



The Trusts & Estates Sections Presents

Why, When, and How to Bring a Revocable Trust Proceeding **Trust into a Conservatorship Matter**

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**WHY, WHEN AND HOW TO BRING A REVOCABLE TRUST PROCEEDING
INTO A RELATED CONSERVATORSHIP**

December 11, 2018

Under what circumstances may a court enter an order bringing a conservatee's pre-existing, revocable trust under 'court supervision'?

A. Background.

In California, a probate conservatorship ("conservatorship") is a court-supervised proceeding wherein a probate judge appoints a responsible person or organization ("conservator") to care for another adult person ("conservatee") who is not able to care for his or her self ("conservatorship of the person") or manage his or her own finances ("conservatorship of the estate"). But the conservatee may be involved with a trust that contains some or all of the conservatee's property, pays money or distributes other property to the conservatee, or gives the conservatee or any other person a power to designate who receives trust property (a power of appointment).

It is the conservator's responsibility to protect all trusts that concern the conservatee, but, under trust law, it is the trustee's responsibility to hold, manage, and administer the assets held in that trust. **The phrase 'court supervision' or 'court supervision under the Probate Code' refers to the authority of the court to require prior court approval or subsequent confirmation of the actions of a trustee as the court would require of the actions of a conservator (or guardian) of the estate. See Rules of Ct. Rule 7.903.**

Court supervision is a requirement only of certain trusts created by or funded by court order. Rules of Ct. Rule 7.903. See LASC Local Rules 4.115-4.118. Nevertheless, either upon the application of an interested person or *sua sponte*, the court may bringing a conservatee's pre-existing revocable trust under continuing

court supervision, so long as a conservatorship proceeding is pending. Such trust assets are not encompassed by the statutory phrase “conservatee’s estate.” Yet such trust assets are part of the estate or property of the conservatee, over which the Court has supervision, and therefore no separate trust petition is required. However, local practice or rule may require the opening of a separate trust proceeding under a new case number.

B. California Trust Law Principles.

1. General Court Jurisdiction.

California’s Trust Law provides generally that trustees and beneficiaries of trusts with their principal place of administration in the State of California are subject to the jurisdiction of California’s courts. See Probate Code §§17000 et seq., 17200 et seq. & 17200(a). Pursuant thereto, the court has general jurisdiction over the internal affairs of trusts and other proceedings involving trusts and trustees.

2. Court Supervisory Powers.

In accordance with the comprehensive grant of jurisdiction, the court is given the broad power and responsibility to supervise and protect the administration of trusts within its jurisdiction. *Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 270; *Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427; *Estate of Hammer*(1993) 19 Cal.App.4th 1621, 1634.

The court’s power of supervision over trusts is not limited to express statutory powers, but also includes inherent equitable power to take any and all reasonable and appropriate remedial action(s) as may be required under the circumstances. See *Edwards v. Edwards* (1998) 61 Cal.App.4th 599, 604 (California trust law provides that “a court can intervene to prevent or rectify abuses of a trustee’s powers.”); *Estate of Heggstad* (1993) 16 Cal.App.4th 943, 951 (the court has the “inherent power to decide all incidental issues necessary to carry out its

express powers to supervise the administration of the trust.”); *Schwartz v. Labow*, supra, 164 Cal.App.4th at 427-428 (the court’s power to remove a trustee necessarily provides it with the lesser powers of suspension of a trustee and continuing court supervision).

Once a trust has been brought to the Court, the court may impose continuing court supervision, *sua sponte*, over the trust, if it believes such action is necessary to protect the interests of the beneficiary(ies) or the trustee(s). See Prob. Code §§17202 and 17206.

However, the nature of the equitable relief to be utilized by the court to provide such protections is left open to the court’s broad discretion. *Evangelho v. Presoto* (1998) 67 Cal.App.4th 615.

3. Invocation of Court Supervisory Power.

Trustees generally have the right to administer the trust free of judicial intervention. Probate Code §17209. Hence, the court does not have the general power, *sua sponte*, to reach out and assert jurisdiction and supervision over a trust that is not already before it.

Rather, a trust proceeding must generally be initiated by a trustee or beneficiary, pursuant to Probate Code §§17200 et seq., before the court’s supervisory power is invoked. The filing of a verified petition concerning the internal affairs of the trust is sufficient to initiate the proceeding. *Esslinger v. Cummins* (2006) 144 Cal.App.4th 517, 523; *Schwartz v. Labow*, supra, 164 Cal.App.4th at 428.

Importantly, if the court has taken or obtained jurisdiction over one aspect of an interested person’s claim with respect to a trust, then the court may determine almost all matters which relate to the administration of that trust. See Probate Code §17206.

4. *Restrictions and Concerns.*

Similar to all court proceedings, in law and equity, standing (and other applicable doctrines) are requirements for bringing a petition for relief under Probate Code §17200.

Further, note that a fundamental principle of jurisprudence is the provision of due process of law, which generally requires notice and a reasonable opportunity to respond. Thus, where an application for court supervision comes from the court, *sua sponte*, some reasonable advance notice of the court's intended ruling must be provided to the trustees and beneficiaries along with an opportunity to object. Failure to provide some advance notice of the Court's intended ruling generally deprives the trustees and beneficiaries of due process. See *Estate of Jenanyan* (1982) 31 Cal.3d 703, 708.

C. **California Conservatorship Principles.**

1. *Court Regulation and Control.*

A "conservator is subject to the regulation and control of the court in the performance of the duties of the office." Probate Code §2102.

2. *Conservatorship Estate.*

The "estate" of a conservatee is comprised of the conservatee's personal property, wherever located, and real property located within the State of California. Probate Code §§2400(b) & 2600(b).

