

Chapter 11

Conservatorships

Rule 611.01 Appointment of Out-of-State Conservators

Generally, the court will not appoint an out-of-state conservator unless sufficient facts exist to support a finding that the appointment is in the best interests of the conservatee.

(Adopted effective July 1, 1992)

Rule 611.02 Appointment of Temporary Conservator

For procedures for applying for appointment of a temporary conservator, go to www.occourts.org, click on probate and click on ex parte procedures. If a petitioner wishes to apply to waive or shorten notice for appointment of a temporary conservator, the petitioner must follow CRC rule 7.1062.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.03 Appointment of General Conservator

All petitions for appointment of conservator must state if whether there is presently a conservator appointed under the Lanterman-Petris-Short (LPS) Act (Welfare and Institutions Code, Part I of Division 5 beginning with section 5000). If an LPS conservatorship exists, notice must be given to the LPS conservator and counsel representing the LPS conservatee.

When the proposed conservatee is, or was, the subject of a guardianship, the petition must include the case number of the prior guardianship, the name of the prior guardian(s), and the names of the attorneys for the prior guardian or ward.

When the petitioner, or the proposed conservator, also serves as the Trustee of a Trust in which the conservatee has a beneficial interest, the existence of the Trust, and the petitioner or proposed conservatee's status and interest in the trust, must be disclosed in the petition.

In any case in which the petitioner requests dismissal of a petition for the appointment of a general conservator or successor conservator or to have a petition placed off calendar, a declaration by the petitioner in support of the request must be filed with the court stating:

- A. The change in circumstances which has occurred since the filing of the petition which has eliminated the need for a conservatorship;
- B. Any transfers of property by the proposed conservatee since the filing of the petition (including, but not limited to, purchases, sales, gifts and declarations of trust), or, in the alternative, a statement that no single such transaction by the

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conservatee exceeded \$500.00, and the aggregate of such transactions during the period did not exceed \$3,000.00; and

- C. Any assets marshaled by the temporary conservator, and any transfers of conservatorship assets (including, but not limited to, purchases, sales, gifts and declarations of trust) by the temporary conservator.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.04 Petition for Appointment of Non-Profit Corporations as Conservators

In addition to the usual allegations in a petition for appointment of a conservator of the person and/or estate, a petition seeking the appointment of a non-profit corporation qualified to act as such pursuant to Probate Code section 2104 must contain specific allegations to enable the Court to determine that the corporation meets the requirements of Probate Code section 2104.

(Adopted effective July 1, 1992)

Rule 611.05 Vacated

(Adopted effective July 1, 1992; repealed effective July 1, 2008)

Rule 611.06 Capacity to Give Informed Consent for Medical Treatment

If a separate petition is filed concerning the capacity of a conservatee to consent to medical treatment pursuant to Probate Code sections 1880 et seq., the petition shall contain a statement that there is on file a current Notification to Court of Address form, or the petitioner shall file a current Notification to Court of Address form concurrently with the petition.

If a conservatee regains sufficient capacity to give informed consent to any form of medical treatment, the conservator shall promptly petition, pursuant to Probate Code section 1891, to revoke any previous order granting the conservator exclusive authority to consent to medical treatment on behalf of the conservatee.

When the Court grants the conservator the exclusive authority to consent to medical treatment on behalf of the conservatee, such authority is subject to the following reservation and condition:

The conservator may not consent to the sterilization of the conservatee. [Such authority must be specifically sought under Section 1952 (developmentally disabled conservatees) or Section 2357 (all other conservatees) of the Probate Code. For required allegations, proof, and findings counsel are advised to consult In re Valerie N. (1985) 40 Cal.3d 143, 166-169]

All orders granting exclusive medical consent authority to a conservator and letters of conservatorship issued thereon shall contain the following condition:

The conservator may not consent to the sterilization of the Conservatee.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

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Rule 611.07 Additional Independent Powers

The court may, on the petition of the conservator, either at the time of appointment or later, grant additional independent powers to the conservator as authorized by sections 2590 and 2591 of the Probate Code. Additional independent powers are not lightly granted. The petition must state for each section 2591 power requested the facts and reasons which justify the independent exercise of the power. Additionally, if the power to sell the conservatee's present or former personal residence is requested, the petition must state all of the information required under section 2540(b). The information required under section 2540(b) must be provided the first time the conservator seeks authority to list or sell the conservatee's present or former personal residence. The court will grant only those independent powers necessary or proper under the specific circumstances of each case. Any powers so granted must be set forth at length in the order and in the letters of conservatorship.

