

# CIVIL, JUVENILE, MISCELLANEOUS & PROBATE RULES

## EFFECTIVE JULY 1, 2024

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## CHAPTER 2. CIVIL RULES

### RULE 2.1 ADMINISTRATION OF CIVIL CASES

#### 2.1.17 Resolution of Discovery Disputes

A. No motion under sections 2016.010 through 2036.050, inclusive, of the California Code of Civil Procedure shall be heard in a civil unlimited case unless the moving party has first requested an informal Pretrial Discovery Conference with the Court and such request for a Conference has either been denied and permission to file the motion is expressly granted via court order or the discovery dispute has not been resolved as a consequence result of such a the conference Conference and permission to file the motion is expressly granted after the conference. The foregoing This rule shall not apply to the following:

1. Motions motions to compel the deposition of a duly noticed party or subpoenaed person(s) who have not timely served an objection pursuant to Code of Civil Procedure section 2025.410 or otherwise obtained the consent of all interested parties agreeing to the non-appearance of the party or person(s) at the deposition as noticed or subpoenaed, and;

2. Motions motions to compel initial responses to interrogatories, requests for, production and requests for admissions;

3. , and Motions motions to quash or compel compliance regarding a subpoena served on a nonparty; and.

4. Motions to compel compliance with initial disclosures.

B. 4. No Change.

C. 2. No Change.

D. 3. No Change.

E. 4. If the party opponent has any opposition to the dispute as stated in the request described in paragraph no. 1 above, a written opposition on the approved form shall be timely filed or it will be considered by the Court as a refusal to participate as defined in "I" "C" below.

- F. 5. No Change.
- G. 6. No Change.
- H. 7. No Change.
- I. 8. No Change. (Effective July 1, 2024; adopted as Rule 2.1.17 effective January 1, 2013)

## CHAPTER 4. MISCELLANEOUS RULES

### 4.2.5 Interlocutory Appeals

A. A party taking an interlocutory appeal from an order denying a motion to suppress pursuant to Penal Code section 1538.5, shall file with the Notice of Appeal a declaration certifying the appeal complies with Penal Code section 1510.

B. Where counsel is unable to find viable issues to raise on interlocutory appeal, the opening brief shall be filed pursuant to *People v. Vera* (2023) 97 Cal.App.5th Supp.10. (Effective July 1, 2024; Rule 4.2.6 (now 4.2.5) renumbered effective January 1, 2023; adopted as Rule 4.2.6 effective January 1, 2021)

## CHAPTER 6. JUVENILE RULES

### RULE 6.9 COMPETENCY PROTOCOL

#### A. Introduction

1. The following protocol applies when it appears that there is a doubt as to the competency of a minor to stand trial or participate in Juvenile proceedings in a delinquency case.

2. This protocol is intended to supplement the provisions of Welfare & Institutions Code § 709, and the California Rules of Court, rule 5.645. In the event that a conflict arises between this protocol and the statute or rule, the statutory and rule provisions control.

3. This protocol is also intended to support Welfare & Institutions Code § 202 and enable a collaborative approach toward issues of competency. The Court should always consider the rehabilitative needs and best interests of the minor and concurrently the interests of public safety and protection of the community. Victims that desire to be present at competency proceedings may attend consistent with Welfare & Institutions Code § 676.5.

4. In order to accomplish the goals of this protocol, the Court shall convene a meeting/staffing of a Juvenile Competency Attainment Team (JCAT).

5. The JCAT is a juvenile justice multidisciplinary team engaged in the prevention, identification and control of crime pursuant to Welfare & Institutions Code § 830.1 and may share information pursuant to the parameters therein consistent with federal regulations.

**B. Informal Resolution/Competency Assessment Hearing (CAH)**

1. Consistent with Welfare & Institutions Code § 680, when it appears that there may be a doubt as to the competency of a minor; the parties are encouraged to seek an informal resolution of the matter, by way of stipulation or agreement.

2. In order to attempt to facilitate an informal resolution, the Court may order a staffing/assessment is to be prepared by the Juvenile Competency Attainment Team (JCAT), under the protocol stated below.

3. At any time during the proceedings, either the District Attorney or defense counsel for the minor may request that a Formal Competency Hearing be scheduled and informal resolution proceedings under Section B2 shall be terminated. (See section C1 of the Protocol)

4. Once doubt has been raised pursuant to this protocol, the Court may set a hearing within five (5) court days (or as soon thereafter as possible) in order to have the JCAT meet and confer about potential options. See Welfare & Institutions Code § 4096. If the minor is not in custody the Court may set a hearing within fifteen (15) court days in order to have the JCAT meet and confer about potential options.