The conservator of the estate has the duty to manage and control that estate. Probate Code §2401. The estate is to be used "as necessary" for the "comfortable and suitable" support, maintenance, and education of the conservatee, and any dependents, and may be so used without prior court order as long as the expenditures are reasonable. See Probate Code §2420.

3. ***Interrelationship Between Conservator, Conservatorship Estate, and Any Property of the Conservatee Which is Held or Managed by Other Person(s).***

The statutorily-defined phrase "conservatorship estate" may not be the same thing as the 'estate or property of a conservatee,' and, therefore, a conservatee may own or have a legal or beneficial interest in property or other assets which are not includable in the conservatorship estate and managed by the conservator. For example:

i. **Community Property Managed by a Spouse or Domestic Partner.**

The conservator has a duty to supervise the management of the community property of the conservatee and his or her spouse (or domestic partner) if the spouse or domestic partner is managing that community property. In that situation, the conservator must "keep reasonably informed concerning the management and control, including the disposition, of the community property." Probate Code §3057(b). If the conservator suspects that the rights of the conservatee are being prejudiced, the conservator may bring an action to enforce the duties owed by the spouse or domestic partner to the conservatee. Probate Code §3057(b).

ii. **Out-of-State Real Property.**

Although out-of-state real property is excluded from being part of the "conservatorship estate," a conservator must use ordinary care and diligence to determine whether the conservatee owns real property outside of the State of California and to preserve and protect that property. See Probate Code §§2400(b), 2401.1 & 2600(b). Although the conservator has no duty to obtain a formal appraisal of such out-of-state real property, the conservator must report its' existence on an informational schedule included in an inventory and appraisal,

provide a good faith estimate of its value, state what action has been or should be taken to preserve the property, and recommend whether or not an ancillary proceeding is necessary to protect and preserve the property. See Probate Code §§1063(h) & 2401.1.

iii. Conservatee's Pre-Existing Revocable Trust.

The crux of this discussion is on assets transferred to or held in a conservatee's pre-existing revocable trust.

Much the same as with the above-described community property interests managed by a spouse or domestic partner, or out-of-state real property, assets held in a conservatee's pre-existing revocable trust are not deemed to be part of the estate of a conservatee. E.g., *Poag v. Winston* (1987) 195 Cal.App.3d 1161, 1176-1177 (a claim asserted against the conservator estate is not a claim to the assets of a conservatee's revocable trust). In such a case, the trustee is the person in control of the assets transferred to or held by the trust, not the trustor, and the trust assets are not part of the inventory and appraisal process.

In other words, such trust assets are part of the estate or property of the conservatee, but are not encompassed by the statutory phrase "conservatee's estate."

But the appointment of a conservator of the person or estate vacates any office of trustee held by the conservatee. Probate Code §15643(e). For conservatorship proceeding, this means that the position of trustee of a conservatee's pre-existing revocable trust may be either: (i) vacant; or (ii) occupied by a successor trustee. That may be problematic.

Further, a revocable trust is generally recognized as simply a probate avoidance device, for which the trustor retains, essentially, complete ownership of the property transferred to or held by the trustee of the trust. A trustor with the

power to revoke the trust “effectively retains full ownership and control over any property transferred to that trust.” *Arluk Medical Center Industrial Group, Inc. v. Dobler* (2004) 116 Cal.App.4th 1324, 1331–1332.¹ Hence, property transferred to or held in a trustor’s revocable trust is deemed to be the property of the trustor. *Zanelli v. McGrath* (2008) 166 Cal.App.4th 615, 633. Consequently, assets of a conservatee’s revocable trust estate are considered to be part of the assets of the larger estate or property of the conservatee and, further, the trustee of that trust “is a person in control of property in the conservatorship estate and must therefore account for [his or her] actions with respect to Trust property.” *Johnson v. Kotyck* (1999) 76 Cal.App.4th 83, 89.²

Correspondingly, the conservator of the estate is required (“must”) secure the conservatee’s estate planning records, including trusts, and communicate as necessary and appropriate with the “trustee of any trust of which the conservatee is a beneficiary.” Rules of Ct. Rule 7.1059(b).

A primary purpose of a conservatorship is to provide a legally competent person to act for the benefit of the conservatee and the conservatee’s property, in

1. This case is commonly referred to as the “*Dobler II*” ruling, customarily cited for its holding in the context of the field of creditor rights that, while a lawsuit is pending against a decedent’s estate, the trustee’s duty to preserve assets in a decedent’s formerly revocable trust is merely to refrain from engaging in affirmative misconduct designed to defeat the creditor’s reasonable expectation for a recovery from trust assets. This is to be contrasted with an earlier appeal in the same case, the so-called “*Dobler I*” ruling, *Dobler v. Arluk Medical Center Industrial Group, Inc.* (2001) 89 Cal.App.4th 530, commonly cited for the propositions that: (i) a decedent’s assets held in a revocable trust are only secondarily liable to the decedent’s creditors, not primarily liable, as per Probate Code §§19000 et seq. and 19001(a); (ii) it is the burden of the creditor to demonstrate the necessary showing of inadequacy of any probate estate; and (iii) if there is no proceeding to administer a decedent’s estate, then the decedent’s creditors may pursue their claims against a decedent by taking action against the decedent’s distributees.

2. The Court of Appeal’s opinion in *Johnson v. Kotyck* confusingly uses the phrase “conservatorship estate,” but does so in the context of referencing the larger description of property or estate of the conservatee which is being managed by someone other than the conservator.

conformity with applicable fiduciary standards and under the court's guidance. Under court supervision and scrutiny, a conservator is vested with control of conservatee's assets and has the power to make decisions on behalf and for the benefit of the conservatee. This includes exercising, pursuant to the power of substituted judgment (pursuant to Probate Code §§2580 et seq.), the legal rights a conservatee had as a trustor of his or her own trust. Therefore, the court's supervisory power over conservatorship estates extends to the conservatee's revocable trust. *Brown v. Labow* (2007) 157 Cal.App.4th 795, 815-816. This permits the court to impose continuing court supervision over the conservatee's existing revocable so long as a conservatorship proceeding is pending.

