

## RESOLUTION 08-14-2017

### DIGEST

#### Probate: Petitions for Extraordinary Compensation

Amends California Rules of Court, rule 7.702 to require identification of persons performing services when requesting compensation for extraordinary services.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends California Rules of Court, rule 7.702 to require identification of persons performing services when requesting compensation for extraordinary services. This resolution should be disapproved because the statute already requires this, making the proposed revision unnecessary.

Attorneys' fees in probate administrations are divided into two categories: statutory and extraordinary. Statutory fees are flat fees based upon the value of the estate for tasks generally associated with the administration of an estate (e.g., gathering assets of the estate, preparing accountings, etc.). (Prob. Code, §10810; see also, e.g., *Estate of Hilton* (1996) 44 Cal.App. 4th 890, 894–895.) The term “statutory” refers to the fact that the amount of the fees is a percentage of the estate as provided by statute. Extraordinary fees may be awarded in the discretion of the court for services outside the scope of statutory fees (e.g., sales of real estate, most litigation, etc.). (Prob. Code, §10811.) An award of extraordinary fees requires a “statement of the hourly rate of each person who performed services, and the hours spent by each of them.” (Cal. Rules of Court, rule 7.702.)

This resolution would amend Rule 7.702 to require the listing of *each person* who performs services when requesting extraordinary compensation. The current version of Rule 7.702 already requires the listing of the hourly rate of *each person* who performs services and the hours spent by each of them. As a result, that requirement is already implicit in the statute. If, as the proponent suggests, courts are not consistently applying the law as it now exists, the solution is not to change the rule but rather to bring the issue to the attention of the noncompliant courts.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that the Judicial Council amend California Rules of Court, rule 7.702 to read as follows:

1 Rule 7.702

2 A petition for extraordinary compensation must include, or be accompanied by, a  
3 statement of the facts upon which the petition is based. The statement of facts must:

4 (1) Show the nature and difficulty of the tasks performed;

5 (2) Show the results achieved;

6 (3) Show the benefit of the services to the estate;

7 (4) Specify the amount requested for each category of service performed;

8 (5) State each person who performed the services, the hourly rate of each person who  
9 performed services, and the hours spent by each of them;

10 (6) Describe the services rendered in sufficient detail to demonstrate the productivity of  
11 the time spent; and

12 (7) State the estimated amount of statutory compensation to be paid by the estate, if the  
13 petition is not part of a final account or report.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Sacramento County Bar Association

## STATEMENT OF REASONS

The Problem: In conservatorship proceedings, any person requesting compensation, including professional fiduciaries, must comply with Rule 7.702 in the request. In some courts, notably Sacramento, some professional fiduciaries are showing all services as having been performed by the supervising fiduciary, usually the highest-billing professional fiduciary, in the firm of fiduciaries, or working on the matter, regardless of who actually performed the work. The justification for this is that the supervising attorney has full responsibility for all of the persons working on the matter. The result of this is that work done by a bookkeeper or person licensed as care manager, caregiver, or nursing associate, the reasonable hourly rate for whom is much lower than that for the supervising fiduciary, is charged at the highest rate. The conservatee thus is paying much more for such services than is truly justifiable. Proponent is also aware that there is inconsistency among counties in applying this rule, with some insisting on identification as proposed by this resolution, and some allowing billing for all services at the professional fiduciary's rate.

The Solution: This change will require that services performed by lower-level employees or agents of a professional fiduciary have established rates that can be observed by the court and other parties, and that their names and time are identified and the time billed at the appropriate rate, saving money for conservatees. It will also bring consistency in application of the rule to all counties.

**IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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