

THE COURT'S VIEW ON THE PERFECT ACCOUNTING

Presented by
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The Court's goal is to approve your accounting on the first review.
What follows is common problems with accountings.

1. FIDUCIARIES

- A. The relationship of Guardian-Ward, Conservator-Conservatee and Trustee-Beneficiaries are fiduciary relationships that are governed by the law of trusts.
- B. Guardian/Conservator of Estate are
 - 1. Governed by the probate provisions relating to estate management by Guardian/Conservator/Trustee. (Prob. C. §1600, et seq., Duties of Trustees in General; Prob. C. §16040, et seq., Standard of Care; and Prob. C. §16045, et seq., Uniform Prudent Investor Act.)
 - 2. Subject to the regulation and control of the court in the performance of their duties. **Prob. C. §2102**
- C. Fiduciaries typically
 - 1. Operate day-to-day activities without court instruction.
 - 2. How well they perform their duties is subject to ongoing court regulations and review.
 - 3. Failure to properly perform is cause for removal. **Prob. C. §2650**

Common Problem:	Fiduciaries use estate funds like it's their own money or commingle funds.
Tip:	Remind your client that they signed duties and are personally liable for mismanagement of funds.

2. PROBATE COURT

- A. **Superfiduciary.** The Probate Court must oversee Guardian/Conservator/"trusts funded by court order" (SNT).
- B. Court has a **duty** to scrutinize accounts and determine all issues.
- C. **Discretionary Review by Court - Prob. C. §2620(d)** – Each accounting is subject to random or discretionary, full or partial review by the Court.
 - 1. If the account has **material errors**, the Court shall make an express finding as to the severity of the error
 - **Minor** deficiencies and actions called for
 - **Major** deficiencies needing corrections
 - 2. The Court shall make an express finding as to what **further action** is appropriate in response to the error.
 - A. **Supplement** as to minor defects
 - Corrects errors in account
 - Includes omitted information
 - B. **Amendment** due to major material errors
 - Replaces prior account
 - Changes starting balance and/or schedules. (filing corrected I&A)

Common Problem:	Supplement is filed when the Court requested Amendment.
Tip:	When asked for an Amendment, file an Amended Accounting, give new Notice and pay new filing fee.

Common Problem:	Oral Supplements and explaining on the Court record.
Tip:	Written supplements provide a permanent record which is easily accessible for future court reviews.

3. NOTICE - Prob. C. §2621

- A. Give notice as set forth under **Prob. C. §1460**, 15 days notice on account and report.
- B. File Notice (GC-020/DE-121) with Court **concurrent** with the time you actually gave notice, **but no later than** two weeks before the hearing or run the risk of having hearing continued.
 - Do not attach a POS at the end of the Petition.
 - Proof of Service only is insufficient. Notice of the Hearing date and time **and** POS is required.
- C. Court appreciates when parties explain the **relationship** of parties to the conservatee on notice/pos.

Common Problem:	Notice is defective, and the same defect is repeated.
Tip:	When Notice was deficient check to VERIFY it has been cured before you send it out again.

- *Example:* Notice was deficient for either 1) number of days (short); 2) failure to include parties or 3) wrong form used (ie. DE-120 instead of DE-115). **Check** your (paralegal's) work, to make sure the specific defect was **actually** cured. They may be sending out the SAME Notice without making corrections.

4. ACCOUNTING

A. Format

1. **California Rules of Court, Rule 7.575 (e)** and Judicial Council Forms GC-400, et seq.
2. **Prob. C. §1061** - Summary, Content & Format
3. **Prob. C. §1062** – Support of Summary & Schedules
4. **Prob. C. §1063** – Additional Schedules
5. **Prob. C. §1064** – Petition for Approval of Account, Contents & Additional Petitions
6. **Prob. C. §2620** – Periodic/Final Court Account & Original Statements.

Common Problem:	The accounting does not include the temporary period
Tip:	Think – should the temp period be included? Tell Court why you are NOT including the temp period.

- *Example:* No actual access to funds or temporary guardian/conservator (of the estate) did NOT utilize the funds during the temporary period.