D. CONCLUSION.

Both *Poag v. Wilson* and *Johnson v. Kotyck* have been construed, limited, and/or criticized by later rulings. Clarity and uniformity in the law would be greatly appreciated.

Nevertheless, the court may impose continuing court supervision over conservatee's pre-existing revocable trust (i.e., 'bring the trust under judicial supervision'), either upon the application of an interested person or *sua sponte*, so long as a conservatorship proceeding is pending. Such trust assets are not encompassed by the statutory phrase "conservatee's estate." Yet they are part of the estate or property of the conservatee, over which the Court has supervision, and therefore no separate trust petition is required.

NOTE: Local practice or rule may require the opening of a separate trust court proceeding under a new case number.

*EXAMPLE: See LASC Local Form PRO-044
(note citation to superseded local court rule on bottom of form).*

SOME RELEVANT STATUTES

Probate Code Sections:

Probate Code 2580

(a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

- (1) Benefiting the conservatee or the estate.
- (2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.
- (3) Providing gifts for any purposes, and to any charities, relatives (including the other spouse or domestic partner), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

- (1) Making gifts of principal or income, or both, of the estate, outright or in trust.
- (2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.
- (3) Exercising or releasing the conservatee's powers as donee of a power of appointment.
- (4) Entering into contracts.
- (5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life. A special needs trust for money paid pursuant to a compromise or judgment for a conservatee may be established only under Chapter 4 (commencing with Section 3600) of Part 8, and not under this article.
- (6) Transferring to a trust created by the conservator or conservatee any property unintentionally omitted from the trust.
- (7) Exercising options of the conservatee to purchase or exchange securities or other property.
- (8) Exercising the rights of the conservatee to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:
 - (A) Life insurance policies, plans, or benefits.
 - (B) Annuity policies, plans, or benefits.
 - (C) Mutual fund and other dividend investment plans.
 - (D) Retirement, profit sharing, and employee welfare plans and benefits.
- (9) Exercising the right of the conservatee to elect to take under or against a will.
- (10) Exercising the right of the conservatee to disclaim any interest that may be disclaimed under Part 8 (commencing with Section 260) of Division 2.
- (11) Exercising the right of the conservatee (A) to revoke or modify a revocable trust or (B) to surrender the right to revoke or modify a revocable trust, but the court shall not authorize or require the conservator to exercise the right to revoke or modify a revocable trust if the instrument governing the trust (A) evidences an intent to reserve the right of revocation or modification exclusively to the conservatee, (B) provides expressly that a conservator may not revoke or modify the trust, or (C) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke or modify the trust.

- (12) Making an election referred to in Section 13502 or an election and agreement referred to in Section 13503.
- (13) Making a will.
- (14) Making or revoking a revocable transfer on death deed.

Probate Code 17200

(a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

- (1) Determining questions of construction of a trust instrument.
- (2) Determining the existence or nonexistence of any immunity, power, privilege, duty, or right.
- (3) Determining the validity of a trust provision.
- (4) Ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument.
- (5) Settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers.
- (6) Instructing the trustee.
- (7) Compelling the trustee to do any of the following:
 - (A) Provide a copy of the terms of the trust.
 - (B) Provide information about the trust under Section 16061 if the trustee has failed to provide the requested information within 60 days after the beneficiary's reasonable written request, and the beneficiary has not received the requested information from the trustee within the six months preceding the request.
 - (C) Account to the beneficiary, subject to the provisions of Section 16064, if the trustee has failed to submit a requested account within 60 days after written request of the beneficiary and no account has been made within six months preceding the request.
- (8) Granting powers to the trustee.
- (9) Fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the trustee's compensation.
- (10) Appointing or removing a trustee.
- (11) Accepting the resignation of a trustee.
- (12) Compelling redress of a breach of the trust by any available remedy.
- (13) Approving or directing the modification or termination of the trust.
- (14) Approving or directing the combination or division of trusts.
- (15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service.
- (16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.
- (17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.
- (18) Approving removal of a testamentary trust from continuing court jurisdiction.

(19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.

(20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.

(21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.

(22) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a deceased member under Section 9764, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a deceased member shall apply to the petition brought under this section.

(23) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a disabled member under Section 2468, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a disabled member shall apply to the petition brought under this section.

(c) The court may, on its own motion, set and give notice of an order to show cause why a trustee who is a professional fiduciary, and who is required to be licensed under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, should not be removed for failing to hold a valid, unexpired, unsuspended license.

Probate Code 15409

(a) On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

(b) The court shall consider a trust provision restraining transfer of the beneficiary's interest as a factor in making its decision whether to modify or terminate the trust, but the court is not precluded from exercising its discretion to modify or terminate the trust solely because of a restraint on transfer.

Probate Code 2628

(a) The court may make an order that the guardian or conservator need not present the accounts otherwise required by this chapter so long as all of the following conditions are satisfied:

(1) The estate at the beginning and end of the accounting period for which an account is otherwise required consisted of property, exclusive of the residence of the ward or conservatee, of a total net value of less than fifteen thousand dollars (\$15,000).

(2) The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than two thousand dollars (\$2,000).

(3) All income of the estate during the accounting period, if not retained, was spent for the benefit of the ward or conservatee.

(b) Notwithstanding that the court has made an order under subdivision (a), the ward or conservatee or any interested person may petition the court for an order requiring the guardian or conservator to present an account as otherwise required by this chapter or the court on its own motion may make that an order. An order under this subdivision may be made ex parte or on such notice of hearing as the court in its discretion requires.