5. A representative from the Department of Behavioral Health (DBH) shall meet with the minor prior to the CAH and may collect information from other JCAT members, family members and/or guardians in order to present clinical impressions to the JCAT at the CAH.

The JCAT on any particular case is to consist of the following representative members; although, each will only be noticed as requested by the Court:

- a. Judge
- b. Defense Counsel for the Minor
- c. District Attorney

- d. ~~Probation~~
- e. ~~Department of Behavioral Health~~
- f. ~~Department of Social Services (DSS)~~
- g. ~~Central Valley Regional Center (CVRC)~~
- h. ~~Fresno County Office of Education/Fresno Unified School District~~
- i. ~~Other School District Representation~~
- j. ~~County Counsel/Public Guardian~~
- k. ~~Other government or community based organization as designated by the Court (i.e., trial representative)~~

6. ~~The JCAT will be noticed of the CAH date and time electronically or by phone by Court staff and will be advised to either attend the CAH with relevant documents or to advise that they do not have relevant information to provide as to the subject minor (these orders are made consistent with the Court's subpoena powers per Welfare & Institutions Code § 727(a)).~~

7. ~~The Court should consider the following potential outcomes of the CAH:~~

- a. ~~Informal Probation per Welfare & Institutions Code § 654~~
- b. ~~Welfare & Institutions Code § 725~~
- c. ~~Placement within CVRC diversion pursuant to Penal Code § 1001.21 et seq.~~
- d. ~~DSS placement~~
- e. ~~Suspension of proceedings per Welfare & Institutions Code § 709~~
- f. ~~Guardianship per WIC § 705, 5000 (Lanterman-Petris-Short Act), 6551 and/or Penal Code § 4011.6~~
- g. ~~Stipulation as to Competency or Incompetency~~

h. Formal Probation with appropriate terms and conditions

i. The JCAT and the Court may conclude that the minor is not competent and thereafter schedule the matter for a Competency Review Hearing (see section F).

**C. Setting the Competency Determination Hearing (CDH)**

1. Pursuant to Welfare & Institutions Code § 709(a), when the Court or minor's counsel formally declares a doubt as to the competency of the minor and the Court finds substantial evidence to support the finding, proceedings as to the minor shall be suspended. It is the intent of this protocol to make these determinations only after or at the time of a CAH or if the parties refuse such hearing.

2. Where the Court or minor's counsel formally declares a doubt as to the competency of the minor, the Court shall set the matter for a Formal CDH as follows:

a. If the minor is in custody, the hearing shall be set within twenty (20) court days from the date of the CAH or from the finding made pursuant to Welfare & Institutions Code § 709.

b. If the minor is not in custody the hearing shall be set within thirty (30) court days from the date of the CAH or from the finding made pursuant to Welfare & Institutions Code § 709.

c. Upon a showing of good cause, the Court may extend the day for the setting of the CDH or continue the hearing date.

3. Once the matter is to proceed to a formal CDH, the Court shall appoint an expert psychologist or psychiatrist pursuant to Welfare & Institutions Code § 709(b).

**D. Evaluation of the Minor**

1. The qualifications of the Evaluator are to be governed by Welfare & Institutions Code § 709(b) and California Evidence Code § 730.

2. The psychiatrist/psychologist appointed will be chosen from a list on a rotational basis as determined by the Presiding Judge of the Juvenile Delinquency Court. The clerk of the Court assigned to the case shall provide the name to the Court of the panel psychologist/psychiatrist next available in rotation. The Court assigned to the case along with the Probation Department will be responsible for arranging the interview between the minor and the Evaluator.

3. The psychologist/psychiatrist will be provided with any and all documents or reports presented to the JCAT. The JCAT folder (which contains all reports or documents presented at the CAH) is to be delivered by the Court to the Evaluator within one (1) business day of the CAH or the formal declaration. The Court shall make all determinations as to which documents will be provided to the evaluator for purposes of the CDH. Attorneys and/or Probation or other JCAT members may provide additional reports including police reports or other documents which they determine may assist with the formal evaluation. Any reports received by the Evaluator must thereafter be returned to the Court, which thereafter holds the formal CDH.

4. In the event that minor's counsel objects to revealing the identity of any health care provider records, school or employer or custodian of any other relevant records regarding the minor, minor's counsel shall raise the objection in court. The District Attorney may similarly raise objections to the inclusion of reports within the JCAT folder. The Court may examine minor's counsel in chambers in order to rule on the objection, or may schedule a separate hearing in order to evaluate and rule on which documents are to be excluded from the JCAT folder.

