
ORANGE COUNTY BAR ASSOCIATION

**CONSERVATORSHIP, GUARDIANSHIP, &
PROTECTIVE PROCEEDINGS
SECTION WEBINAR**

Conservatorship Accountings and Fees:
Best Practices and How to Get Yours Approved the First Time



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Conservatorship Accountings and Fees: Best Practices and How to Get Approved the First Time

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CONSERVATORSHIP ACCOUNTINGS

- One year from the time of appointment, and biennially after that (i.e. the end of years 1, 3, 5, etc.), the conservator must file an accounting. *Probate Code* §2620(a).
- The accounting and pleading must be in the format required by *Probate Code* §1061-1064 and Rule of Court 7.575.
- “Time of appointment” begins at the appointment of a temporary conservator - if given authority to marshal assets.

“STANDARD” ACCOUNTINGS

- All accountings must be “standard” unless a “simplified” accounting is permitted. Rule of Court 7.575.
- “Standard” accountings report all receipts and disbursements in **subject-matter categories**. Use of the Judicial Council forms (GC-400 series) is optional, but the schedules must follow the same format. Rule of Court 7.575(e)(6).

"SIMPLIFIED" ACCOUNTINGS

- "Simplified" accountings report all receipts and disbursements chronologically (not in categories). This format can only be used if:
 - 1. The estate contains no income-producing real property.
 - 2. The estate has no interest in a trade or business.
 - 3. The appraised value of the estate, **excluding the conservatee's personal residence**, is less than \$500,000. Rule of Court 7.575(d).
- A simplified accounting **must** be presented on Judicial Council forms (GC-405 series).

GC-400(SUM)/GC-405(SUM)

<input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF (Name): _____ <div style="text-align: right; margin-top: 10px;"> <input type="checkbox"/> Conservatee <input type="checkbox"/> Minor </div>	CASE NUMBER: _____
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SUMMARY OF ACCOUNT—STANDARD AND SIMPLIFIED ACCOUNTS

☐ (Check if final.) and Final Account ☐ (Check if interim.) Account Current
 Account number ("First," etc.) _____ through _____
 Opening date of account _____ Closing date of account _____

CHARGES*

Property on Hand at Beginning of Account Period, consisting of:			
1a	Cash Assets	\$	
1b	Non-Cash Assets (carry value)		
1c	Total Property on Hand at Beginning of Account Period (add 1a and 1b)		\$
2	Additional Property Received During Period of Account	— Schedule	
3	Receipts During Period of Account	— Schedule A	
4	Gains on Sales During Period of Account	— Schedule B	
5	Other Charges (describe):	— Schedule	
6	Net Income From Trade or Business During Period of Account	— Schedule	
7	TOTAL CHARGES (add 1c, 2, 3, 4, 5, and 6)		\$

CREDITS*

8	Disbursements During Period of Account	— Schedule C	\$
9	Losses on Sales During Period of Account	— Schedule D	
10	Distributions to Conservatee or Ward	— Schedule	
11	Other Credits (describe):	— Schedule	
12	Net Loss From Trade or Business During Period of Account	— Schedule	
Property on Hand at End of Account Period — Schedule E, consisting of:			
13a	Cash Assets	\$	
13b	Non-Cash Assets (carry value)		
13c	Total Property on Hand at End of Account Period (add 13a and 13b)		
14	TOTAL CREDITS (add 8, 9, 10, 11, 12, and 13c)		\$

* (Enter "0" for all categories of charges or credits for which you have no entries. Do not include schedules for these categories, but do not relabel or redesignate the schedules that are included.)

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Whether
"standard" or
"simplified", use
of form
GC-400(SUM) is
mandatory for
ALL
conservatorship
accountings.

REQUIRED SUPPORTING DOCUMENTS - STATEMENTS

- Along with each accounting the conservator must file supporting documents per *Probate Code* §2620(c):
- **Original** account statements showing balances as of the **closing** date of the accounting. If the accounting is the first one, account statements showing the **opening** balances are also required.
- Private Professionals must submit **all** statements. §2620(c)(3).
- “Originals” still required? The court has discretion to allow electronic copies per Rule of Court 7.575(b); and AB 2844 (on the Gov.’s desk) will allow submissions in “verified electronic form”.

OTHER REQUIRED SUPPORTING DOCUMENTS

- **Escrow closing statements** for any sale of real property that occurred during the period.
- If the conservatee is in a residential care facility or long-term care facility, all **billing** statements from the facility.
- The court will accept electronic copies of these documents.