(c) For any accounting period during which all of the conditions of subdivision (a) are not satisfied, the guardian or conservator shall present the account as otherwise required by this chapter.

CA RULES OF COURT:

Rule 7.903. Trusts funded by court order

(a) Definitions

- (1) "Trust funded by court order" under this rule means and refers to a trust that will receive funds under Probate Code section 2580 et seq. (substituted judgment); section 3100 et seq. (proceedings for particular transactions involving disabled spouses or registered domestic partners); or section 3600 et seq. (settlement of claims or actions or disposition of judgments involving minors or persons with disabilities).
- (2) "Continuing jurisdiction of the court" under (b) means and refers to the court's continuing subject matter jurisdiction over trust proceedings under division 9 of the Probate Code (Prob. Code, § 15000 et seq.).
- (3) "Court supervision under the Probate Code" under (b) means and refers to the court's authority to require prior court approval or subsequent confirmation of the actions of the trustee as for the actions of a guardian or conservator of the estate under division 4 of the Probate Code (Prob. Code, § 1400 et seq.).

(b) Continuing jurisdiction and court supervision

The order creating or approving the funding of a trust funded by court order must provide that the trust is subject to the continuing jurisdiction of the court and may provide that the trust is to be subject to court supervision under the Probate Code.

(c) Required provisions in trust instruments

Except as provided in (d), unless the court otherwise orders for good cause shown, trust instruments for trusts funded by court order must:

- (1) Not contain "no-contest" provisions;
- (2) Prohibit modification or revocation without court approval;
- (3) Clearly identify the trustee and any other person with authority to direct the trustee to make disbursements;
- (4) Prohibit investments by the trustee other than those permitted under Probate Code section 2574;
- (5) Require persons identified in (3) to post bond in the amount required under Probate Code section 2320 et seq.;
- (6) Require the trustee to file accounts and reports for court approval in the manner and frequency required by Probate Code sections 1060 et seq. and 2620 et seq.;
- (7) Require court approval of changes in trustees and a court order appointing any successor trustee; and
- (8) Require compensation of the trustee, the members of any advisory committee, or the attorney for the trustee, to be in just and reasonable amounts that must be fixed and allowed by the court. The instrument may provide for periodic payments of

compensation on account, subject to the requirements of Probate Code section 2643 and rule 7.755.

(d) Trust instruments for smaller trusts

Unless the court otherwise orders for good cause shown, the requirements of (c)(5)–(8) of this rule do not apply to trust instruments for trusts that will have total assets of \$20,000 or less after receipt of the property ordered by the court.

Rule 7.1059. Standards of conduct for the conservator of the estate

(b) Conservatorship estate management

The conservator of the estate must:

- (1) Provide competent management of the conservatee's property, with the care of a prudent person dealing with someone else's property;
- (2) Refrain from unreasonably risky investments;
- (3) Refrain from making loans or gifts of estate property, except as authorized by the court after full disclosure;
- (4) Manage the estate for the benefit of the conservatee;
- (5) Subject to the duty of full disclosure to the court and persons entitled under law to receive it, closely guard against unnecessary or inappropriate disclosure of the conservatee's financial information;
- (6) Keep the money and property of the estate separate from the conservator's or any other person's money or property, except as may be permitted under statutes authorizing public guardians or public conservators and certain regulated private fiduciaries to maintain common trust funds or similar common investments;
- (7) Hold title reflecting the conservatorship in individual securities, mutual funds, securities broker accounts, and accounts with financial institutions;
- (8) Keep accurate records of all transactions. Professional fiduciaries must maintain prudent accounting systems and procedures designed to protect against embezzlement and other cash-asset mismanagement;
- (9) Undertake as soon as possible after appointment and qualification to locate and safeguard the conservatee's estate planning documents, including wills, living trusts, powers of attorney for health care and finances, life insurance policies, and pension records;
- (10) Undertake as soon as possible after appointment and qualification to secure the real and personal property of the estate, insuring it at appropriate levels, and protecting it against damage, destruction, or loss;
- (11) Make reasonable efforts to preserve property identified in the conservatee's estate planning documents;
- (12) Communicate as necessary and appropriate with the conservator of the person of the conservatee, if any, and with the trustee of any trust of which the conservatee is a beneficiary;
- (13) Pursue claims against others on behalf of the estate when it would be in the best interest of the conservatee or the estate to do so. Consider requesting prior court authority to pursue or compromise large or complex claims, particularly those that might require litigation and the assistance of counsel and those that might result in an award of attorneys' fees for the other party against the estate if unsuccessful, and request such approval before entering into a contingent fee agreement with counsel;

- (14) Defend against actions or claims against the estate when it would be in the best interest of the conservatee or the estate to do so. Consider requesting court approval or instructions concerning the defense or compromise of litigation against the estate;
- (15) Collect all public and insurance benefits for which the conservatee is eligible;
- (16) Evaluate the conservatee's ability to manage cash or other assets and take appropriate action, including obtaining prior court approval when necessary or appropriate, to enable the conservatee to do so to the level of his or her ability;
- (17) When disposing of the conservatee's tangible personal property, inform the conservatee's family members in advance and give them an opportunity to acquire the property, with approval or confirmation of the court; and
- (18) In deciding whether it is in the best interest of the conservatee to dispose of property of the estate, consider the following factors, among others, as appropriate in the circumstances:
 - (A) The likely benefit or improvement of the conservatee's life that disposing of the property would bring;
 - (B) The likelihood that the conservatee would need or benefit from the property in the future;
 - (C) Subject to the factors specified in Probate Code section 2113, the previously expressed or current desires of the conservatee concerning the property;
 - (D) The provisions of the conservatee's estate plan concerning the property;
 - (E) The tax consequences of the disposition transaction;
 - (F) The impact of the disposition transaction on the conservatee's entitlement to public benefits;
 - (G) The condition of the entire estate;
 - (H) Alternatives to disposition of the property;
 - (I) The likelihood that the property will deteriorate or be subject to waste if retained in the estate; and
 - (J) The benefit versus the cost or liability of maintaining the property in the estate.

