CHAPTER 9—Probate and Adoption Proceedings

9.010 MAILING PROBATE MATERIALS TO THE COURT

Petitions, motions, orders and judgments not requiring a court appearance may be mailed to the trial court administrator, with self-addressed stamped envelopes or postcards for responses.

9.020 APPROVAL OF BONDS

A supporting affidavit, signed by the guardian, conservator, personal representative or attorney of record, must be filed if there is a request for approval of a surety bond in an amount less than the aggregate value of the property in the estate as disclosed by the petition. The requirement of this section may be satisfied by a statement in the petition for appointment.

9.030 ADDRESSES AND TELEPHONE NUMBERS REQUIRED

(1) The name, address, telephone number, fax number, e-mail address, and bar number of the attorney of record must be typed or printed on the last page of every petition, motion and order.

(2) The name, address and telephone number of the guardian, conservator or personal representative must be typed or printed on the last page of every order.

(3) The trial court administrator must be promptly notified by separate letter of any change in address or telephone number of any attorney of record, unrepresented party, guardian, conservator or personal representative.

9.040 SETTLEMENT OF PERSONAL INJURY CLAIMS IN PROBATE CASES

A petition for approval of a settlement of a personal injury claim must be accompanied by an affidavit setting forth all relevant information concerning the settlement, including medical reports covering the nature and extent of the injuries sustained and the prognosis. The court may require further information.

9.050 RESTRICTED ACCOUNTS

When assets of an estate or conservatorship are placed with a depository subject to withdrawal only on order of the court, a writing signed by the depository showing the assets held and that they are subject to withdrawal only on further order must be filed with the court within 30 days of entry of the order unless the order allows a longer period of time. Prompt procurement of the writing is the responsibility of the attorney for the fiduciary. Any asset restricted by court order shall be identified in the inventory or annual accountings as restricted with reference to the date and title of the order imposing the restriction.

9.060 FEES IN ESTATES, GUARDIANSHIPS AND CONSERVATORSHIPS

(1) Attorney fees requested in protective proceedings under ORS chapter 125 must be supported by affidavit setting out the justification for the amount requested.

(2) Attorney fees requested for a decedent's estate must be supported by affidavit in compliance with ORS 116.183.

(3) Personal representative fees requested in excess of the statutory amounts provided in ORS 116.173(1) must be supported by affidavit setting out justification for the additional claimed amount.

(4) All fiduciary and attorney fee applications and accountings in decedents' estates, guardianships and conservatorships must be served in the manner and on the persons described in ORS 116.093, 125.475, and acts amendatory thereof.

9.070 SUMMARY DETERMINATION OF CLAIM UNDER ORS 115.145(1)(a) AND 115.165

A party requesting a summary determination of a claim under ORS 115.145(1)(a) and 115.165 must:

(1) indicate in the caption of the request that a summary determination is being requested, and

(2) tender the appropriate fee with the request.

9.080 ORAL OBJECTIONS IN PROTECTIVE PROCEEDINGS AND NOTICE OF FREE AND LOW-COST LEGAL SERVICES

(1) Every court exercising probate jurisdiction must adopt an SLR designating a place where oral objections may be made under ORS 125.075 to petitions in protective proceedings. SLR number 9.081 is reserved for this purpose.

(2) Every court exercising probate jurisdiction shall post, at the place where oral objections may be made pursuant to subsection (1) of this rule, information regarding any free or low-cost legal services available in the area sufficient to satisfy the requirements of ORS 125.070.

9.160 FORM OF ACCOUNTINGS

Accountings substantially in the form specified in Form 9.160 in the UTCR Appendix of Forms, as further explained in this rule, must be accepted by all judicial districts. Accountings in this format may be made mandatory by SLR. SLR 9.161 is reserved for purposes of making such format mandatory in the judicial district:

(1) Preliminary information. The beginning of the accounting shall state:

(a) The first and last date of the accounting period. For annual accountings, the last day of the accounting period shall be within 30 days of the anniversary of appointment.

