

SUPERIOR COURT OF CALIFORNIA, COUNTY OF BUTTE

RULES OF COURT

PROPOSED RULE CHANGES

JANUARY 1, 2014 CYCLE

LOCAL RULE 12 PROBATE RULES (*Effective 7/1/98, as amended 7-1-02, as amended 1-1-05, as amended 7-1-09, as amended 1-1-11, as amended 7-1-12, as amended 7-1-13, as amended 1-1-14*)

12.1 GENERAL (*Effective 7-1-98, as amended 7-1-99, as amended 7-1-12, as amended 1-1-14*)

(a) RESERVED

(b) FORM OF PAPERS PRESENTED FOR FILING

1. It is the duty of the attorney (or the party appearing without an attorney) to prepare and submit the supporting documents and proposed orders for all matters. All such documents shall include the time and date of the hearing, typed under the caption of the front page.

2. If a Judicial Council form is available for the particular form of relief sought, that form shall be used. The form is to be used in the same format as prescribed and printed by the Judicial Council (i.e. ~~printed in a rolled format so that the reverse side of the document can be read by "rolling" the form as opposed to turning it over~~). Only current Judicial Council forms are acceptable for filing.

3. A proposed form of order is to be submitted with each petition or motion for relief. Any petition or motion filed without such proposed form of order will not be calendared for hearing until such time as the proposed form of order is submitted.

(c) PROCEDURES FOR EX PARTE MATTERS

1. If the ex parte matter is contested the petition shall so specify. If necessary, the Clerk will contact the attorney of record so the matter can be added to the next available calendar for hearing.

(a) All applications for ex parte orders must contain a list of any and all requests for special notice which have been filed in the proceedings or contain an allegation that no special notice has been requested. If any such notice has been requested, a waiver must accompany the petition.

(b) If it is reasonably likely there will be a dispute or contest as evidenced by documents on file in the proceeding, then all parties must be notified pursuant to California Rule of Court §3.1200-3.1207 of the time and place where the application for the ex parte order will be made. Proof by the attorney's declaration of such notification shall accompany the petition.

2. For good cause, the Court may require a noticed hearing before approval of any matter.
(Effective 7-1-98, as amended 7-1-99, as amended 7-1-12, as amended 1-1-14)

12.10 CONSERVATORSHIPS *(Effective date 7-1-98, as amended 1-1-03, as amended 7-1-09, as amended 1-1-11, as amended 7-1-12, as amended 7-1-13, as amended 1-1-14)*

(a) RESERVED

(b) COURT INVESTIGATOR

1. In all cases, the petitioner or his or her attorney must submit a completed Court Investigator Information Sheet to the Clerk's Office at the time of the filing of the petition for appointment of a conservator.
2. The provisions of the Probate Code concerning the duties of the Court Investigator apply whether or not the proposed conservatee is the petitioner, [contrary to Probate Code §1826(o).]
3. The Court Investigator must be informed immediately of any change of address for the conservatee, the conservator or any attorney of record. This may be accomplished by submitting a new Court Investigator Information Sheet.
4. After filing, the Court's file will be submitted to the Court Investigator for his use.
5. Assessment for the cost of the Court Investigator's investigation shall be paid as ordered by the Court. Prob. §1851.5 permits the county to waive, defer, or order paid in part such fee in case of hardship. Assessments will be billed to the estate or, where applicable, to a trust where the conservatee is a beneficiary. Conservator shall provide the Court Investigator's Office with the current address of the trustee of any such trust.
6. Assessments shall be paid to ~~the Central Collections Department~~ **Butte County Superior Court.**
7. Original plus one copy required of the following at the time of filing for use by the Court Investigator: Petition for Appointment, Confidential Supplemental Information, Confidential Screening, Court Investigator's Information Sheet, doctor reports and accountings.
8. Additional fees and/or mileage costs may apply for any time the court investigator must travel out of county to perform an investigation due to the other county not performing courtesy investigations.

(c) TEMPORARY CONSERVATORSHIP

1. Ordinarily, no petition for appointment of a temporary conservator will be considered by the Court prior to the filing of a petition for appointment of a permanent conservator. The bond must be filed with the Court within five (5) court days of appointment as temporary conservator. Failure to do so will result in removal as the temporary conservator.
2. The petition for appointment of a temporary conservator may be brought ex parte, provided that the provisions for notice to proposed conservatee required by law are satisfied, either by giving notice to the proposed conservatee or by submission of a declaration showing

facts sufficient to allow the Court to determine that good cause exists to eliminate or alter the notice requirements and provided that the following information is submitted:

- A. The original and copy of the petition and proposed order;
 - B. A detailed statement of facts in the petition establishing the necessity for the temporary conservatorship; and
 - C. An endorsed, filed copy of the petition for appointment of the permanent conservator.
 - D. If the attorney is informed that the petition for appointment of a permanent conservator will be contested, all known potential objectors shall be notified at least forty-eight (48) hours in advance of the time and place the petition for appointment of the temporary conservator will be presented. However, if facts are found which make it clear that the notice required by this section would tend to adversely affect the conservatee or the conservatee's estate, notice to potential objectors may be waived upon a showing of exigent circumstances.
3. Ordinarily, the Court will require a bond for temporary conservators of the estate.
 4. Letters of temporary conservatorship expire on the date of the hearing on the appointment of the permanent conservator or thirty (30) days after appointment of the temporary conservator, whichever is earlier, unless the Court extends the termination date pursuant to Prob. §2257.
- (d) INDEPENDENT EXERCISE OF POWERS. No powers specified in Prob. §2591 will be granted in the absence of a clear and convincing factual showing that the grant of each power requested is needed to administer the estate, and that the grant of such power is for the advantage, benefit and best interests of the estate.
- (e) CONDITIONS FOR APPOINTMENT OF INDIVIDUAL CONSERVATORS
1. BOND OF CONSERVATOR. Bond for an individual conservator of the estate shall not be waived. Under special circumstances, the Court in its discretion may order a reduced bond where the conservatee, having sufficient capacity to do so, has waived or requested bond amount. Bond of the conservator may be reduced by deposit of assets into block accounts. The bond must be filed with the Court within ten (10) days of appointment as conservator. Failure to do so will result in removal as conservator.
 2. HANDBOOK. Prior to the hearing for appointment of conservator, the proposed conservator shall obtain the "Handbook for Conservators" by accessing it at www.courts.ca.gov/documents/handbook.pdf .
 3. DUTIES OF CONSERVATOR. A completed form "Duties of Conservator" and "Confidential Conservator Screening Form" (JC Form GC-348 and GC-314) shall be filed simultaneously with the petition for appointment.
- (f) ALLOWANCE OF FEES IN CONSERVATORSHIP PROCEEDINGS.

1. No fees will be ordered paid in conservatorship proceedings until the filing of the inventory, but in no event until the expiration of ninety (90) days from the issuance of letters, pursuant to Prob. §§2640-2642.
2. Conservators of persons or estates or both and attorneys may petition the Court for just and reasonable compensation earned to the date of filing the petition. The petition for compensation shall set forth the hours spent and services performed by the conservator, the attorney and any paralegal. At the time of filing the first accounting, the conservator and attorney (and the attorney on behalf of the paralegal) may petition the Court for compensation, or additional compensation earned from the date of a prior award, by setting forth the hours spent and the services performed.
 - A. Ordinarily, reasonable compensation for conservators shall not exceed seventy-five dollars (\$75) per hour.
3. Fees for services which could ordinarily be provided by someone of less skill than the conservator (such as running errands, shopping and the like) will be compensated at a rate which one might expect for the performance of such duties rather than at a rate which might be appropriately paid to the Conservator for services which require the skill, training and expertise of a conservator.
 - A. In the event the attorney for a conservator performs some of the administrative and bookkeeping functions normally performed by the conservator, the attorney may be awarded a larger amount of the combined fees and the conservator allowed a smaller portion thereof so that the total compensation awarded is no larger than that provided for under the guidelines set forth above.
4. Where all or a portion of the fee awarded exceeds cash on hand in the estate, the Court may, in appropriate circumstances, issue its order imposing a lien for fees on any or all of the assets in the estate. Ordinarily, enforcement of the lien will be deferred until the assets of the estate subject to the lien have been liquidated for reasons other than the satisfaction of the unpaid fee.
5. To be valid, contingent fee contracts with an attorney require prior court approval. It is advisable for the attorney to petition the Court for its approval prior to rendering services.
6. The title of the petition embodying an application for the payment of fees and of the notice of hearing of such petition shall include a reference to the request.
7. Compensation to an attorney representing a conservatee may be ordered at the conclusion of the hearing on the appointment of the conservator.

(g) PRIVATE PROFESSIONAL CONSERVATORS.

1. REGISTRATION. All parties who fit the definition of a Private Professional Conservator as described in Prob. §2341 must register with the Clerk's Office. Contact the Clerk's Office for the current fee. One set of fingerprint cards and a Certificate of Registration of Private Professional Conservator are required when registering.