LASC LOCAL RULES:

4.115 SETTLEMENTS OF CLAIMS OF MINORS OR PERSONS WITH DISABILITIES (INCLUDING ESTABLISHMENT AND FUNDING OF TRUSTS) Where there is a judgment or settlement of claim(s), including a covenant not to sue, for a minor or person with a disability, as defined by Probate Code section 3603, the following procedures apply. (See also Code Civ. Proc., § 372; Prob. Code, § 2500 et seq.; Prob. Code, § 3500, Prob. Code, §§ 3600 - 3612; Standards of Judicial Administration, Section 7.10; and Cal. Rules of Court, rule 3.1384 and rule 7.950 et seq.) (a) Proper Court to Approve Settlement. (1) No Civil Action Pending. If no civil action is pending, the settlement must be approved by the probate court as provided in Probate Code sections 2505(b) and 3500. (2) Pending Civil Action. If a settlement for a minor or a person with a disability is reached in a pending civil action, the settlement must be approved in the court in which the action is pending (Prob. Code, § 2505(a)). (b) Disposition of Proceeds. Proceeds from a settlement or judgment may be handled in the following manner (except for settlements made pursuant to Probate Code section 3500(d)): (1) Distribution to a parent of a minor. (Prob. Code, § 3611(e) and 3400 et seq.); (2) Distribution to one or more insured blocked accounts deposited in financial institutions in California. (Prob. Code, § 3602(c)(1).) Deposits in financial institutions covered by FDIC insurance must not exceed the amount covered; (3) Distribution to a

guardian or conservator of the estate after filing of appropriate bond. (Prob. Code, § 3602(b) and 3611(a).); (4) Distribution to a custodian under the Uniform Transfers to Minors Act. The custodian may be required to place the funds into a blocked account or be bonded in the amount required by Probate Code section 2320 et seq. (Prob. Code, §§ 3602(c) and 3611(f).); (5) Purchase of a single-premium deferred annuity. (Prob. Code, §§ 3602(d) and 3611(b).); (6) Creation and distribution to a special needs trust. (Prob. Code, §§ 3602(d) and 3611(c).); and (7) Creation and distribution to a trust for a minor that is revocable at age 18. (Prob. Code, §§ 3602(c)(3) and 3611(g).) (c) Special Needs Trusts. When the settlement proposes the establishment of a special needs or other trust as provided in Probate Code sections 3600 to 3612, the terms of the proposed trust must be reviewed by the Probate Department. The terms of the trust must include the provisions required in California Rules of Court, rule 7.903, and Local Rule 4.116. (d) Orders. (1) Order Approving Compromise. The order must be on Judicial Council form "Order Approving Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Adult Person with a Disability." (2) Order Establishing Trust. When the order establishes a trust, the order must set forth the provisions of the trust in their entirety. (e) Post-Judgment Procedure. (1) Commencement of Trust Proceeding. An order approving a settlement must provide that the trustee(s) commence a separate trust proceeding with a probate case number in the County. A certified copy of the settlement order establishing the trust and a copy of the trustee's bond(s) must be filed with the court as an attachment to a pleading which will create a new probate case. The accounting will be tracked by the court in the new probate case. (2) Blocked Account: A certified or file endorsed copy of the Judicial Council form "Order To Deposit Money Into Blocked Account" must be delivered to the financial institution. The Judicial Council form "Receipt and Acknowledgment of Order for the Deposit of Money to Blocked Account" must be signed by the depository and promptly filed with the court pursuant to California Rules of Court, rule 7.953. Counsel must ensure that funds are deposited in accordance with the order. Attorney's fees must not be paid until a receipt reflecting the deposit is filed with the court. (3) Withdrawal of Funds from Blocked Account: In order to withdraw funds from a blocked account, Judicial Council form "Petition for Withdrawal of Funds from Blocked Account" must be filed in the probate court. Petitions may be presented ex parte. In Central District cases, contact Minor's Account Section, Stanley Mosk Courthouse. When withdrawal is sought because the minor has reached majority and the "Order To Deposit Money Into Blocked Account" is self-executing, i.e., provides for release when minor attains the age of 18, no petition is necessary and the former minor must contact the financial institution directly for release of funds.

4.116 TRUST CREATED OR FUNDED PURSUANT TO COURT ORDER (a) Trusts Created or Funded by Court Order. Trusts created or funded by court order, including trusts created pursuant to Probate Code sections 2580 et seq. ("substituted judgment"), 3100 et seq. (relating to particular transactions for disabled spouses or registered domestic partners), and 3600 et seq. (relating to the compromises of claims of minors and persons with disabilities) are governed by California Rules of Court, rule 7.903. All such trusts must include provisions for protection of the trust assets against misuse and continuing supervision by the court. Except as provided in subdivision (c) herein, or unless the court otherwise orders for good cause shown, trusts created or funded by court order must: (1) not contain a no-contest provision; (2) prohibit modification or revocation without court approval; (3) clearly identify the trustee and any other person(s) with authority to direct the trustee to make disbursements; (4) prohibit investments by the trustee other than those permitted under Probate Code section 2574; (5) require persons identified in subdivision (3) to post bond in the amount required under Probate Code section

2320 et seq.; (6) require the trustee to file accounts and reports for court approval in the manner as frequency required by Probate Code sections 1060 et seq. and 2320 et seq.; (7) require court approval of changes in trustees and a court order appointing any successor trustee; and (8) require that compensation of the trustee, the members of any advisory committee, and the attorney for the trustee be in reasonable amounts as fixed by court order. The trust may provide for periodic payments of compensation, subject to the requirements of Probate Code section 2643 and California Rules of Court, rule 7.755.