ADDITIONAL REQUIRED INFORMATION

- **Market values.** Each accounting must also have a schedule of the **market value** of each asset in addition to the carry value. *Probate Code* §1063(a). These can be included on the schedule of Assets on Hand. Examples:

■ <u>ASSET</u>	<u>CARRY</u>	<u>MARKET</u>
■ Wells Fargo Bank account no. xxx1234	\$ 6,986.49	\$ 6,986.49
■ 100 shares Facebook common stock	\$13,100.00	\$25,400.75
■ 2016 Honda Accord automobile	\$16,000.00	\$ 9,000.00

- A schedule of **liabilities**. *Probate Code* §1063(g).

ADDITIONAL REQUIRED INFORMATION

- A schedule of purchases or changes in the form of assets. *Probate Code* §1063(b). This is because the examiners are looking at changes in the number of shares from accounting to accounting. Examples:
 - 2/1/20 Change in fund name from ING Global Real Estate Fund to Voya Global Real Estate Fund (no change in shares)
 - 3/1/20 71.356 shares Center Coast MLP Focus Fund acquired via reinvestment of \$662.44 in dividends
 - 4/1/20 50 shares of Southwest Airlines common stock via purchase for \$1,921.50 cash
 - 8/1/20 300 shares Apple Computer common stock acquired via 4-1 stock split

ADDITIONAL REQUIRED INFORMATION

- An additional schedule listing any real property located in another state or country. *Probate Code* §1063(h). The schedule must provide:
 - 1. An estimate of FMV.
 - 2. Identify what action has been or will be taken to preserve and protect the property, including an ancillary proceeding if necessary.

ADDITIONAL ALLEGATIONS REQUIRED FOR PLEADING

- There was/was not any **compensation** paid from the assets subject to the account to the fiduciary or to the attorneys for the fiduciary other than pursuant to a prior court order.
- There was/was not any **family or affiliate relationship** between the fiduciary and any agent hired by the fiduciary during the accounting period.
- Whether or not the estate **cash** has been maintained in interest bearing accounts or in investments authorized by law, except for an amount of cash that is reasonably necessary for orderly administration.
- *Probate Code §1064(a).*

ADDITIONAL ALLEGATIONS REQUIRED FOR PLEADING

- Whether or not the conservatee has a **spouse or domestic partner**; if so, the name and address of that person. *Probate Code* §1460.
- The current address of the **conservatee**.
- Whether the conservatee has been a patient in or on leave of absence from a **state hospital** under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services. *Probate Code* §1461.
- Whether the conservatee receives benefits from the **Department of Veterans Affairs**. *Probate Code* §1461.5.
- **These are required for comparison to the Notice of Hearing.**

REQUIRED BOND ALLEGATION

- Unless waived, every conservator must post bond for the value of the personal property of the estate plus probable annual gross income. *Probate Code* §2320.
- Additional bond is required under §2320(c) to cover the reasonable costs for recovery on the bond if that becomes necessary. The addition is 10% of the first \$500,000, 12% of the next \$500,000 and 2% of the remainder. Rule of Court 7.207.

BEST PRACTICE: FORMAT FOR BOND ALLEGATION

- The conservator is subject to current bond of \$750,000.00. The new correct bond would be \$708,754.76, a decrease of \$41,245.24, calculated as follows:
- FMV of personal property on hand: \$579,784.77
- Probable annual gross income: \$ 61,960.55
- Subtotal: \$641,745.32
- Plus Rule of Court 7.207 additions:
- 10% of the first \$500,000: \$ 50,000.00
- 12% of the next \$141,745.32: \$ 17,009.44
- Total Bond Required: \$708,754.76
- Remember to include the conclusion in your prayer for relief.

BEST PRACTICES TO GET YOUR ACCOUNTING APPROVED: FROM THE PRACTITIONER SIDE

- Talk to your client early and often about the record keeping requirements for preparing an accounting.
- Do NOT assume your clients have read or understood the instructions in the Conservatorship Handbook.
- Calendar regular check-ins that records are being kept appropriately.
- Encourage timekeeping, even if the client does not intend to request compensation.
- Request materials and records from the client four months in advance.
- The Probate Code states the frequency for filed accounts, but it does not state the period to be covered by the accounting. It's better practice to file a clean accounting for a shorter period than to rush an accounting for a period ending a few days before the filing date.

BEST PRACTICES TO GET YOUR ACCOUNTING APPROVED: FROM THE COURT SIDE

- Present a clean, transparent accounting with all **supporting documentation** provided. Make sure the **schedules** are in order and **all required allegations** have been made.
- Transparency – discuss any oddities up front, such as a discrepancy in balance. Raise them yourself, don't wait for the examiner to catch them.
- If you know an opposing party is going to object to a certain line item, explain why you contend the item is proper. It's a red flag if, despite known objections, you try to slip it by without addressing the opposing party's concerns.
- **Lodging vs filing.** In practical terms, the court no longer has "lodging" for documents. Please submit them for filing.
- Make your **prayer complete**, no references to matters appearing earlier in the pleading.
- Clearly state the **period** of your accounting early in the pleading.