(b) If no bond is required, the date of the court order waiving the bond or a reference to the statute exempting the fiduciary from filing a bond. If a bond is required, the accounting shall state the current amount of the total bond. If a bond is required, an accounting shall also provide the following information.

(i) The total value of the assets as of the last date of the current accounting period;

(ii) The income estimated to be received during the next accounting period;

(iii) Total assets and income (the sum of items (i) and (ii));

(iv) The value of the total assets and income which have been restricted by court order and a reference to the dates of all orders restricting assets;

(v) Unrestricted assets and income (the difference between (iii) and (iv), generally the amount which should be bonded);

(vi) The fiduciary's request for any change in the amount of the existing bond or in restrictions on assets or income.

(vii) If appropriate, an explanation for any difference between the amount of the requested bond and the amount that should be bonded.

(2) Asset Schedule. There shall be a separate asset schedule with a summary of all property of the estate or conservatorship. All assets listed in the Inventory, any Amended or Supplemental Inventory, or the previous accounting and all assets subsequently acquired shall be listed in this schedule if they are owned at any time during the accounting period.

(a) This schedule shall have at least five columns.

(i) Description of Asset. The first column shall describe each asset owned by the estate or conservatorship at any time during the accounting period. The description of any asset that has been restricted pursuant to court order shall include the date and title of the order. The description of any asset acquired or disposed of during the accounting period shall include the date of acquisition or disposal. If an asset consists of a depository account into which funds are received or from which funds are disbursed, the description shall include a reference to any separate paragraph or exhibit containing the statement of receipts and disbursements for the depository account.

(ii) Beginning Value. If the asset was owned by the estate or conservatorship at the beginning of the accounting period, the second column shall state the value of the asset at the beginning of the accounting period.

(iii) Value of Later-Acquired Asset. If the asset was acquired after the beginning of the accounting period, the third column shall state the value at acquisition.

(iv) Value at Disposition. If the asset was disposed of before the end of the accounting period, the fourth column shall state the value at disposition.

(v) Current Value. If the asset is in existence at the end of the accounting period, the fifth column shall state the current value.

(b) The sums of the second through fifth columns shall be provided at the bottoms of those columns.

(c) The schedule may have additional information such as original cost, increase or decrease in value, the source of an acquisition or the reason for disposition of assets, and any other information which would aid in accounting for assets.

(d) For the purpose of this schedule, total value of household goods and personal belongings may be listed on one line.

(e) For the purpose of this schedule, the side margins may be one-half inch and font size may be no smaller than 10 point type.

(f) A trust company acting as a fiduciary is exempt from the requirement to file an asset schedule as provided above. Instead, a trust company acting as a fiduciary may provide a schedule of assets in existence at the beginning of the accounting period and a schedule of assets in existence at the end of the accounting period.

(3) Receipts and Disbursements. The accounting of receipts and disbursements shall meet the following requirements for each depository account:

(a) For each account, receipts and disbursements shall be separately listed in chronological order, with the date and value of each transaction. For each account, the total of each list of receipts and disbursements shall be provided at the end of each list.

(b) Each receipt into the account shall show the source and shall have a brief explanation of the source or purpose of the entry. The first entry in the list of receipts shall be the beginning balance for the account.

(c) Each disbursement from the account shall show the payee or recipient and shall have a brief explanation of its purpose. If the disbursement is by check or similar instrument, the name on the disbursement shall match the payee on the instrument. The sum of the total disbursements plus the ending balance in the account shall be shown.

(d) A sale of real property shall be evidenced by a copy of the seller's closing statement from escrow or, if none is available, third-party documentation of the details of the transaction.

(e) Any transfers between depository accounts shall be so labeled with reference to the source or destination of the deposit or withdrawal.

(f) Any difference between the closing balance shown for the account in the accounting and the closing balance shown for the account in a depository statement filed in accordance with these rules shall be reconciled.