5. The Order appointing the Evaluator shall set forth the issues upon which the Evaluator is to express an opinion per Welfare & Institutions Code § 709 as follows:

a. Does the minor suffer from a mental disorder, developmental disability, developmental immaturity or other condition:

1) Which causes the minor to lack sufficient present ability to consult with counsel and assist in preparing the defense with a reasonable degree of rational understanding; or

2) Which causes the minor to lack a rational as well as factual understanding of the nature of the charges or proceedings.

b. The Evaluator shall also render a professional opinion as to whether the minor is likely to benefit from attempts at attaining competency, i.e. what interventions, treatment, education, programs or training may assist the minor in attaining competency and whether with available resources there is a substantial probability that the minor will be able to attain competency in the foreseeable future.

The Evaluator may contact any of the JCAT members, excluding counsel and the judicial officer to provide further information that may assist in answering any of the queries outlined above.

6. The Evaluator shall submit a report and three copies to the Court within two (2) court days prior to the date set for the formal CAH. The JCAT folder is to be returned to the Court by the Evaluator (however, maybe utilized by the Evaluator during any hearings that are held pursuant to this protocol).

**E. Competency Determination Hearing (CDH)**

1. The Court shall conduct a hearing to determine whether the minor is competent. At the hearing, the Court may consider the Evaluator's report, testimony by the Evaluator, and any other records or testimony proffered by the parties (including the JCAT folder). The District Attorney or minor's counsel at their expense may request, with good cause, another Welfare & Institutions Code § 709(b) evaluation be conducted prior to the formal hearing.

2. The burden of proving incompetence is upon the minor's counsel and must be shown by a preponderance of the evidence.

3. Upon a finding of competence, the suspension of proceedings shall be ordered vacated.

4. Upon a finding of incompetence, the Court shall set the matter for a Competency Review Hearing (CRH). All proceedings shall remain suspended.

5. The Court may make orders it deems appropriate for services that may assist the minor in attaining competence and may rule on motions that do not require the participation of the minor as delineated in Welfare & Institutions Code § 709(c).

**F. Competency Review Hearing (CRH) and Competency Restoration**

1. After any determination of incompetence, the Court shall order the JCAT to reconvene and shall determine which members shall participate in the CRH. The members may reconvene either in person or by other telephonic or electronic method; however, counsel and the judicial officer are not to participate in the evaluations of the minor for purposes of submission of a CRH Planning Report.

2. If the minor is detained in custody, the CRH shall be set within fifteen (15) court days from the finding of incompetence. If the minor is out of custody, the CRH shall be set within thirty (30) court days from the finding of incompetence. After the first CRH is held, subsequent CRHs are to be held every forty-five (45) court days. Upon a showing of good cause, the Court may extend the day for the setting of the CRH or continue the hearing date.

3. The report is to be submitted jointly by representatives from DBH and Probation. The report should outline the nature of the charges pending before the Court, and contain general information about the status of the case and the date the minor was declared incompetent. The body of the report should address three areas. The **first section** should address the services that are available in order to assist the minor in obtaining competency. These services can include but are not limited to, mental health services, placement services, educational services, rehabilitative services, and psychiatric services, and should address whether these services can best be met safely in the home, community, or an open or closed residential facility. (This portion of the Planning Report is similar in structure to the Mini Treatment plan). The JCAT, when submitting its Planning Report must always consider that the minor be held in the least restrictive setting and may only be detained pursuant Welfare & Institutions Code § 636. Providing services to attain competency should always include coordination of services from JCAT members. The report in the **second section** should address the minor's compliance with the current plan and the status of implementation of the plan. The **third section** of the report should address in a general overview, the minor's progress toward regaining competency. The joint report is to be provided to the Court and counsel two (2) court days prior to the CRH.

4. The CRH shall typically be handled as an informal hearing in order for the parties to promote the best interests of the minor and restoration of competency. However, either counsel may request a contested hearing be held as to any of the proposed orders for treatment or housing, or if there is a determination being sought as to the ultimate issue of restoration of competency. Any party requesting such formal hearing must do so with advance notice if at all possible. Notice by the objecting party must be served on all parties and requests made to JCAT members to be present in order to testify if necessary; subpoenas may be requested of the Court upon a contested hearing being scheduled. The purpose of the CRH is to determine whether:

- a. The minor has regained competency or whether there is a substantial probability that the minor will attain competency in the foreseeable future;
- b. The minor is progressing in the course of treatment that has been previously ordered for the minor;
- c. The minor needs adjustments in the services being provided in order to promote the least restrictive setting for continued treatment or in order to promote the safety of the minor and/or the public.

