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.

RULE 611.02 APPOINTMENT OF TEMPORARY CONSERVATOR

Attorneys should choose a date for hearing any morning, Monday through Friday at 11:00 a.m. in Department 703. Attorneys should complete Judicial Council Form "Notice of Hearing" and cause same to be personally served, together with a copy of the petition, at least five days before the date selected on the proposed conservatee. The court may require notice to other persons, or may waive notice for good cause. If the proposed conservatee is unable to attend the hearing, the court ordinarily will require a doctor's declaration as to the mental capacity and medical condition of the proposed conservatee.

No later than 2:00 p.m. the day before the hearing, attorneys must file the petition for appointment of a general conservator (if it has not previously been filed), obtain the case number, and affix the case number to the temporary petition and proofs of service. Attorneys must deliver the temporary petition, proofs of service and order, together with a copy of the petition for appointment of the general conservator to the designated area in the Probate Division of the Clerk's Office no later than 2:00 p.m. the day before the hearing.

At the time and on the date selected, attorneys should appear before the calendar call and advise the clerk that they are appearing on the petition and whether or not anyone is present to oppose the petition. If no opposition is presented, and the matter appears proper, the court will grant the petition. If there is any opposition, the matter may be heard at the end of the calendar or continued to a date specific.

RULE 611.03 APPOINTMENT OF GENERAL CONSERVATOR

Petitions for appointment of general conservators are set on calendar at least five weeks after the date of the filing and appearance of the proposed conservator and counsel may be required. The petition for appointment of general conservator, Confidential

Supplemental Information, and Declaration of Medical or Accredited Practitioner regarding proposed conservatee's inability to attend the hearing must be filed in duplicate.

Where a petition seeks the appointment of a non- petitioning conservator, a consent to serve as conservator must be filed for each non-petitioning proposed conservator.

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 such a petition placed off calendar, a declaration by the petitioner in support of such 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 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.

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.

RULE 611.05 LIMITED CONSERVATORSHIPS

A petition for appointment of a limited conservator must be filed in duplicate, the duplicate being for the use of the Probate Investigator.

If appointment of counsel by the court is required pursuant to Probate Code Section 1471(c), a petition for appointment of counsel, together with a proposed order, should be submitted to the

court at the time of filing the petition for appointment of conservator so that such appointed counsel will have time, prior to the hearing, for investigation and whatever action is necessary.

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 must be filed in DUPLICATE and 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 reservations and conditions:

A. 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.]

B. In the absence of the written consent of all persons entitled to notice under subparagraph 1, below, the conservator may direct or consent to the withdrawal or withholding of life-sustaining treatment (including nutrition by hydration), only:

1. after giving 15 days written notice of such proposed action to the persons otherwise entitled to notice of hearing under Probate Code Sections 1821(b), 1822(b), 1822(f), and 1822(e), by mail in conformance with Probate Code Section 1465. Such notice of proposed action shall comply with the requirements of Probate Code Section 10585. Judicial Council Form DE-165, suitably modified, may be used. (The court, for good cause shown, may shorten the period of notice.)

2. if no written objection is received by the conservator by the date specified in the notice of proposed action.

If written objection is received by the conservator, consent may be given to the withholding or withdrawing of life sustaining treatment only after obtaining an order of the court authorizing such action.

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

A. The conservator may not consent to the sterilization of the conservatee; and

B. The conservator may consent to the withdrawal or withholding of life-sustaining treatment only after giving notice of such proposed action as required by then current rules of the court.

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.

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 a 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 only if that trust provides that the assets will be available for the support and maintenance of the conservatee during his or her life.

RULE 611.09 BONDS OF CONSERVATORS

The court ordinarily will fix the bond of a conservator of the estate in the amount permitted under Section 2320 of the Probate Code for a bond given under that section by an admitted surety insurer.

However, upon a showing of good cause, the court may increase or decrease the amount. If it appears likely that the estate will satisfy the conditions of Subdivision (b) of Section 2628 of the Probate Code for the duration of the conservatorship, the court may dispense with such bond. The court may also dispense with the bond where the conservatee, having sufficient capacity to do so, has waived the filing of a bond.

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).

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 16008 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 Sections 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.

RULE 611.11 CONSERVATORS' ACCOUNTS

The form of accounts should follow the form of accounts for decedents' estates, set forth above in Chapter 8 of the Probate Rules.

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

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.

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.

RULE 611.13 PETITIONS TO TERMINATE CONSERVATORSHIP

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

RULE 611.14 DEATH OF THE CONSERVATEE

Within 90 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.

RULE 611.15 DECEASED CONSERVATEES - CLAIMS FOR UNPAID EXPENSES

Claims for unpaid expenses of the conservatorship, if allowed in full or in part by the conservator shall be presented to the court for approval with the conservator's allowance attached on Orange County Form 902. Bills and invoices, complete in themselves, may be attached as claims to the approval form. If such bills and invoices are smaller than 8-1/2 inches by 11 inches, they must be firmly affixed to a backing paper of that size to permit court filing.

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 903.

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.

RULE 611.18 CONSERVATOR'S GENERAL PLAN

A General Plan is required for all conservators and successor conservators. At the time of the appointment of the conservator or successor conservator, the court will set a hearing for general plan review 135 days after appointment and shall order the conservator to return. Within 90 days after appointment, the conservator shall file a detailed general plan using Orange County Form 985. A duplicate copy of the plan shall be filed with the original for use by the court investigator.

The conservator shall serve notice of hearing and filing of the general plan upon the conservatee and all relatives named in the Petition for Appointment at least 30 days before the hearing date set for the plan and shall file proof of mailing such notice at least four court days before the hearing. The conservator and his/her attorney are required to appear at the hearing unless the court allows the hearing to go off calendar. Counsel should telephone to see if an appearance is required during the week prior to the hearing.

RULE 611.19 CONSERVATOR'S HANDBOOK AND ORIENTATION PROGRAM

Each proposed conservator (including proposed temporary conservators) must purchase the Conservator's Handbook (PC 1835) when it becomes available before the Court will consider the person's petition for appointment. The handbook will be available for purchase in the Probate Division of the Clerk's office.

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, when available for purchase, 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 four court days before the scheduled hearing on the petition for appointment of a general or limited conservator.

Failure to meet these requirements will 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 will 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.

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.