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Santa Clara County Judges Initiate First Changes in Requirements for Reimbursement of Private Professional Fiduciaries Fees

*Supervising probate judge initiates reforms ahead of Court's formalized,
legislative process for Local Rule changes.*

SAN JOSE, Calif. (July 26, 2012): On Wednesday, July 25, the Superior Court of California, County of Santa Clara (Court) convened a Task Force to address concerns raised regarding the fees charged in conservatorships by private professional fiduciaries.

The Task Force, Chaired by Assistant Presiding Judge Brian Walsh, discussed guidelines proposed by the Superior Court to address claims of inequities in compensation for private professional fiduciaries in some cases.

“Our court considers the proper care of conservatees a very serious matter,” said Judge Walsh. “With the full support of our entire bench, we have organized this meeting of interested parties to help us establish guidelines that balance the needed care of the conservatee with the ability of the individual estate to afford that care.”

In an effort to jump-start these changes, on Wednesday, July 18, Judge Thomas Cain initiated the first change in the Superior Court of California, County of Santa Clara's (Court) requirements for fee approval relating to private professional fiduciaries.

For all those who come before his bench, Judge Cain has ordered monthly statements of activities and fees to be served to those named on the proof of service for the petition, as well as the Court Investigator. This shift in requirements allows those with a vested interest in a particular conservatorship, as well as the Court's investigatory and monitoring function, to have more regular accountings of what fees are being accrued and for what services. The current Local Rule only requires accountings to be filed one year after the appointment and biennially thereafter.

“The Court has promised the residents of Santa Clara County that we were going to take this matter seriously and act in a timely manner – and we're making good on that promise,” said Judge Walsh. “Like any defined legislative process, by statute, a change in our Local Rules cannot happen overnight, but the Court is moving swiftly in the areas where we do have discretion, as Judge Cain's actions have shown.”

In addition to the monthly statements, Judge Cain is now requiring a compliance hearing within 90 days of filing an estimate of fees to be automatically set on the Court's calendar. If an estimate of fees is filed within 90 days, the calendaring of the hearing will be cancelled as the fee petitioner has complied with the Court's current Local Rule requirements. This automatic calendaring has been designed to add a greater sense of accountability by requiring a fee petitioner to come before Judge Cain and explain why they have not complied with the 90-day requirement.

"We're dealing with both very limited resources and restrictive legislation that governs changing our Local Rules, but that doesn't mean we can't be creative," said Judge Walsh. "Judge Cain is letting everyone know that if you don't comply with our filing requirements and aren't estimating reasonable fees for the services provided, you'll have to answer to him directly. I'm confident that filers will not dismiss this lightly."

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