(b) Additional Trust Requirements. The court may also require that the trust include the following provisions: (1) Where the trustee is a trust company (as defined in Financial Code section 107) and it petitions for fees, the petition must include a complete disclosure of any fees paid to a fiduciary and/or any affiliate as required by Probate Code section 16015 and Financial Code section 1561.1; (2) Any purchase of a personal residence for a beneficiary may be made only if authorized by the court pursuant to the rules applicable to conservatorships and guardianships. (See Prob. Code, § 2571.); (3) Any sale of a personal residence of the beneficiary may be made only if authorized by the court pursuant to the rules applicable to conservatorships and guardianships. (Prob. Code, § 2540(b).) Such sales must be returned to court for confirmation. (See Prob. Code, § 10300 et seq.); and (4) The trustee may not borrow money, lend money, give security, lease, convey, or exchange any property of the estate without prior authorization of the court. (Prob Code, § 2550.) (c) Rule Does Not Apply to Trusts Under \$20,000. Unless the court otherwise orders for good cause shown, this rule does not apply to trust instruments or trusts that have a total asset value of \$20,000 or less.

4.117 SPECIAL NEEDS TRUST CREATED BY COURT ORDER/JUDGMENT A special needs trust is intended to allow the beneficiary to continue to maintain eligibility for certain needs-based government benefits, such as SSI or Medi-Cal. The trust contains limitations on the ability to use trust assets to pay for the beneficiary's food, shelter, clothing and utilities, so that this eligibility for government benefits will not be impaired. (See 20 C.F.R. § 416.1130 et seq., and 22 Cal. Code Regs., § 50509 et seq.) Where special needs trusts are established by court order, federal law generally requires that the trust provide that upon termination of the trust Medi-Cal or any other Medicaid agency which has paid benefits to the beneficiary shall receive all amounts remaining in the trust up to an amount equal to the benefits paid (42 U.S.C. § 1396p(d)(4)(A)). The Department of Health Services promulgates general guidelines regarding special needs trusts, and the guidelines can be obtained by contacting that agency.

4.118 COURT PROCEEDING FOR TRUST ESTABLISHED UNDER PROBATE CODE SECTION 2580 OR 3100 When a trust is created under Probate Code section 2580 et seq. in a conservatorship proceeding, or pursuant to Probate Code section 3100 et seq., all future proceedings relating to that trust must be filed as a new separate case.

| | | | |
|---|--|----------------------------|--|
| NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY: | | STATE BAR NUMBER | NO FILING FEE DUE FOR COURT USE ONLY |
| TELEPHONE NO.: | | | |
| E-MAIL ADDRESS (Optional): | | | |
| ATTORNEY FOR (Name): | | | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES | | | |
| COURTHOUSE ADDRESS: | | | |
| IN THE MATTER OF: | | | |
| NOTICE OF COMMENCEMENT OF PROCEEDINGS FOR A COURT SUPERVISED TRUST (NO FILING FEE DUE) | | CASE NUMBER: | |
| | | NO HEARING REQUIRED | |

1. The name of the subject trust is: _____
2. The trustee(s) of the subject trust is (are): _____
3. The subject trust was (check one):
 - ☐ created/funded by court order dated _____ under case number _____
 - ☐ brought under court supervision by court order dated _____ under case number _____
4. Attached as **Exhibit A** is (check one):
 - ☐ A copy of the court order establishing the trust.
 - ☐ An executed copy of the trust instrument.
5. Check the first box that applies:
 - ☐ An original bond or conformed copy of the bond file under case number _____ is attached as **Exhibit B**.
 - ☐ No bond has been previously ordered.

6. Check the first box that applies:

- ☐ The trustee's first account was ordered to be filed not later than _____
- ☐ The trustee has not previously been ordered to file an accounting.

Dated: _____

(Signature)

Trustee

(Typed or Printed Name)

(Signature)

Trustee

(Typed or Printed Name)

(Name of Attorney or Law Firm)

By: _____

Attorney for Trustee (Signature)

VERIFICATION

I, _____, declare as follows:
(Name)

1. I have read the foregoing and I certify that the same is true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

2. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 2____, at _____
(City and State)

(Signature)

Notice of Commencement of Proceedings for a Court Supervised Trust

CONFIDENTIAL (DO NOT ATTACH TO PETITION)

GC-312

| | | | |
|---|--|--------------------|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): | | FOR COURT USE ONLY | |
| TELEPHONE NO.: FAX NO. (Optional): | | | |
| E-MAIL ADDRESS (Optional): | | | |
| ATTORNEY FOR (Name): | | | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF | | | |
| STREET ADDRESS: | | | |
| MAILING ADDRESS: | | | |
| CITY AND ZIP CODE: | | | |
| BRANCH NAME: | | | |
| CONSERVATORSHIP OF (Name): | | | |
| PROPOSED CONSERVATEE | | | |
| CONFIDENTIAL SUPPLEMENTAL INFORMATION (Probate Conservatorship) | | CASE NUMBER: | |
| Conservatorship of <input type="checkbox"/> Person <input type="checkbox"/> Estate <input type="checkbox"/> Limited Conservatorship | | HEARING DATE: | |
| 1. a. Proposed conservatee (name): | | DEPT.: TIME: | |
| b. Date of birth: | | | |
| c. Social security No.: | | | |

2. ☐ UNABLE TO PROVIDE FOR PERSONAL NEEDS* The following facts support petitioner's allegation that the proposed conservatee is unable to provide properly for his or her needs for physical health, food, clothing, and shelter (specify in detail, enlarging upon the reasons stated in the petition; provide specific examples from the proposed conservatee's daily life showing significant behavior patterns): ☐ Specified in Attachment 2.