COMMON ERRORS THAT CAUSE CONTINUANCES

1. Errors on Notice of Hearing (wrong department, wrong time) or typos on mailing address (especially apartment numbers)
2. Failure to fully fill out the Proof of Service. You don't have to give notice again, but should submit a corrected notice of hearing with the POS filled out. Helpful to indicate at top "corrected POS"
3. Lack of supporting documentation as required.
4. Lack of required allegations.

COMMON ERRORS THAT CAUSE CONTINUANCES

5. Service at different addresses than listed in the pleading.

6. Failure to give notice to a person who filed a Request for Special Notice.

7. Schedules do not balance, presented in wrong format, or missing required information.

8. Failure to address examiner's notes in a timely manner (**five court days** prior to the hearing).

The court will not clear outstanding notes from the bench, so don't ask.

ACCOUNTS ON DEATH OF THE CONSERVATEE

- The final accounting of the conservator on the death of the conservatee must include separate schedules for the period ending on date of death **and a separate accounting** for the period after date of death. *Probate Code* §2620(b).
- Allegations of the need for notice to the Dept. of Health Care Services (Medi-Cal) and the Victim Compensation Board. *Probate Code* §215, 216.
- A final account must propose a distribution of the property on hand: either to a personal rep. of an estate, or via “small estate” affidavit per *Probate Code* §13100. The person(s) to whom distribution is proposed must be specifically named in the **prayer**. Real property must be specifically identified.
- The final account must allege whether the conservatee died testate or intestate.

WAIVER OF ACCOUNTING

- Per *Probate Code* §2628, an account can be **waived** if:
- 1. The estate, at the start and end of the period for which an account would be required, has a net value of **less than \$15,000** (not counting the residence of the conservatee).
- 2. The income of the estate each month (not counting public benefits like SSA) was **less than \$2,000**.
- If the conservatee owns a residence, the request for a waiver must include the property address; a copy of the latest property tax bill; a copy of the insurance declaration; and the latest mortgage statement and HOA statement. Rule of Court 7.575(f).

WAIVER OF ACCOUNTING

- Can the **final** account be waived if the requirements of *Probate Code* §2628 are met?
- *Probate Code* §2620 and Rule of Court 7.1052 require a final account; but §2628 waives the “accounts required by this chapter...” and §2620 is part of that chapter.
- But even if an accounting can be waived, a final **report** must still be filed to address notice to Medi-Cal, distribution of the remainder on hand, etc.

BEST PRACTICES: FEES

- Requests for awards of attorney's fees under *Probate Code* §2642 are governed by Rule of Court 7.751 and 7.702. Each request for fees must show:
 - The nature and difficulty of the tasks performed;
 - Results achieved;
 - The benefit of the services to the estate;
 - The amount requested for each category of service performed;
 - The hourly rate of each person who performed services and the hours spent by each of them; and
 - The services rendered in sufficient detail to demonstrate the productivity of the time spent.
- The court may allow fees for services performed before appointment if the necessity for pre-appointment services is shown. Rule of Court 7.751.

BEST PRACTICES: FEES

- A conservatorship practice can thrive with the use of an experienced paralegal, but know the requirements for compensation of a paralegal. The paralegal must meet the definitions in *Bus. & Prof. Code* §6450. The fee declaration should state:
 - The paralegal's qualifications.
 - The hours spent and at what rate and describe the services.
 - Why it was appropriate to use a paralegal in the particular case.
 - Demonstrate that the total amount required for services by the attorney and the paralegal, combined, does not exceed the amount appropriate if the attorney had performed the services without the assistance of the paralegal. Rule of Court 7.703(e), 7.754.

COMMON PROBLEMS WITH FEE REQUESTS

- Redacting your billings is NOT a best practice.
- The court will not accept just dates and hours without a description of the work performed.
- If court has stated it will not allow fees for an ancillary matter, the petitioner needs to assure the court that the billings have been properly separated.
- Make sure your billing rate is commensurate with the type of work performed.
- Reported appearances not matching Minute Orders.
- Do not include eldercare coordinator fees in the accounting; those fees are to be paid by family members, not by the conservatee's estate.
- The court generally views internal costs such as photocopying, postage and parking as part of overhead and should not be requested as a cost.

**NEW ACCOUNTING
PORTAL: COMING
SOON**

QUESTIONS AND COMMENTS