

CHAPTER 7
RULES OF PROBATE PROCEDURE

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CHAPTER 7

RULES OF PROBATE PROCEDURE

Rule 7.1 Effective removal order — turnover. When the court orders the removal of a fiduciary under Iowa Code section 633.65, such order, unless expressly providing otherwise, shall be effective as a turnover order under Iowa Code section 633.70, and without further order the fiduciary so removed shall turn over all personal property, money or securities to or for the fiduciary's successor at the clerk's office within five days after such order is filed.

[Court Order November 16, 1965; November 14, 1979; Report November 9, 2001, effective February 15, 2002]

Rule 7.2 Fees in probate.

7.2(1) Every report or application requesting an allowance of fees for personal representatives or their attorneys shall be written and verified as provided in Iowa Code section 633.35.

7.2(2) When fees for ordinary services are sought pursuant to Iowa Code sections 633.197 and 633.198, proof of the nature and extent of responsibilities assumed and services rendered shall be required. Unless special circumstances should be called to the court's attention, the contents of the court probate file may be relied upon as such proof. In determining the value of gross assets of the estate for purposes of Iowa Code section 633.197, the court shall not include the value of joint tenancy property excluded from the taxable estate pursuant to Iowa Code section 450.3(5) or the value of life insurance payable to a designated beneficiary.

7.2(3) When an allowance for extraordinary expenses or services is sought pursuant to Iowa Code section 633.199, the request shall include a written statement showing the necessity for such expenses or services, the responsibilities assumed, and the amount of extra time or expense involved. In appropriate cases, the statement shall also explain the importance of the matter to the estate and describe the results obtained. The request may be made in the final report or by separate application. It shall be set for hearing upon reasonable notice, specifying the amounts claimed, unless waivers of notice identifying the amounts claimed are filed by all interested persons. The applicant shall have the burden of proving such allowance should be made.

7.2(4) One half of the fees for ordinary services may be paid when the federal estate tax return, if required, and Iowa inheritance tax return, if required, are prepared. When a federal estate tax return is not required, the one-half fee may be paid when the Iowa inheritance tax return is prepared or, when it is not required, when the probate inventory required by the Iowa Probate Code is filed. The remainder of the fees may be paid when the final report is filed and the costs have been paid. The schedule for paying fees may be different when so provided by order of the court for good cause.

7.2(5) Every report or application requesting compensation for other fiduciaries and their attorneys pursuant to Iowa Code section 633.200 shall be written and verified.

7.2(6) When compensation has been allowed to a person employed by the fiduciary or attorney to assist the estate pursuant to Iowa Code section 633.84, the request for fees by the fiduciary shall disclose the identity of such person and the amount allowed, for consideration by the court in determining fees for the fiduciary pursuant to Iowa Code section 633.86.

[Court Order November 14, 1979; Report September 5, 1985, effective November 15, 1985; November 9, 2001, effective February 15, 2002; November 23, 2004, effective February 1, 2005]

Rule 7.3 District court rules in probate. A district court rule of probate and administration shall not be valid until it has been filed with the clerk of the supreme court and approved by that court.

[Court Order November 14, 1979; Report November 9, 2001, effective February 15, 2002]

Rule 7.4 Report of referee. A report of a referee in probate shall substantially comply with the form that accompanies these rules.

[Report November 9, 2001, effective February 15, 2002]

Rule 7.5 Referees in probate.

7.5(1) Duties.

a. Referees as masters. Unless otherwise directed by the court, a referee in probate appointed by the district court pursuant to Iowa Code section 633.20, and determined by the court to be qualified to serve as a master, shall have the powers to perform all the duties required of masters appointed by

the court in civil actions (Iowa Rs. Civ. P. 1.935 - 1.942) and shall examine all reports, applications and petitions in probate and in trusts requiring action by the court.

b. Other referees. A referee in probate not determined by the court to be qualified to serve as a master shall have authority to examine probate files to make the report provided by rule 7.4.

c. Referee reports. The report of the referee shall be in writing on a form which substantially complies with the form that accompanies these rules and shall contain such matters as the court may request as shown by the files and reports in the clerk's office. If the referee is authorized to act as a master, the report shall also contain recommendations of the referee as to what ought to be done relative to the reports when considered by the court. No final report will be approved until the report of the referee is presented to the court, it being contemplated that such presentation shall be made expeditiously and without delay.

d. Other duties. In addition to the powers and duties of the referee in probate prescribed by this rule, the referee shall perform such duties as the court may require.