* If this item is not applicable, complete item 8.

(Continued on reverse)

Page one of four

CONFIDENTIAL

| | |
|----------------------------|--------------|
| CONSERVATORSHIP OF (Name): | CASE NUMBER: |
| PROPOSED CONSERVATEE | |

3. ☐ UNABLE TO MANAGE FINANCIAL RESOURCES* The following facts support petitioner's allegation that the proposed conservatee is substantially unable to manage his or her financial resources or to resist fraud or undue influence (specify in detail, enlarging upon the reasons stated in the petition; provide specific examples from the proposed conservatee's daily life showing significant behavior patterns): ☐ Specified in Attachment 3.

4. RESIDENCE ("Residence" means the place usually described as "home"; for example, owned real property or long-term rental.)
- a. The proposed conservatee is **located** at (street address, city, state):

- b. The proposed conservatee's **residence** is* ☐ the address in item 4a ☐ other (street address, city, state):

- c. **Ability to live in residence*** The proposed conservatee is
- (1) ☐ **living** in his or her residence and
- (a) ☐ will continue to live there unless circumstances change.
- (b) ☐ will need to be moved after a conservator is appointed (specify supporting facts below in item 4c(3)).
- (c) ☐ other (specify and give supporting facts below in item 4c(3)).

* If this item is not applicable, complete item 8.

(Continued on page three)

CONFIDENTIAL

| | |
|------------------------------------|----------------------|
| CONSERVATORSHIP OF (Name): | CASE NUMBER: |
| PROPOSED CONSERVATEE | |

4. c. (continued)

- (2) ☐ **not living** in his or her residence and
- (a) ☐ will return by (date): (specify supporting facts below in item 4c(3)).
- (b) ☐ will not return to live there (specify supporting facts below in item 4c(3)).
- (c) ☐ other (specify and give supporting facts below in item 4c(3)).
- (3) ☐ Supporting facts (specify if required): ☐ Specified in Attachment 4c.

5. ALTERNATIVES TO CONSERVATORSHIP* Petitioner has considered the following alternatives to conservatorship and found them to be unsuitable or unavailable to the proposed conservatee (specify the alternatives considered and the reason or reasons each is unsuitable or unavailable): ☐ Reasons specified in Attachment 5.

a. Voluntary acceptance of informal or formal assistance (give reason this is unsuitable or unavailable):

b. Special or limited power of attorney (give reason this is unsuitable or unavailable):

c. General power of attorney (give reason this is unsuitable or unavailable):

d. Durable power of attorney for ☐ health care ☐ estate management (give reason this is unsuitable or unavailable):

e. Trust (give reason this is unsuitable or unavailable):

f. Other alternatives considered (specify and give reason each is unsuitable or unavailable):

6. SERVICES PROVIDED* (complete a or b, or both a and b)

a. ☐ During the year before this petition was filed,

(1) **health services** ☐ were provided ☐ were not provided to the proposed conservatee (explain):
☐ Explained in Attachment 6a(1).

(2) **social services** ☐ were provided ☐ were not provided to the proposed conservatee (explain):
☐ Explained in Attachment 6a(2).

* If this item is not applicable, complete item 8.

(Continued on page four)

CONFIDENTIAL

| | |
|----------------------------|--------------|
| CONSERVATORSHIP OF (Name): | CASE NUMBER: |
| PROPOSED CONSERVATEE | |

6. a. (continued)

(3) **estate management assistance** ☐ was provided ☐ was not provided to the proposed conservatee (explain):

☐ Explained in Attachment 6a(3).

b. ☐ Petitioner has **no knowledge** of what ☐ social services ☐ health services ☐ estate management assistance was provided to the proposed conservatee during the year before this petition was filed. Petitioner has no reasonable means of determining what services were provided.

7. **SUPPORTING FACTS (AFFIDAVITS)** The information provided above is stated

- a. Item 1: ☐ on petitioner's own knowledge ☐ in an affidavit (declaration) by another person attached as Attachment 1a.
- b. Item 2: ☐ on petitioner's own knowledge ☐ in an affidavit (declaration) by another person attached as Attachment 2a.
- c. Item 3: ☐ on petitioner's own knowledge ☐ in an affidavit (declaration) by another person attached as Attachment 3a.
- d. Item 4: ☐ on petitioner's own knowledge ☐ in an affidavit (declaration) by another person attached as Attachment 4a.
- e. Item 5: ☐ on petitioner's own knowledge ☐ in an affidavit (declaration) by another person attached as Attachment 5a.
- f. Item 6: ☐ on petitioner's own knowledge ☐ in an affidavit (declaration) by another person attached as Attachment 6a.

8. **ITEMS NOT APPLICABLE** The following items on this form were not applicable to the proposed conservatee:

☐ 2 ☐ 3 ☐ 4b ☐ 4c ☐ 5 ☐ 6 (specify reasons each item is not applicable):
☐ Reasons specified in Attachment 8.

9. Number of pages attached: _____

DECLARATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

Hypothetical #1

Carol Conservatee had lived alone since getting divorced thirty (30) years ago. Carol Conservatee has two children: Sam Squatter and Donna Detached. Carol Conservatee began showing signs of diminished capacity seven (7) years ago.

Approximately five (5) years ago Sam Squatter fell on hard times and moved in with Carol Conservatee after Carol Conservatee offered to help Sam Squatter. Since moving in, Sam Squatter has not worked, paid rent, or contributed to the household expenses. Sam Squatter has assisted Carol Conservatee with her ADLs.