B. Period - Prob. C. §2620(a)&(b) – Dates Matter

1. **First Account:**
 - a. Starting date is from date of appointment (may include temp. period)
 - b. Ending date is 1 year from date of appointment
 - *Example:* Temporary appointment 3/10/15
General appointment 5/18/15
Period is 3/10/15 through 5/17/16
2. **Subsequent (Current) Account:**
 - a. Starting date is one day *after* the ending date of the last account
 - b. Ending date is 2 years from beginning date of account
 - *Example:* Period is 5/18/16 through 5/17/18
3. **Final Account:**
 - a. Starting date is one day *after* the ending date of the last account
 - b. Ending date is:
 - i. date of death Conservator/Ward. **Prob. C. §2620(b)**

- ii. termination of Guardianship/Conservatorship. **Prob. C. §1863(c)/CRC 7.1004**
- iii. removal or resignation of Guardian/Conservator. **Prob. C. §2653(b) & §2660**
- *Example:* Date of death 7/4/19
Period is 5/18/18 through 7/4/19
- 4. **Stub Account:** (subsequent period)
 - a. Starting date is one day *after* date of death
 - b. Ending date is when all administrative expenses have been paid. (2-3 months)
 - *Example:* File account by 10/4/19
Period is 7/5/19 through 9/30/19
- 5. File final account timely within **90 days** following death. **Local Court Rule 10.03(E)**
- 6. File death certificate within **30 days** of death of Conservator. **Local Court Rule 10.03(D)**

Common Problem: File Final Account up to Date of Death, and never file a separate Stub Account -OR- File Stub Account separately requiring new notice and filing fee.

Tip: Do file Final Account and Stub Account in the same petition.

- C. **Beginning Balance on Hand - Prob. C. §1061(a)(1)**
- 1. I&A is the value of the estate as of the date of the appointment.
 - a. I&A is due **90 days** after appointment
 - 2. Date of Appointment means either the Temporary or General.

Common Problem: Using the date of General Appointment on I&A when Conservator/Guardian paid expenses during the temporary period.

Tip: Determine if Conservator/Guardian accessed the funds during the temporary conservatorship period and use DOA for temporary on I&A if funds accessed during temporary period.

- 3. If **First Account** then start with **I&A** value.
 - a. If Beginning Balance on Hand Schedule is **different** from I&A then file “Correct” I&A simultaneously with filing the Account.
 - b. I&A value comes from the financial statements. The balance on the bank statements **must equal** the value you put on I&A, on the date of appointment.
 - c. File a “Corrected I&A” at the time of the account because the values do not match.
 - d. If **Subsequent Account** then Beginning Balance on Hand Schedule **must equal** the previous account’s Ending Balance on Hand Schedule.

Common Problem: Taking the client’s word for the beginning balance without seeing the statements.

Tip: Don’t believe your clients. Tell them that you must see the actual bank statements.

Tip: Get bank statements from client ASAP after Appointment.

D. **Schedules**

- 1. Information **Required** in **All Accountings - California Rules of Court, Rule 7.575**
 - a. Each account filed must include all information required in **Prob. C. §1061**
 - b. If Guardian/Conservator do **not use** the standard Judicial Council forms, than they must use the same information as indicated on the forms and the same general layout

Common Problem: Accounts do not include GC-400/405(SUM) in conservatorships.
Tip: In a conservatorships ALWAYS include GC-400/405(SUM) Summary of Account! It is the ONLY REQUIRED form in the account per CRC 7.575(e)(5). *Optional in Trusts/Probates*

2. **Simplified Account schedules** - GC-405, et seq. forms
 - a. **Must use GC-405(SUM) Summary of Account**
 - b. Simply list receipts/disbursements **chronologically** - by payment date
3. **Standard Account schedules Prob. C. §1062(a)(b)(c)(d)(e)&(f)**
 - a. **Must use GC-400(SUM) Summary of Account**
 - b. List Receipts/Disbursements as the same categories as listed on the optional forms, **same general layout**