5. If a determination is being requested at the CRH that the minor be determined competent and that delinquency proceedings be reinstated, the Court, District Attorney, or counsel for the minor may request a new evaluation

and CDH be held consistent with sections C through E of the Protocol. The preference is for the Court to appoint the same doctor that conducted the initial Evaluation.

6. If a determination is made that there is not a substantial probability that the minor will attain competency in the foreseeable future, the Court and the JCAT may pursue hospitalization of the minor pursuant to Welfare & Institutions Code §§ 705, 5000, 6551 and/or Penal Code § 4011.6, the JCAT can determine whether the minor would benefit from a conservatorship under the LPS Act and the JCAT should cause to file an Application for Mental Health Conservatorship Investigation with the Public Guardian's Office. The JCAT, upon pursuit of either option, should work collaboratively toward the best interests of the minor and in accordance with this protocol.

7. The Court may at any time that it determines there is not a substantial probability that the minor will attain competency in the foreseeable future, determine that all other options are not appropriate and that the case must be dismissed. Under no circumstances shall a minor be held in a custodial setting in excess of one hundred fifty (150) days after the determination of incompetency has been made on the case which is the subject of the competency proceedings. (Effective January 1, 2013; adopted as Rule 6.9 effective July 1, 2012)

#### A. Introduction

1. The Juvenile Competency Protocol shall apply when it appears that there is a doubt as to a minor's competency to stand trial or to participate in Juvenile Justice proceedings. The protocol is designed to provide an overview of the following: Procedures for determining a minor's competency; the evaluation process; the competency hearing process; and the remediation process.

2. This protocol is intended to supplement the provisions of Welfare & Institutions Code § 709, California Rules of Court, rule 5.645, as well as relevant case law. Unless otherwise noted, references to a section (or §) are to the Welfare & Institutions Code and references to a rule are to the California Rules of Court.

3. If a conflict arises between this protocol and statutory or case law, the statute and case law control. Moreover, this protocol is not intended to, and does not, create any rights, substantive or procedural, enforceable at law by any party in any matter.

## **B. Consideration of Informal Resolution**

1. Formal competency proceedings in some cases may be contrary either to the goals of protecting public safety or rehabilitating the minor.<sup>1</sup> If the court and parties agree that voluntary participation in services available in the community sufficiently address the needs of the minor and community safety, the court may proceed with an informal resolution without initiating formal competency proceedings.

2. The informal resolution shall last only until services are in place and the minor is stabilized, generally no longer than six months. On agreement of the parties, the informal resolution may last for a period longer than six months but shall not be longer than one year. Upon successful completion of the informal resolution, the petition shall be dismissed pursuant to §782, and sealed pursuant to the law. The minor shall be deemed in compliance with the terms of the informal resolution if the minor is in substantial compliance with the terms of the informal resolution.

3. If a party asserts the minor is failing to comply with the terms of the informal resolution, the court shall hold a hearing to determine whether the minor is in substantial compliance. If the court finds that the minor has failed to comply with the terms of the informal resolution within their ability, formal competency proceedings may commence.

## **C. Juvenile Competence Proceedings**

A minor is incompetent to participate in Juvenile Justice proceedings if the minor "lacks sufficient present ability to consult with counsel and assist in preparing the minor's defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against them. Incompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability, or developmental immaturity." (§ 709, subd. (a)(2).)

## **D. Initiation of Competency Proceedings**

### **1. Expression of Doubt**

During the pendency of any juvenile proceeding, the court or minor's counsel may express a doubt as to the minor's competency. (§ 709, subd. (a)(3).)

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<sup>1</sup> Use of the word "minor" throughout this protocol refers to both minors and former minors.

Prior to commencing competency proceedings, the court must first find "substantial evidence that raises a doubt as to the minor's competency." (§ 709, subd. (a)(3); Rule 5.645(d)(1).) The court should conduct an initial inquiry to determine if substantial evidence exists to suspend the underlying juvenile proceedings. The court may receive information from any source. Evidence is substantial if it raises a reasonable doubt concerning the minor's ability to understand the nature of the juvenile proceedings or to assist in the defense. (*People v. Rogers* (2006) 39 Cal.4th 826, 847; *People v. Hayes* (1999) 21 Cal.4<sup>th</sup> 1211, 1281-1282.)