(g) For the purpose of this schedule, the side margins may be one-half inch and font size may be no smaller than 10 point type.

(h) A trust company acting as a fiduciary is exempt from the requirements of UTCR 9.160(3)(a). Instead, a trust company acting as a fiduciary may provide a chronological list of receipts and disbursements, with a total for the amount of receipts and a total for the amount of disbursements.

(4) Narrative. The accounting shall include a description of any changes in the assets of the estate or conservatorship or the financial life of the protected person not clearly shown in the Asset Schedule including, but not limited to, corrections to previously declared values, omitted assets, the closing of an account, the sale or purchase of an asset, a significant change in living expenses, or a stock split.

(5) Other forms of accounting. In its discretion, the court may allow other forms of accounting.

9.170 FIDUCIARY DISCLOSURE IN ACCOUNTINGS

The narrative of an accounting shall specifically disclose and explain all of the following transactions during the accounting period unless previously approved by the court:

(1) All gifts.

(2) Transactions with a person or entity with whom the fiduciary has a relationship which could compromise or otherwise affect decisions made by the fiduciary. The disclosure shall include, but is not limited to, payment for goods, services, rent, reimbursement of expenses, and any other like transactions.

(3) Any payment for goods or services provided either:

(a) by a person who is not engaged in an established business of providing similar goods or services to the general public; or

(b) at a rate higher than that ordinarily charged to the general public.

9.180 VOUCHERS AND DEPOSITORY STATEMENTS

(1) Unless otherwise provided by statute, SLR, or order of the court, a voucher for each disbursement reported in the accounting must accompany the accounting as a separate exhibit or shall be attached to a cover page showing the case caption. Vouchers required by statute or order of the court must be documents evidencing each disbursement and showing the name of the payee, date, and amount.

(2) Unless the fiduciary is excused from the requirement of filing vouchers, the accounting shall include depository statements for each account. An opening depository statement must evidence the account beginning balance, unless one was submitted with a previous accounting. A closing depository statement must evidence the balance in the account within 30 days of the close of the accounting period or on the date of closing of an account closed during the accounting period.

(3) For purposes of this rule, a "depository" is an entity holding assets of the estate or conservatorship, including a bank, stock and bond broker, mutual fund, or similar entity.

(4) Copies of vouchers and depository statements need not be served on persons entitled to copies of the accountings or on persons who have requested notice in the proceedings.

9.190 RETURN OF VOUCHERS AND DEPOSITORY STATEMENTS

Vouchers and depository statements submitted under UTCR 9.180 may, in the court's discretion, be returned to a personal representative, conservator, guardian or attorney of record at any time after expiration of the time for appeal or, if an appeal is taken, after final determination of the case. A person requesting return of vouchers or depository statements shall submit a self-addressed envelope with adequate postage with the documents filed.

9.300 APPOINTMENT OF GUARDIANS IN ADOPTIONS

Except in cases when one or more of the petitioners, or a state or private agency, is the legal or natural guardian of the minor child, when a petition is filed for leave to adopt a minor child and the required consent thereto has been filed, the attorney for the petitioner must prepare and submit to the court an order providing for the appointment of the petitioner, or other suitable person, as guardian of the person of the minor child pending further order of the court or entry of a decree.

9.310 PRESENTATION OF ADOPTION DECREES

Proposed adoption decrees may be presented to the court without the necessity of a personal appearance by the attorney or the adoptive parents.

9.320 CHANGE OF NAME AND CHANGE OF SEX PROCEEDINGS

The public notice required by ORS 33.420 or ORS 33.460 may be given either by posting in a public place or publication in a newspaper of general circulation. The notice must give 14 days from the date of posting or publication for all persons to appear and show cause. If no appearance is made, the decree or order may be entered 15 days after posting or publication. After entry of the decree or order, public notice of the change must be given by posting in a public place or publication in a newspaper of general circulation. A certificate of posting or publication must be submitted to the trial court administrator.