Common Problem: Don't know when to use Standard Account Format
Tip: Per CRC 7.575(b) use Standard Account formatting

- If estate contains income or real property
- If estate contains any interest in a trade/business
- If value of estate exceeds \$500,000 (excluding residence)
- If court directs standard format be used
- If Schedule A (receipts) or C (disbursements) is longer than 5 pages

- c. Provide a **detailed** description of the expenses.
 - *Example:* Purchased new wheelchair, Remodeled bathroom to be wheelchair accessible; Repaired kitchen floor, sink, walls to prepare for sale

E. Receipts - Prob. C. §1061(a)(3)&1062(a)

1. **Wages** of Ward/Limited Conservatee are **not** part of the estate. Wage income should not be reported on the accounting. **Prob. C. §2601(a)(1)**
 - *Example:* Income - Grocery Store Bagger, Movie Theater Usher; ARC

Common Problem: Description of Transactions are not detailed enough
Tip: Each Income transaction should include 1) name of payor 2) date 3) purpose/source of receipt & 4) amount

- *Example:*

Great Call	7/17/19	Cell Phone Refund - June 2019	\$123.00
StateFarm	8/21/19	Prorated HO Refund	\$500.00
Chase	9/10/19	Safe Deposit Box Rental Refund	\$222.00

2. **Additional Property Received**
 - a. Additional assets located during administration of conservatorship;
 - b. Assets not on I&A

F. Disbursements - Prob. C. 1061(a)(6)&1062(b)

1. Disbursements are Expenses, Loss on Sales, Net Loss on trade or business
2. Distributions are payments/allowances to Conservatee/Ward

Common Problem: Description of Transactions are not detailed enough
Tip: Each Disbursement transaction should include 1) name of payee 2) date 3) check # 4) detailed description of purpose & 5) amount

- *Example:*

Coastal View	#123	7/17/19	Care giving R&B - June 2019	\$3,123.00
MediPro	#124	8/21/19	Low-air loss mattress	\$1,500.00
Chase	#125	9/10/19	Payoff Pre-Death c/c charges	\$2,222.00

G. Unusual Items - Prob. C. §1064(a)(2)

1. Explain UNUSUAL ITEMS in the **report/petition** for transactions appearing in the account schedules in this account period.

Common Problem:	Petitioner says there are NO unusual items
Tip:	There are ALWAYS unusual items!

2. Give a brief description of **procedural points** of interest in EACH account.
3. Give a “Birds Eye View” of the case
 - Could be a different LR or Pro Tem reviewing the account
 - J6 reviews 400 cases per month and several hundred accountings per year.

Common Problem:	Assuming the Court remembers every detail of your case from prior accountings or what was said during hearings, and never reduced to writing.
Tip:	Include as unusual items anything that happened during this period or the prior account period if it affects the transactions in this account. <u>Even if set forth in prior accountings or initial petition</u>, since the payment is appearing in THIS account.

- *Example:* Explain **Attorney’s Fee Payment** appearing in this account schedule
ABC Firm #101 7/17/19 **3/10/15 Court Approved Legal Fees** \$123,123.00
- *Example:* Explain **Sale of Real Property**
 - a) Unless Guardian/Conservator has **Prob. C. §2590** powers to sell, then prior court approval is needed to sell residence. **Prob. C. §2540(b)**
 - b) Ex Parte Petition for Sale of Real Property
 - 1) explain in Petition, 2) on Schedules & 3) attach Seller’s Closing Statement as Exhibit

H. Categorize Expenses by Subject Matter - Prob. C. §2610(a)(6)(7)(8)&(9)

1. Summarize Expenses in report/petition - **Prob. C. 1061(a)(6)**
2. Brief description of expense categories in **THIS account period**
 - a. Set forth care giving/family agreement- R&B, utilities included, Truelink, etc.
 - b. Sub-categories (Administration Exp – Attorney fees, court fees, supplies, postage)

Common Problem:	Categorizing expenses by Bank Account
Tip:	List expense by subject matter categories and then list by bank account with a category sub-total