The Court may allow minor's counsel to present their opinion regarding the minor's competence *in camera* if the court finds there is reason to believe that attorney-client privileged information would be inappropriately revealed in open court. (Rule 4.130(b)(2).)

The court must only determine the existence of substantial evidence to raise a doubt as to the minor's current competency. (§ 709, subd. (a).)

## **2. Suspension of the Proceedings**

If the court finds substantial evidence raises a doubt as to the minor's competency, proceedings shall be suspended. (§ 709, subd. (a)(3).)

During the suspension of proceedings, the court may rule on motions that do not require the participation of the minor in their preparation. These motions include, but are not limited to:

- a. Motions to dismiss;
- b. Motions regarding a change in the placement of the minor;
- c. Detention hearings;
- d. Demurrers; and
- e. Motions to join agencies in the Juvenile Justice Court proceedings that may have failed to meet a legal obligation to provide services to the minor. (§ 727, subd.(b)(1).)

## **3. Appointment of Evaluator**

When the court finds substantial evidence of a doubt as to the competency of the minor, the court shall appoint an expert from the court's panel to assess the minor's competence unless the parties stipulate to, or submit on the issue of, the minor's lack of competency.

When the court orders a juvenile competency evaluation, the court shall select one Juvenile Competency Panel evaluator. The court shall immediately notify the evaluator and probation of the appointment.

Probation shall send any relevant information to the evaluator, including, but not limited to, police reports, school records, special education records and recent psychological testing reports, that they believe will be of assistance in making a juvenile competency determination. Minor's counsel and the District Attorney's Office shall provide all relevant documents in their possession to probation as soon as possible. Probation shall make every attempt to obtain any relevant documentation to the evaluator as quickly as possible.

The Court shall, absent unusual circumstances, set a non-appearance "status" hearing within five (5) court days from the time the proceedings are suspended to confirm the evaluator has accepted appointment for the evaluation. Upon confirmation of acceptance, the court will provide the evaluator's contact information to all counsel.

#### 4. Method of Evaluation

##### a. Independent Experts

The evaluators on the Juvenile Competency Panel are appointed by the judicial officers as "at will" independent experts. The policies discussed herein describe the contents and processes involved in generating evaluations only. The opinion rendered in each evaluation is at the discretion of the individual psychologist.

##### b. Criteria for Competency Evaluations

The juvenile competency evaluator shall:

1) Interview the minor in person, absent exigent circumstances and agreement of counsel. If the minor is detained, the interview will take place at the Juvenile Justice Campus in a confidential setting. If the minor is not detained, the evaluator will schedule an appointment with the minor or the minor's parent or guardian.

2) Review all material and conduct all interviews and testing as set forth in the Checklist for Juvenile Competency Evaluations attached to the Juvenile Competency Protocol as Appendix 1.

3) Opine, in a written report, whether the minor has the sufficient present ability to consult with counsel with a reasonable degree of rational understanding, and whether the minor has a rational and factual understanding of the nature of the charges or proceedings against them. The evaluator shall state the basis for these conclusions.

c. **Inclusion of Remediation Plan**

If the evaluator concludes that the minor lacks competency, the evaluator shall give an opinion on whether the minor is likely to attain competence in the foreseeable future, and, if so, make recommendations regarding the type of remediation services that would be effective in assisting the minor attain competence. (§ 727, subd.(b)(3).)

**E. Juvenile Competency Hearing (JCH)**

1. **Timing**

The juvenile competency evaluator shall submit their report to the court and counsel at least two (2) court days prior to the date set for the Juvenile Competency Hearing. If the minor is detained, the Juvenile Competency Hearing will be scheduled within 30 calendar days of the suspension of proceedings. If the minor is not detained, the hearing will be held within 45 calendar days.

Upon a showing of good cause, the court may continue the hearing date.

The question of the minor's competence shall be determined at an evidentiary hearing unless there is a stipulation or submission by the parties on the findings of the evaluator.

2. **Judicial Officer**

The Judicial Competency Hearing need not be held before the same judicial officer who declared a doubt as to the minor's competence to stand trial. (*People v. Hill* (1967) 62 Cal.2d 105, 113, fn. 2; *People v. Lawley* (2002) 27 Cal.4th 102, 133-134.)

3. **Burden of Proof**

There is a rebuttable presumption that the minor is competent. (§ 709, subd. (c).) The party asserting the minor's incompetence bears the burden of proof by a preponderance of the evidence. (§ 709; *In re R. V.* (2015) 61 Cal.4th 181; *Bryan E. v. Superior Court* (2014) 231 Cal.App.4th 385.)