(h) APPOINTMENT OF LEGAL COUNSEL. Appointment of legal counsel pursuant to Prob. §§1470 and 1471 is made in the following manner:

A. If the conservatee or proposed conservatee is developmentally disabled or indigent, the Butte County Public Defender is appointed;

B. If the conservatee or proposed conservatee is not indigent, an attorney's name is obtained through the Court's list of attorneys available for appointment. The attorney will be paid up to his or her usual hourly rate from the conservatee's estate.

C. If a conservatee or proposed conservatee has retained legal counsel independently, the representation is subject to approval by the Court.

(i) ACCOUNTINGS

A. The conservator or successor conservator may either arrange to pick up the original lodged confidential supporting documents or provide a self-addressed stamped envelope for their return upon final determination and approval of the conservator's account by the Court. If the conservator or successor conservator is picking up lodged documents in person, they must sign a receipt pursuant to CRC §10.610(c)(8) and CCP §1952.2. Any documents so lodged, which are not accompanied by a self-addressed stamped envelope or in the alternative not picked up and a receipt signed, may be destroyed by the clerk 45 days after the hearing.

(j) TERMINATION OF CONSERVATORSHIP OF THE PERSON

The conservator shall provide a copy of the death certificate of the conservatee along with a declaration prior to termination of a conservatorship of the person. *(Effective date 7-1-98, as amended 1-1-03, as amended 7-1-09, as amended 1-1-11, as amended 7-1-12, as amended 7-1-13, as amended 1-1-14)*

LOCAL RULE 14 ATTORNEY FEES & COST REIMBURSEMENT (Effective 1-1-91, title amended 7-1-99, as amended 7-1-09, as amended 7-1-12, as amended 7-1-13, **as amended 1-1-14**)

14.6 JUVENILE DEPENDENCY AND FAMILY CODE §3150 APPOINTMENTS CASES (Effective 7-1-09, **as amended 1-1-14**)

(a) For Juvenile Dependency conflict counsel, and Family Code §3150 appointments, reimbursement for attorney fees shall be authorized in accordance with LR 14.2. Other reasonably necessary expenses, including investigative and other expert services, shall be authorized in accordance with LR 14.3(a) through LR 14.3(e).

(b) Prior to incurring investigative, or other expert fees and/or other costs, the form of order presented for authorization must be accompanied by a declaration in support thereof, ~~and shall contain the following language:~~

~~“The cost(s) and expense(s) of such service(s) or examination(s) shall not exceed _____ (which is the dollar amount indicated by the Court on each Ex Parte Appointment Order). The Court finds that the cost(s) for expert service(s) is/are a legitimate expense of the Superior Court of California, County of Butte and will be paid by the Court upon written certification that the expenses have been incurred.”~~

(c) The declaration in support of investigative and or expert witness fees and costs will be (1) authored by the expert or investigator attesting to the nature of work to be done, the number of hours expected, anticipated costs, hourly rate(s) depending on the nature of the work and (2) have a resume or curriculum vitae attached along with (3) a statement by the attorney detailing they have made the inquiry as detailed in the declaration and describing the relevance of the information or services sought.

(d) For purposes of this local rule: “investigator” includes an individual or company providing services in support of the relevant needs of the attorney on behalf of their client; “expert” includes an individual the attorney intends to proffer in court as an expert in a particular subject.

(e) Authorization of reimbursement for costs as detailed in this local rule does not amount to a finding by the court that testimony or evidence of the investigator or expert will be admitted in court, nor constitute a finding that an individual qualifies as an expert under the law.

(f) The declaration shall contain the following language:

“The cost(s) and expense(s) of such service(s) or examination(s) shall not exceed \$_____ (the dollar amount the attorney is requesting the Court authorize on each Ex Parte Appointment Order).”

(g) The request for reimbursement must include a proposed form of order that includes the following language: “The Court finds that the cost(s) for expert or investigative service(s), as detailed in the declaration, is/are a legitimate expense of the Superior Court of California, County of Butte and will be paid by the Court upon written certification that the expenses have been incurred.”

~~(e)~~*(h)* A request for reimbursement shall be paid upon presentation of an itemized billing attached to or listed on a completed Butte County Superior Court Claim for Professional Services, with attached receipts for expenses and a copy of the court order that previously authorized the expenditure. The claim must specify the case number, an hourly rate **consistent with that expressed in the declaration or ordered by the Court, whichever is less**, the number of hours billed, and shall not exceed the total amount previously authorized by the Court. The attorney shall then present the claim to the Court's Administrative Office for processing for payment. (Effective 7-1-09, **as amended 1-1-14**)

LOCAL RULE 17 JUVENILE COURT RULES (ATTORNEYS REPRESENTING PARTIES IN DEPENDENCY PROCEEDINGS) (Effective 7-1-96, as amended 1-1-02, as amended 1-1-07, as amended 1-1-10, as amended 1-1-11, as amended 1-1-1, as amended 7-1-12, **as amended 1-1-14**)