- *Example:* **Income** - Interest, dividends, SS, pension, VA benefits, rents, tax refunds
Expenses – Medical, real property, groceries, income taxes, utilities, care giving

3. Normal vs. Unusual Expense Categories

<u>Normal Expenses</u>	vs.	<u>Unusual Expenses</u>
-Assisted Living		-Groceries (if not just for C’tee)
-Room & Board		-Dinning Out (if not just for C’tee)
-Medical		-Personal Items
-wheelchair		-bedding
-dental work		-furniture
- Incidentals		-gym membership
-Clothing		-Utilities (if not just for C’tee)
-RX		-Travel/Gas (if auto not on I&A)
-Admin		-Care Giving
		-Pets
		-High dental expenditures

I. Ending Balance on Hand

1. Use Carry Value **and** also include current Fair Market Value.
2. Court reviews the ending bank statement balance:
 - a. Cash balance is easy to identify.
 - b. Securities balance will not match because the carry value in the schedules vs. FMV. Court reviews number of shares and cost basis.
3. FMV on Ending Schedule will not always balance to financial statements. The ending date of account most likely is not the ending date of the financial statement.

Common Problem:	FMV on Ending Schedule will not always balance to financial statements.
Tip:	Ending Balance of Account will not always match the financial statements since they end on different dates.
Tip:	It is ok to not match statements. A Reconciliation of statements may be needed.

J. Change in Form of Assets - Prob. C. §1063(b)

1. Identifying purchases, sales or other changes in form of assets on designated schedule.
2. Transfers between cash or accounts in a financial institution do not need to be reported.

Common Problem:	Listing transfers from the Conservatorship to the SNT is shown as a receipt of income
Tip:	Transfer from/to Conservatorship to Trust/SNT are “Additional Properties Received” NOT income. Separate schedules are required.
Tip:	Transfers from account to account are “Change in Form of Assets”, NOT deposit of income. Separate schedules are required.

3. Good Practice: Identify transfers between different financial institutions because it is much easier to check your work and spot errors quickly.

Common Problem:	Listing transfers between bank accounts as a receipt of income instead of “Change in Form of Assets”
Tip:	This causes expense and income to be improperly over-inflated.

K. Liabilities - Prob. C. §1063(g)

1. Identify liens on estate; taxes due but unpaid; notes payable; judgments against the estate.
 - *Example:* Mortgages, Reverse Mortgages, Notes Payable, Taxes due, any lien on assets

Common Problem:	No Liabilities are identified.
Tip:	Identify earned but not yet court-approved attorney fees and conservator fees.

L. Forced Adjustments

1. The Court allows “forced adjustments” but they are frowned upon.

Common Problem:	Schedules DON’T Balance
Tip:	Total Charges (In) MUST equal total Credits (Out). Prob. C. §1061(c).
Tip:	Adjustments may be needed.

Common Problem:	Do not throw good money after bad
Tip:	Do not spend \$600 in attorney fees to find a \$100 discrepancy.

5. EXHIBIT ATTACHMENTS - Prob. C. §2620(c)

A. Original Bank/Financial Statements - Prob. C. §2620(c)(1)

- a. To prevent fraud.
- b. Falsified documents; skimming cash off the top.
- c. Court has *discretion* to accept a computer-generated printout of the statements as an original.
CRC, Rule 7.575(b)(1)

B. Original Ending Statements - Prob. C. §2620(c)(2)

- a. Matching the account (bank/security statements) period's closing date for each account.
- b. NOT ENTIRE PERIOD
- c. If FIRST account & report then provide BEGINNING statement matching the opening period date. (immediately preceding the date of conservatorship)
- d. If existing account is closed and new account opened mid-period, then provide both statements.

Common Problem:	Account schedule balances do not match statement balances.
Tip:	IF statement balances are not readily in agreement/balance with carry values, THEN <u>reconciliation</u> should be submitted.

C. Private Fiduciary - Prob. C. §2620(c)(3)

1. Shall provide **ALL** original **account statements** (bank/financial/security statements) for ALL months covered in the account period.