#### **4. Capacity**

Prior to the determination of competency, the court shall determine, for any minor under age 14 at the time of the alleged offense, whether the minor had the capacity to commit a crime pursuant to Penal Code §26. The district attorney bears the burden of rebutting the presumption that a minor under the age of 14 is presumed to be incapable of committing a crime by clear and convincing evidence. (*In re Joseph H.* (2015) 237 Cal.App.4th 517, 538.)

#### **5. Findings**

a. If the minor is found competent, the court shall reinstate the Juvenile Justice proceedings.

b. If the minor is found incompetent and the petition contains only misdemeanor offenses, the court shall dismiss the petition. (§709, subd. (f).)

c. If the minor is found to be incompetent and able to be remediated in the foreseeable future, and the petition includes felony offenses, proceedings shall remain suspended and the court shall set a Competency Planning Hearing within 15 calendar days for detained minors, or within 30 calendar days for minors who are out of custody.

#### **F. Competency Planning Hearing/Remediation Review Hearings**

At the Competency Planning Hearing, the court shall order appropriate remediation services for the minor. The court shall set a Competency Remediation services for the minor. The court shall set a Competency Remediation Hearing within six (6) months of the referral for remediation services.

The court shall set the first Remediation Review Hearing. The court shall review the minor's progress every 30 calendar days if the minor is detained, and every 45 calendar days if the minor is out of custody. The need for detention shall remain at issue throughout the remediation process and alternatives to detention shall be explored.

The assigned probation officer will be responsible for coordinating appropriate treatment services with behavioral health and submitting reports to the court.

For minors receiving remediation services in custody, the remediator should make every effort to provide services a minimum of twice a week.

Behavioral health, or their designee, shall provide a report as it relates to participation and progress in the competency remediation program for each Remediation Review Hearing. The report should indicate the degree of progress towards regaining competency and the minor's compliance with the current remediation plan. The report shall be provided to probation 5 court days prior to each Remediation Review Hearing and probation shall distribute the reports to the court, counsel and district attorney upon receipt. The assigned probation officer shall notify behavioral health, or their designee, of court dates.

If the minor does not participate in remediation services, behavioral health shall immediately notify the assigned probation officer. Probation shall request that the court calendar the case for the next available court date to reevaluate the most effective means of providing remediation services. Behavioral health, or their designee, shall provide a report containing the efforts made to administer competency training.

At any time during the remediation process, if behavioral health or their designee, believes the minor's competence has been obtained or restored, this information shall be included in their progress report to the court.

If the court finds that the minor has attained competence, the Juvenile Justice proceedings shall be reinstated and the case shall resume at the stage at which it was suspended.

#### **G. Placement of Minor**

Services must be provided in the least restrictive environment consistent with public safety. A finding of incompetency alone shall not be the basis for secure confinement. (§709, subd. (g)(1).) Many minors can successfully participate in remediation services while living in their homes, attending their regular schools, and participating in their normal activities.

The court has the discretion to place a minor in an out of home placement or in custody. The court should take into consideration the following factors:

1. Where the minor will have the best chance of obtaining competence
2. Needs of the minor
3. Seriousness of the underlying offense(s)
4. Public Safety
5. Minor's past performance while out of custody

6. Whether the minor will actively engage in remediation services while out of custody

#### **H. Six Month Remediation Hearing**

Within six months of the finding of incompetence, the court shall hold an evidentiary hearing on whether the minor has been remediated or can be remediated in the foreseeable future unless the parties stipulate, or agree, to the recommendation of behavioral health.

If the minor disputes the opinion that the minor has attained competency, the minor has the burden of proving that they remain incompetent. The burden of proof is by a preponderance of the evidence.

If the district attorney disputes the recommendation that the minor is unable to be remediated, the district attorney has the burden of proving, by a preponderance of the evidence, that the minor is remediable.

At the 6-Month Remediation Hearing, the court has the following options:

1. Find that the minor has been remediated and reinstate the proceedings.

2. Find that the minor has not yet been remediated but is likely to be remediated within the foreseeable future. The court shall order the minor to return to the remediation program. However, the total remediation period shall not exceed one year from the finding of incompetence, unless the petition contains a §707, subd. (b), offense. Remediation services may be extended to a maximum of 18-months if the petition contains a §707, subd. (b), offense.

3. If the court finds that the minor will not achieve competency in the foreseeable future, the court shall dismiss the petition.