17.4 ~~RESERVED (Effective 7-1-96, as amended 1-1-02)~~ **PRIVATELY RETAINED ATTORNEY (Effective 1-1-14)**

Any privately retained attorney must submit to the Court, at their first appearance or within 10 days thereafter, either (a) a statement of competency with attachments described in 17.5, or (b) documentation they advised their client in writing of their right to be represented by competent counsel and that the client is waiving that right by electing to retain an attorney who does not meet the competency requirements as listed in California Rule of Court Rule 5.6660 and as further detailed in Butte County Superior Court Local Rules. Documentation under (b) must be attested to and signed by the client and the attorney. (Effective 1-1-14)

17.5 MINIMUM STANDARDS OF EDUCATION AND TRAINING; WORKLOADS (Effective date 7-1-96, as amended 1-1-02, as amended 7-1-12, **as amended 1-1-14**)

(a) Each attorney appointed in a dependency matter before the juvenile court shall complete the following minimum training and educational requirements:

1. Eight (8) hours of training and education in juvenile dependency law, covering the following areas: Applicable case law and statutes; rules of court; judicial council forms; writ procedures; child abuse and neglect; child development; substance abuse; domestic violence; family preservation and reunification; ~~(A certificate of attendance at MCLE training, professional organization training (along with a copy of the program schedule) and/or attendance at court sponsored or approved training will fulfill this requirement) or~~

2. At least six (6) months of regular appearances in dependency proceedings or comparable experience as determined by the presiding juvenile judge, in which the attorney has demonstrated competence to the Court's satisfaction in the attorney's representation of his or her clients.

(b) ***For an attorney who relies on Rule 17.5(a)(1) to meet the minimum standards of competency, a Certificate of Competency to Practice in Juvenile Dependency Court (form JV.010) shall be completed by the attorney of record for the dependency matter and submitted to the Court within 10 days of his or her first appearance in a dependency matter. Documentation from the provider of successful completion of the course work must be attached to the Certificate of Competency. Such documentation can include a certificate of attendance at MCLE training, professional organization training (along with a copy of the program schedule) and/or attendance at court sponsored or approved training.***

For an attorney who relies on Rule 17.5(a)(2) to meet the minimum standards of competency, a Certificate of Competency to Practice in Juvenile Court (form JV .010) shall be completed by the attorney of record for the dependency matter and submitted to the Court within 10 days of his or her

first appearance in a dependency matter. The form will detail the court in which the 6 months of regular appearances were made, the time frame of those appearances and the name of the judge(s) presiding over those matters and whether the appearances were appointments, retained, or pro bono.

(c) Failure to submit a Certificate of Competency pursuant to Local Rule 17.5(b), will cause the Court to notify the attorney that his or her right to practice in dependency proceedings is revoked. The attorney shall have thirty (30) days from mailing of the notice to submit a Certificate of Competency. If the attorney fails to submit such proof, the Court shall order that the attorney is prohibited from practicing in dependency proceedings and shall appoint certified competent counsel to substitute in.

(d) Each attorney certified to practice before the juvenile court, shall complete eight (8) hours of continuing education related to dependency and submit a new Certificate of Competency to the Court within every three (3) years ***of their first appearance in the dependency court of the Juvenile Division of the Butte County Superior Court.***

(e) The attorney's continuing training or education shall be in the areas set forth in Local Rule 17.5(a)(1), or in other areas related to juvenile dependency practice ~~including, but not limited to,~~ ***that has included*** special education, mental health, health care, immigration issues, the rules of evidence, adoption practice and parentage issues, the Uniform Child Custody Jurisdiction Act, the parental Kidnapping Prevention Act, state and federal public assistance programs, the Indian Child Welfare Act, client interviewing and counseling techniques, case investigation and settlement negotiations, medication, basic motion practice and the rules of civil procedure.

(f) When a certified attorney fails to complete eight (8) hours of continuing education and submit a new Certificate of Competency within three (3) years, the Court shall notify the attorney that his or her right to practice in dependency proceedings is revoked. The attorney shall have thirty (30) days from mailing of the notice to submit proof of completion of the required education or training and submit a new Certificate of Competency. If the attorney fails to do so, the Court shall order that the attorney is prohibited from practicing in dependency proceedings and shall appoint certified competent counsel to substitute in.

(g) The attorney for a child must have a caseload that allows the attorney to perform the duties required by Welfare and Institutions Code Section 317(e) and the California Rules of Court. (Effective date 7-1-96, as amended 1-1-02, as amended 7-1-12, ***as amended 1-1-14***)