Where the power is granted to sell real property (thereby eliminating the need to publish notice of sale), the court ordinarily requires the sale to be returned to the court for confirmation.

(Adopted effective July 1, 1992)

Rule 611.08 Establishing Trusts for Conservatees

If a petition seeks authority to establish a living trust for the benefit of a conservatee with conservatorship assets, the court will require that the trust provide:

- A. that the conservator of the estate (or, if none, of the person) shall have the power to amend or revoke the trust, subject to prior court approval;
- B. that all fees awarded by the court to the conservator (person and/or estate) and the conservator's attorney shall be paid by the trustee if so ordered by the court;
- C. that all costs assessed for visits by the Probate Court Investigator shall be paid by the trustee if so ordered by the court;
- D. that the principal may be invaded for the benefit of the conservatee, and such power of invasion shall be construed liberally in favor of the conservatee; and
- E. that during the lifetime of the conservatee the trustee shall file an account with the court every two years, and notice of hearing on the account shall be given in the same manner and for the same time as required in conservatorship accounts.

A copy of the proposed trust instrument must be attached to the petition. The terms of the trust, as authorized by the court, must be set forth fully in the order submitted after hearing.

If a petition seeks to transfer conservatorship assets to an already established living trust, the court will ordinarily grant such authority if that trust provides that the assets will be available for the support and maintenance of the conservatee during his or her life.

(Adopted effective July 1, 1992)

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Rule 611.09 Bonds of Conservators

All petitions for reduction in bond must be filed and set for hearing and noticed pursuant to Probate Code section 2329, except as provided in Probate Code section 2328 (relating to funds and property deposited in a bank or trust company, etc., not to be withdrawn except on order of the court. See Rule 613.08).

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.10 Investments by Conservators

The standard set out in section 16040(a) of the Probate Code, providing for investments by trustees, is the standard applied by the Probate Court in authorizing proposed investments by conservators. The Probate Court does not act as an investment counselor but suggests that the investments by conservators should be prudent and in keeping with the size and character of the conservatee's estate. Investments in existence at the time of the creation of the conservatorship usually may be maintained, subject to the provisions of section 16048 of the Probate Code. Investments other than as provided in Probate Code section 2574 require court authorization unless the conservator is empowered to so act pursuant to Probate Code section 2590, et seq.

The court will not ordinarily approve the investment of the conservatee's funds in unsecured loans, secured loans to near relatives, or debenture bonds except those which are part of a large issue, well-seasoned, and listed on an established security exchange.

The court will not approve the investment of the conservatee's funds in bonds or obligations of foreign governments or corporations, whether payable in dollars or not.

Investments in real estate, either by purchase or encumbrance, will not be granted unless supported by an M.A.I. appraisal.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.11 Conservators' Accounts

All accounts filed in conservatorship cases must comply with CRC rule 7.575.

Private professional conservators are to file original financial account statements as required in Probate Code section 2620(c)(3). After examination and becoming part of the court's electronic record, pursuant to Government Code section 68150, the original documents will be returned to the submitting party. The court will retain the documents in electronic form only. The private professional must file the bank and financial records separate from the conservator accounting. The caption shall state "Private Professional Bank and Financial Records per Probate Code section 2620(c)(3)" and the date, time and department of the hearing. The private professional conservator must submit with the records a self-addressed envelope with sufficient postage for mailing the documents or an attorney service pick up slip. The private professional conservator must retain the originals until the order approving the final account is final.

Where a conservator accounts for the assets of more than one conservatee, the accounting for each conservatee must be set forth separately.

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The conservatee's current residence address should be set forth in each report or account filed.

Each report/final account of a conservator upon termination of the proceeding due to the conservatee's death must contain an allegation either that notice of the conservatee's death has been provided to the Director of Health Services as required by Probate Code section 215 or that no such notice is required. (See Welfare & Institutions Code section 14009.5)

The order submitted after hearing should, when appropriate, contain a direction to the conservator to pay the assessments imposed pursuant to section 1851.5 of the Probate Code to the Orange County Clerk, in care of Finance Division, P.O. Box 838, Santa Ana, California 92702. When containing a direction to pay, the order should state the dollar amount assessed. On current accounts where the court has found that the assessments would pose a hardship to the estate, the order submitted after hearing should contain such a finding and an order that the assessments not be paid except upon further court order.