If remediation services are continued past the 6-Month Remediation Hearing, the court shall set at 12-Month Remediation Hearing and continue to hold Remediation Review Hearings. If the court finds that the minor has not been remediated at the 12-Month Remediation Hearing, the petition shall be dismissed, unless the petition contains a §707, subd. (b), offense and the court finds, at the 12-Month Remediation Hearing, that the minor is likely to be remediated in the foreseeable future, the court shall set an 18-Month Review Hearing and continue to hold Remediation Review Hearings. If the court finds that the minor has not been remediated after 18-Months of remediation efforts, the petition shall be dismissed.

## **I. Secure Confinement During Competency Proceedings**

The court shall not continue a minor's detention beyond six (6) months from the finding of incompetence unless it makes findings, on the record, that it is in the best interests of the minor and public safety that the minor remains detained. In making this determination, the court shall consider whether:

1. It is the location the minor will have the best chance of obtaining competence
2. The placement is the least restrictive setting appropriate
3. Alternatives have been identified and pursued and, if not, why not
4. The placement is necessary for the safety of the minor or other

In any case in which a detained minor is charged with a §707, subd. (b), offense, after consideration of the criteria listed above, the court may continue the minor's detention for an additional year, but not to exceed eighteen (18) months from the finding of incompetence.

## **J. Developmentally Disabled Minors**

If the juvenile competency evaluator believes the minor is developmentally disabled and the minor is not a Central Valley Regional Center (CVRC) client, the court shall appoint CVRC to evaluate the minor. CVRC shall determine whether the minor is eligible for CVRC services and shall provide the court with a written report informing the court of its determinations. The court's appointment of CVRC for determination of eligibility for services shall not delay the court's competency determination.

Minor's counsel shall request that the court include a referral to CVRC on the minute order. The assigned probation officer shall serve the court order forthwith on CVRC and file a proof of service with the court clerk. Minor's counsel may provide CVRC with any information from the minor's file that is necessary for the purposes of obtaining or continuing services through CVRC.

For purposes of a CVRC referral, developmental disability shall be defined based on the description contained in §4512, subd. (a).

An evaluator's opinion that a minor is developmentally disabled does not supersede an independent determination by CVRC as to the minor's eligibility for services under the Lanterman Petris-Short Act. To qualify for these services, CVRC must examine and accept the minor.

## **K. Minor's Statements in Subsequent Proceedings**

Statements made to any competency evaluator or to mental health professionals during remediation process, and any evidence derived from these statements, shall not be used in any hearing, not related to competency, against the minor in either juvenile or adult court. (§709, subd. (b)(5).) (Effective July 1, 2024 January 1, 2013; adopted as Rule 6.9 effective July 1, 2012)

# **CHAPTER 7. PROBATE RULES**

## **RULE 7.1 PLEADINGS**

### **7.1.1 Form of Documents Presented for Filing in Probate Matters**

A. When printed forms are reproduced on the front and back of a single sheet, the back sheet shall be inverted (tumbled) so that it can be read when affixed at the top in a file folder.

AB. No Change.

BC. No Change.

CD. No Change.

DE. No Change.

EF. No Change.

FG. All documents containing attachments, schedules or exhibits shall be indexed and tabbed. Each page shall have page numbers to facilitate review by the Probate Examiner's Office and the court. Physical filings containing attachments, schedules, or exhibits shall be indexed and shall have page numbers on all pages. (Effective July 1, 2024 2020; Rule 7.1.1 renumbered effective January 1, 2006; adopted as Rule 70.1 effective July 1, 2004)

### **7.1.2 Filing Fees for Trust Matters**

All initial proceedings for court supervision of trusts (including but not limited to related but separate trusts, or testamentary trusts funded by a probate) and Petitions to Establish Special Needs Trusts are new actions, and require assignment of a new case number and payment of a current filing fee. Proceedings for trust matters, including but not limited to testamentary trusts, trust funded by court order, and related but separate trusts, require separate case number assignment and payment of a current filing fee for establishment of such separate case. (Effective July 1, 2024; January 1, 2015; Rule 7.1.2 renumbered effective January 1, 2006; adopted as Rule 70.2 effective January 1, 2004)

## **RULE 7.5 STATUS HEARINGS AND STATUS REPORTS**

- A. No Change.
- B. No Change.
- C. If the required account, report, or petition for distribution is filed at least five (5) days before the date set for the Status Hearing, no Status Report is required. The filing party shall notify the Probate Filing Clerk or Probate Examiner, in writing or via email or FAX that the necessary documents have been filed and the date of the hearing thereon. Upon such timely notification, the Status Hearing will be taken off calendar.  
(Effective July 1, 2024 January 1, 2017; Rule 7.5 renumbered effective January 1, 2006; adopted as Rule 74 effective January 1, 2004)