D. Original Escrow Statements - Prob. C. §2620(c)(4) (Seller's Closing Escrow Statement).

1. Closing Cost amounts should be itemized on the schedule.
2. The statement shall be attached as an exhibit.
3. Briefly explain sale in Petition, even if a notice of proposed action was already approved/filed with the Court.

Common Problem:	Sales of Real Property are completely omitted.
Tip:	Sales of Real Property are always Unusual Items that require explanation and copy of settlement statement as an exhibit.

E. Original Residential/Long-term Care Facility Statements - Prob. C. §2620(c)(5)

1. Statements for ALL months covered in the account period.

F. Confidential Documents - Prob. C. §2620(c)(7).

1. An Affidavit is needed to set forth specific facts for consideration as to why the documents are "different" and should be deemed **confidential**.

Common Problem:	Bank statements are submitted as Confidential.
Tip:	Bank account numbers, and balances are items that would normally be presented on I&A or in account & report and are NOT confidential.

2. Redact out what you think is confidential, so it can be filed in the regular court file.
 - SSN on Death Certificates can be redacted

Common Problem:	Filing a HUGE cumbersome Account Petition.
Tip:	File the account and report SEPARATE from the account statements.
Tip:	Since you only need beginning and ending statements it should not be so voluminous.

6. DISCLOSURES & REQUESTS FOR APPROVAL - Prob. C. §1064(a)

A. Disclosure Family/Affiliate Relationship - Prob. C. §1064(c)

1. Disclose relationship between Guardian/Conservator/ Trustee and those hired to work for/by Guardianship/Conservatorship.
 - **Family** – relationship created by blood or marriage.
 - **Affiliate** – entity that directly/indirectly related through one/more intermediates controlled/is controlled by or under common control with Guardian/Conservator.
2. Disclose when paying **family members** from estate funds.
 - What was done? What skill was involved? What is the value of the estate?
 - Could the work be done by a professional?
 - Attach a quote from 1-800-GotJunk; Care Manager’s fees, etc.

Common Problem:	Hiring family to clean out residence or do yard work.
Tip:	Disclose that a family member was hired, at what rate, and what work was provided.
Tip:	Disclose what a professional would have charged.
Tip:	Describe the benefit to the estate by hiring the family member.

- *Example:* Paying \$35/hour to Conservator’s son to do yard work. Provide cost estimate by a professional for the same services.
- *Example:* Paying \$25 to niece for cleaning out the conservatee’s house since she was a hoarder and the niece was familiar with the sentimental value of the personal property, which a hired cleaner would not be able to do.

B. Request for Fees - Prob. C. §2640-2646 (See May 2021 VCBA Presentation)

- Guardian/Conservator/Attorney – **CRC 7.751 & 7.702**
- Counsel for Conservatee - **Local Rule 10.02(L)**

C. Advance Payments & Periodic Payments - CRC 7.755

1. Must neither **pay nor receive** payment for services rendered **without** prior court approval.
2. Disclose compensation paid to Guardian/Conservator/Attorney
3. Guardian/conservator may request Court to authorize periodic payments of attorney fees for future services under **Prob C. §2643** on a showing of an ongoing need for legal services.
 - Court will review reasonableness of services in the next account period.

Common Problem:	Account schedules reveal that Guardian/Conservator/Attorney was already paid for services without Court approval.
Tip:	Disclose and discuss if compensation was paid to Guardian/Conservator/Trustee/ Attorney in error as an Unusual Item.
Tip:	If you state that estate will be reimbursed once the error was discovered, attach proof of deposit.

D. No Compensation Paid in Advance - CRC 7.700

- a. Paying/receiving compensation without prior approval prohibited.
- b. Court can impose 1) sanctions; 2) surcharge or 3) removal
 - Surcharge may include interest

E. Verification - Prob. C. §1021(a)(1) & CRC 7.103 - Accounting Petition must be verified by Guardianship/Conservator under penalty of perjury.