Waivers of account will be accepted in the court's discretion only in the following instances:

- A. When the proceeding is terminated by court order, and the conservatee thereafter waives an account; or
- B. When the proceeding is terminated by death of the conservatee and either (1) there is no will and a written waiver is obtained from all of the conservatee's heirs; or (2) there is a will and a written waiver is obtained from the executor and the devisees under the will after the order admitting the will has become final; and (3) the time to present creditors' claims has expired and there is a representation by the estate representative that the estate is solvent. Waivers will be accepted only from heirs or devisees who are competent adults.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.12 Substituted Judgment

The party filing a petition for substituted judgment (Probate Code section 2580) must fully inform the court of all relevant circumstances. The petitioning party must use due diligence to inform the court of everything a reasonable person in the conservatee's position would have wanted to know before deciding whether or not a proposed action should be taken. See Conservatorship of Hart (1991) 228 Cal.App.3d 1244.

The Court may appoint counsel for the conservatee. The Court may also require the appointment of an expert to investigate, report or testify if it would be helpful to the Court's determination.

If the Court grants a petition for the exercise of substituted judgment, the order submitted after hearing must contain the findings required by Probate Code section 2582. See also Rule 611.08 for additional requirements relating to trusts.

(Adopted effective July 1, 1992)

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Rule 611.13 Petitions to Terminate Conservatorship

When a petition seeks termination of a conservatorship, the court will ordinarily require the appearance of the conservatee at the hearing on the petition.

(Adopted effective July 1, 1992)

Rule 611.14 Death of the Conservatee

Within 30 days of the death of the conservatee, the conservator shall notify the court or cause the court to be notified of the death. Such notice need not be in any particular form but must:

- A. be in writing;
- B. be signed by the conservator or the conservator's attorney of record; and
- C. state the date of death of the conservatee.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.15 Vacated

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.16 Deceased Conservatees – Liquidation of Estate

Petitions and orders under Probate Code section 2631 for authority to liquidate the estates of deceased conservatees must be submitted on Orange County Form L-903.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.17 Attorneys Appointed for Conservatees or Proposed Conservatees

The court is aware that, for attorneys appointed to represent conservatees or proposed conservatees, the prospect of future employment by the conservator might create situations which could lead to violation of Rules 3-110 and 3-310 of the Rules of Professional Conduct. Actual employment by a conservator after representation of the conservatee or proposed conservatee presents a high risk of violation of Rule 3-314(d) of the Rules of Professional Conduct. Accordingly, all attorneys who are appointed by the court to represent conservatees or proposed conservatees, pursuant to sections 1470 or 1471 of the Probate Code, are deemed to stipulate to the court, by accepting such appointment, that they will not subsequently represent the conservator in the same conservatorship.

(Adopted effective July 1, 1992)

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Rule 611.18 Vacated

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.19 Conservator’s Handbook and Orientation Program

Each proposed conservator (other than a proposed temporary conservator) must attend an orientation program provided by the Court before the hearing date on the petition for appointment. The Conservator’s Handbook must be purchased and taken to the orientation program.

These requirements must be met before the hearing date and proof of compliance must be filed no later than five court days before the scheduled hearing on the petition for appointment of a general or limited conservator.

Failure to meet these requirements may result in the petition for appointment being ordered off calendar if the person has not been appointed temporary conservator. If a temporary conservator fails to attend the orientation program, the conservator and counsel must attend the hearing on the petition for appointment of the general or limited conservator. Failure of the temporary conservator to attend the hearing may result in suspension of the temporary conservator’s powers and issuance of citation to compel appearance.

At the hearing the temporary conservator must show good cause why the temporary conservator failed to attend the orientation program. Lack of planning to attend, inconvenience, being too busy, and the like, do not constitute good cause. Unless good cause is shown the Court will ordinarily consider terminating the temporary conservatorship, ordering the petition for appointment of general or limited conservator off calendar, and making other appropriate orders.

The Public Guardian, corporate fiduciaries, banks and other entities authorized to conduct the business of a trust company are exempt from these requirements. All other proposed conservators, including private professional conservators, must meet these requirements once. While each proposed conservator must only purchase one handbook and attend one orientation program, proof of compliance must be timely submitted in each case where appointment is sought.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 611.20 Visitation

The Court expects a conservator to visit the conservatee with sufficient frequency to assure that the conservatee’s needs are being met. The frequency of visitation will vary depending on the conservatee’s living situation and needs. If the conservatee is living in a skilled nursing facility the court expects the conservator to visit at least once a month. The plan for visitation should be included in the general plan together with an explanation of why the proposed frequency of visitation is appropriate.

(Adopted effective July 1, 1992)