## **RULE 7.6 ORDERS**

### **7.6.2 Pre-Approved Orders**

Orders on uncontested matters may be approved by the court at the time noticed for hearing. A conformed copy of the signed order will be immediately available upon entry of the signed order by the Probate Clerk's Office, and will be provided to the filing party or to appearing counsel electronically, or available upon request. Unrepresented parties may generally obtain a copy of the order at the Probate Clerk's Office after 1:30 p.m. on the day of the hearing. (Effective July 1, 2024; January 1, 2017; Rule 7.6.2 renumbered effective January 1, 2006; adopted as Rule 75.2 effective January 1, 2004)

## **RULE 7.9 PUBLICATION**

- A. If the decedent resided or a non-resident decedent, owned property within the city limits of the following cities, publication ~~may~~ shall be made as follows:

<b><u>If the residence or property owned was in:</u></b>	<b><u>Publish in</u></b>
Clovis or Fresno	Fresno Bee, or Fresno Business Journal
Kerman	Kerman News
Kingsburg	Kingsburg Recorder
Mendota	Firebaugh Mendota Journal, or Mendota Times
Prather	Mountain Press
Reedley	Mid Valley Times
Sanger	Mid Valley Times
San Joaquin	Westside Advance
Selma	Selma Enterprise

B. No Change. (Effective July 1, 2024 2020; Rule 7.9 renumbered effective January 1, 2006; adopted as Rule 78 effective January 1, 2004)

## **RULE 7.12 PETITIONS FOR DISTRIBUTION**

### **7.12.3 Distribution of Personal Effects**

A. The Court will not order distribution of tangible or intangible personal property assets in undivided interests without written consent of all distributees, or factual allegations showing good cause, including but not limited to furniture, vehicles, or appliances, in undivided interests without factual allegations showing good cause or the written consent of all distributees.

B. Parties requesting distribution of personal property in undivided interests to a minor must first submit a detailed declaration documenting the need therefor and why it would be in the minor's best interest. (Effective July 1, 2024 2016; Rule 7.12.3 renumbered effective January 1, 2006; adopted as Rule 81.3 effective January 1, 2004)

### **7.12.4 Distribution of Real Property**

A. The court will not order distribution of real property in undivided interests without factual allegations showing good cause or the written consent of all distributees.

B. Parties requesting distribution of real property in undivided interests to a minor must first submit a detailed declaration documenting the need therefore and why it would be in the minor's best interest. (Effective January 1, 2017; adopted as Rule 7.12.4 effective January 1, 2008)

## **RULE 7.16 ATTORNEY'S FEES AND COMMISSIONS IN GUARDIANSHIP AND CONSERVATORSHIP**

A. No Change.

B. The court will allow a flat fee for attorney services, without the need to comply with Rule 7.16 (A) above, as follows:

1. No Change.
2. Court confirmed sale of real property: \$2,500.00. \$1,250.00
3. No Change.
4. No Change.
5. No Change.

C. No Change:

D. No Change.

E. No Change. (Effective July 1, 2024; January 1, 2015, Rule 7.16 renumbered effective January 1, 2006; adopted as Rule 85 effective July 1, 2004)

**RULE 7.17 REIMBURSEMENT OF ATTORNEY'S, CONSERVATOR'S, GUARDIAN'S OR PERSONAL REPRESENTATIVE'S COSTS ADVANCED**

A. No Change.

B. The following expenses are considered by the court to be a business expense and are not reimbursable costs or fees:

1. No Change.

2. No Change.

3. No Change.

4. No Change.

5. No Change.

6. No Change.

7. ~~Runner or filing services and service fees. (Vendor service fees associated with electronic filing shall be reimbursable from the estate, and must be distinguished from fees charged by filing services used by attorneys.)~~

C. No Change.

1. No Change.

2. No Change. (Effective July 1, 2024 January 1, 2017, Rule 7.17 renumbered effective January 1, 2006; adopted as Rule 86 effective January 1, 2004)

## **RULE 7.18 EXTRAORDINARY FEES IN DECEDENT'S ESTATES**

A. The court will allow the following amounts as extraordinary fees for attorneys without further justification or declaration as would otherwise be required by California Rules of Court, Rule 7.702-7.703:

1. Court confirmed sales of real property: ~~\$2,500.00~~ ~~\$1,000.00~~
2. No Change.
3. No Change.

B. No Change. (Effective July 1, 2024; January 1, 2008, Rule 7.18 renumbered effective January 1, 2006; adopted as Rule 87 effective January 1, 2004)