7. OTHER ACCOUNTING ELEMENTS

A. Additional Considerations – An Account and Report is the appropriate time to ask for additional considerations

1. Does Conservatee need to be moved to a care home?

2. Do you need the right to sell Conservatee's home?
 3. Do you need to sell tangible personal property?
 - Sale exceeding \$5,000 in a calendar year requires prior court approval. **Prob. C. §2545(b)**
- B. Petitions** - Court prefers one account period per petition.
1. Do not file First and Second Accounts in same petition.
 - Second should be filed *after* the First has been approved.
 2. File conservatorship account **separately** from SNT-related account.
 - Okay to file both separate account petitions to be heard at the same time.
- C. Timing of Account Filings**
1. Petition for account is filed 60-90 days (8-12 weeks) after account period ends.
 2. Hearing is set at least 60 days (8 weeks) after filing.
- D. Reconciliation** - Account period rarely coincides with the ending date on the financial statement.
- Highlight or indicate the ending date balance.
 - Provide reconciliation if ending balance is not clearly obvious.
- E.** Standard Account Format is preferred. - If receipts or expenses are more than 5 pages long then use standard accounting format. **CRC, Rule 7.575(d)(A)(2).**
- F.** Only **required form** is GC-400/GC-405(SUM) - Summary of Account **CRC Rule 7.575(e)(5).**
- G.** Allowance to Ward/Conservatee requires prior court approval
1. **Gifts** of any kind, are not allowed without prior Court approval.
 2. **Don't** Commingling estate funds
 3. Large expenditures – when in doubt get prior court approval
 4. Excessive dining & groceries for caregiver

8. BANK ACCOUNTS & INVESTMENTS

- A. Review statements. Are titles to assets held correctly by fiduciary?
- B. Review the Type of Investments
 1. Managed Accounts
 - **Educate adviser to plan investments so that accountings will be streamlined**
 - Constantly buying/selling (daily)
 - Labor intensive to input into account schedules
 - Increases G/C/A fees but without much benefit to the estate (number of hours to input all transactions resulting in excessive fees)
 2. Investment Advisory Fees
 - **Costs can be high if investment professional does not understand accounting process**
 - Fees vs. gain or value to the estate
 - Explain as unusual items, why selling if there was a drop in the market.

Common Problem:	Securities are sold using an “average share cost” resulting in the schedules not balancing.
Tip:	Petitioners should include the actual “cost of shares” for security investments at the Beginning and Ending Balance schedules to properly calculate sales allowing schedule to balance.

- C. **Reinvested Income**
 1. Reinvested dividends should appear on “receipt” schedule **and** on “change in the form of assets”
 2. There should also be an increase on **“ending balance”** schedule AS SECURITIES if reinvested.
 - Note the increase of 1) Shares, 2) Cost and 3) Value
 3. Do not show as increase in cash.

9. WAIVER OF ACCOUNTS - Prob. C. §2628(a)

- A. - The Court can order accounts waived so long as **ALL** 3 conditions are met:
1. The estate value at the **beginning AND end** of the account period is **less** than **\$15,000**. (Exclusive of residence).
 2. The monthly income of the estate is **less** than **\$2,000**. (Exclusive of public benefits – state aid & medical assistance; federal old age, survivor and/or disability insurance benefits; federal supplemental security income for aged, blind or disabled).
 3. **ALL** income during the account period was spent for the benefit of the conservatee (if not retained).
- B. **Prob. C. §2628(c)** – For ANY account period where ALL 3 conditions are **NOT** satisfied the Guardian/Conservator **SHALL prepare and submit an account**.
- C. If account shows the estate is exhausted then the court “shall order proceeding terminated and Guardian/Conservator of estate discharged”, unless court determines a reason not to do so. **Prob. C. §2626**.
- D. Accountings can be waived by the Court if the funds are placed in **Blocked Accounts**.
- Purpose of this section is to reduce the expense of administration of small estates.
 - Informal accounts or submission of bank statements may be requested.