Carol Conservatee executed The Carol Conservatee Revocable Trust twenty (20) years ago. The successor trustee is Sam Squatter. Carol Conservatee is the current income and principal beneficiary of her Trust. The named contingent beneficiaries of the Trust are Sam Squatter and Donna Detached, in equal shares.

The Trust owns Carol Conservatee's residence valued at \$1.5 million and Carol Conservatee's rental property valued at \$3.5 million. The rental property generates \$10,000/month in income. Neither of these assets have outstanding liabilities.

Carol Conservatee's personal estate is comprised of her investment account valued at \$1 million, her checking account (that curiously has a minimal balance as of late), and her social security income. The rental income has always been deposited into Carol Conservatee's checking account.

There have been suspicious transfers to an "unknown account" that Donna Detached noticed on Carol Conservatee's checking account because Donna Detached has online access.

Hypothetical #2

Elderly Eleanor's husband passed away 20 years ago. She has two (2) children with her deceased husband: Worried Wanda and Entitled Eric. Upon her husband's passing Eleanor received the \$2 mil. estate via probate.

Upset with the probate fees, Eleanor immediately established the Elderly Eleanor Revocable Trust.

Using her wit and wile Elderly Eleanor increased her trust estate to \$6 million in investment accounts and a \$2 million home.

Elderly Eleanor receives IRA distributions to her personal account in the amount of \$8,000/mo.

Elderly Eleanor married Charming Charlie 5 years ago. Approximately 3 years ago Elderly Eleanor was diagnosed with cognitive impairment. 2 years ago, the original Trust disappeared from Elderly Eleanor's safe. Charming Charlie and Elderly Eleanor do not know where it went. Charming Charlie has recently been driving around in a new Porsche and is wearing a very nice Rolex. Property taxes are in arrears on the residence.

Recently, while Charming Charlie was out driving in his new Porsche, Worried Wanda and Entitled Eric visited Elderly Eleanor and Elderly Eleanor did not recognize them as her children.

Worried Wanda has a copy of the Elderly Eleanor Revocable Trust. This draft of the trust designates Worried Wanda and Entitled Eric as the Successor Co-Trustees. Elderly Eleanor was the current income and principal beneficiary. Worried Wanda and Entitled Eric were the contingent beneficiaries, in equal shares.

Elderly Eleanor's investment accounts are now titled: "Elderly Eleanor and Charming Charlie, Trustees of the Elderly Eleanor Revocable Trust."



CERTIFICATE OF ATTENDANCE

Why, When, and How to Bring a Revocable Trust Proceeding

Trusts & Estates

DATE: Tuesday, December 11, 2018- Tuesday, December 11, 2018

TIME: 12:15 PM - 1:15 PM

LOCATION: Los Angeles Superior Court
Special Events Center (Old Department 1,
Room 222)
111 North Hill St.
Los Angeles, 90012

CREDIT: 1.00 Practice Specific - Probate Specialization

PLEASE COMPLETE AND KEEP FOR YOUR RECORDS.

By signing below, I certify that I attended the activity described above.

Name (print)

State Bar Number

Signature

Date

CALIFORNIA

State where credits are to be registered.

Provider #36

The Los Angeles County Bar Association is a State Bar of California approved MCLE provider. The Los Angeles County Bar Association certifies that this activity has been approved for MCLE credit by the State Bar of California.



PROGRAM EVALUATION FORM

Why, When, and How to Bring a Revocable Trust Proceeding

Program Title

Trusts & Estates

Section/Committee

Tuesday, December 11, 2018 12:15 PM

Los Angeles Superior Court

Program Date and Time

Event Location

Participant Name

State Bar Number

Profession, if not a lawyer

- Please rate by circling the appropriate number (5 = highest rating; 1 = lowest rating)

Speakers

Usefulness of Information

Speaking ability

Adam L. Steltzer

5 4 3 2 1

5 4 3 2 1

Rodney C. Lee

5 4 3 2 1

5 4 3 2 1

Nicholas James Van Brunt

5 4 3 2 1

5 4 3 2 1

- Overall program rating** 5 4 3 2 1
- Contribution of written materials to the learning experience** (Consider whether the material contained significant, current intellectual or practical content) 5 4 3 2 1
- Contribution of the location/environment to the learning experience** 5 4 3 2 1
- Did the program meet your expectations?** ☐ Yes ☐ No

If no, Please explain

- Did the promotional materials accurately describe the program?** ☐ Yes ☐ No

If no, Please explain

- How did you hear about the program?**

☐ E-Mail ☐ Brochure ☐ LACBA Website ☐ LACBA Publications ☐ Other

If other, Please explain

- Please rank the factors that influenced your attendance at this program.**

Topic 5 4 3 2 1

Location 5 4 3 2 1

Price 5 4 3 2 1

Time 5 4 3 2 1

Materials 5 4 3 2 1

Speakers 5 4 3 2 1

Other

- Number of years in practice _____ Number of lawyers in firm _____
- List of your area(s) of practice/interest _____

- Who recommends/authorizes CLE attendance in your firm?
 - ☐ Managing partner ☐ Recruiting officer ☐ Other _____
 - ☐ Department Head ☐ Self
- What program length do you prefer?
 - ☐ 1 Hour ☐ 2 Hours ☐ 3 Hours ☐ All-day
- What time of day do you prefer to attend program?
 - ☐ Weekday before 10 a.m. ☐ Weekday lunch ☐ Weekday evening
 - ☐ Weekend ☐ Other _____

Comments _____

☐ You may use my comments for future promotional purposes

☐ You may not use my comments

Signature _____

Date _____