Common Problem:	Accounting was waived for <u>one</u> account period under Prob. C. §2628 and Fiduciary fails to account when conditions <u>change</u> and all three requirements of are no longer met.
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Tip:	At the account period closing date Fiduciary should review statements to determine if conditions have changed. ASK:
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1. **Is beginning or ending balance over \$15,000?**
2. **Is monthly income still under \$2,000?**
3. **Was all income spent on conservatee?**

10. TITLE OF PLEADING

- A. **Caption vs. Prayer/Order - CRC 7.102**
1. The **request** must be in the Caption, if it is being asked for in the Prayer and Order.
 2. Petition must clearly and completely identify the nature of the relief sought or granted.
 3. Need to put the other parties on notice of what you are asking for.
 4. Cannot bury the request in the petition. *Due Process issue*.

Common Problem:	Failing to ask for Fees or Allowance in the Title of the Pleading.
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Tip:	Make sure title, body and prayer all ask for the same thing.
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11. INVENTORY & APPRAISAL – Prob. C. §2610(a)

- A. I&A must be filed 90 days after appointment.
1. I&A and **Notice** of filing/how to object (GC-042) must be mailed to persons specified (Conservatee/ward and their Counsel) in **Prob. C. §2614**.
 2. Objections to I&A must be filed on GC-045.
- B. If I&A not timely filed: **Prob. C. §2614.5**.
1. Then Court shall set an OSC Re Removal and/or Suspension of Letters will be issued.
 2. Petitioner can be liable for damages for any injury to the estate for failure to file timely.
- C. Private Professional Fiduciary shall file concurrently with the I&A, a proposed Hourly Fee Schedule. The court can later reduce G/C or attorney’s fees or other compensation. **Prob. C. §2614.7 & §2614.8**

Common Problem:	PPF's rate schedule is not filed.
Tip:	File your rate schedule at initial appointment.

12. BOND – Prob. C. §2300 & §2320

- A. Why is sufficient bond essential?
1. Guardians/Conservators rarely have personal funds available to pay surcharge judgment.
 2. Sufficient bond will allow estate to collect or to be made whole.
- B. Guardian/Conservator of *estate* must post bond. **Prob. C. §2300**
1. Bond must be posted before Letters issued. **Prob. C. §2320**
 2. Amount to be posted by a surety insurer **Prob. C. §2320.**
 3. If bond is given by “personal sureties” it must be twice about amount. **Prob. C. §2320(d).**

Common Problem:	Petitioner does not provide calculation.
Tip:	Insert formula CRC 7.207 calculation in your Petition.

- C. Placing money in **blocked account** results in decline in estate value and can reduce the bond. **Prob. C. §2328-2329**
- D. If bond is insufficient.
1. Then Guardian/Conservator **MUST** make **Ex Parte** application for order **increasing** bond **immediately** upon occurrence of facts making additional bond necessary. **CRC 7.204(a).**
 2. If Guardian/Conservator does not act, then attorney **MUST** make ex parte application “immediately upon becoming aware of the need to increase bond”. **CRC 7.204(b) & Prob. C. §2320.1. At least annually.**

Common Problem:	Attorney waits for next account period to increase bond.
Tip:	Ex Parte Petition to increase bond should be filed.

- E. Additional bond required?
1. If sale of real property results in need for additional bond, then the bond should be required in Order Confirming Sale. **Prob. C. §2330.**
 2. If additional bond needed when account is heard, then Court should not approve until additional bond is posted. **Prob. C. §2320.2. & CRC 7.206.**
- F. Co-Guardian/Conservator
1. Court can order joint or separate bonds. **CRC 7.203.**
 2. If joint bond then liability is joint and several. **Prob. C. §2326.**
 3. If one of the Co-Guardian/Conservator lives out of state, then must have a bond.
 4. If more then one Ward/Conservatee then must have separate bonds. **Prob. C. §2327.**

13. FAILURE TO FILE ACCOUNT

- A. Why Account?
1. It is a Court order to account.
 - Due date and hearing dates are set at the time of appointment.
 2. Accounting actions to the Court AND obtaining an approval will cut off the time to object.
 - Think Res Judicata and Collateral Estoppel.
- B. Failure to file account by deadline or obtain extension shall constitute contempt. **CCPS1209**
1. Sanctions
 2. Removal
 3. Suspension of powers
 4. Temporary appointment of PG