7.5(2) Fees.

a. The referee shall be paid a fee for services as permitted under a schedule established under Iowa Code section 633.21, unless a referee and any assistant are appointed for the county for all matters in probate in the county and are paid an annual compensation.

b. Referee fees shall be taxed and collected by the clerk as other costs, and such fees shall be in addition to all other fees charged and collected by the clerk in probate matters as required by Iowa Code section 633.31.

c. In such cases where a referee and any assistant are paid an annual compensation, any excess of fees remaining after payment of such other expenses as are approved by the court shall be disbursed pursuant to the Code.

[Court Order December 18, 1980, effective January 1, 1981; Report November 9, 2001, effective February 15, 2002]

Rule 7.6 Reports of delinquent inventories or reports.

7.6(1) The clerk's report to the presiding judge required by Iowa Code section 633.32, of all delinquent inventories or reports in estates, trusts, guardianships or conservatorships shall contain, in addition to the information required by Iowa Code section 633.32(3), a copy of each delinquency notice and, if they do not appear on the face of the delinquency notice, the following information for each delinquent inventory or report:

- a.* The probate number of the matter.
- b.* The title of the matter.
- c.* An indication of whether the matter is an estate, trust, guardianship, or conservatorship.
- d.* The name and address of the fiduciary.
- e.* The name and address of the attorney, if any, for the fiduciary.
- f.* The type of delinquent inventory or report.
- g.* The date notice of delinquency was given.
- h.* A statement that the required report or inventory or an order extending time for a specified period was not filed within 60 days after the giving of notice of delinquency.
- i.* The date the matter was opened.
- j.* The name of the last paper filed by the fiduciary or attorney and the date of filing such paper.
- k.* The number, including "zero" if appropriate, of previous delinquency notices given in the matter and ignored.

7.6(2) The clerk shall submit a copy of the report to the chief judge of the judicial district and the state court administrator in addition to the presiding judge as required by Iowa Code section 633.32(2). If an order extending time for a specified period was filed but not complied with, the clerk shall proceed as in instances in which an order is not filed.

7.6(3) The state court administrator shall utilize the reports in the discharge of the duties prescribed in Iowa Code section 602.1209 and, in addition, shall prepare a list of the attorneys for fiduciaries who have received and ignored a notice of delinquency. The state court administrator shall transmit the list of attorneys, together with other relevant information, to the Iowa Supreme Court Attorney Disciplinary Board and to the Client Security Commission.

7.6(4) The Iowa Supreme Court Attorney Disciplinary Board, as a commission of the supreme court pursuant to Iowa Ct. R. 35.2, shall communicate with each attorney licensed to practice law in Iowa whose name appears on the list transmitted to the board pursuant to rule 7.6(3). If the board determines there is reasonable cause to believe an attorney for a fiduciary has violated Iowa R. of

Prof'l Conduct 32:1.3 or 32:3.2 for failure to file a required inventory or report within 60 days after receiving notice of delinquency, or within an extension of time for a specified period granted by order, the board shall initiate appropriate disciplinary action. The board chairperson shall include the number of attorneys investigated and complaints initiated and processed pursuant to this rule, a synopsis of each such complaint, and the disposition thereof, in the annual board report to the supreme court required by Iowa Ct. R. 35.25.

7.6(5) The assistant court administrator of the disciplinary system is authorized to inquire into the status of any delinquent probate inventory or report.

[Court Order March 13, 1980; October 20, 1981; 1983 Iowa Acts, chapter 186, §10151; January 17, 1995, effective April 3, 1995; Report November 9, 2001, effective February 15, 2002; August 29, 2002, effective December 1, 2002; April 20, 2005, and July 1, 2005, effective July 1, 2005; February 20, 2012]

Rule 7.7 Interlocutory report. If the final report of the personal representative required by Iowa Code section 633.477 is not filed within 18 months after the date of the second publication of the notice to creditors, the personal representative shall at that time file an interlocutory report in accordance with Iowa Code section 633.469. The report shall identify the work remaining to be done in the estate and shall include an estimate of the period within which the work will be completed. The personal representative shall provide copies of the report to all interested parties by mailing, and proof of mailing shall be filed with the clerk. An order of the court approving the report shall not be required unless hearing on the report is held upon request of the personal representative or an interested party. The provisions of Iowa Code section 633.32 and rule 7.6 shall apply to the report required by this rule.

[Report August 22, 1985, effective November 1, 1985; November 9, 2001, effective February 15, 2002]

Rules 7.8 to 7.10 Reserved.

Rule 7.11 Forms.

Rule 7.11 — Form 1: Report of Referee.

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

IN THE MATTER OF THE ESTATE OF _____, Deceased.	REPORT OF REFEREE Probate No. _____
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COMES NOW the duly appointed Referee and reports to the Court as follows:
The _____ Report has been filed in this Estate. The Referee has examined said Report and reports to the Court as follows: (All questions must be answered. If "yes" or "no" is not appropriate, check "N/A".)

- | | | | |
|---|-----------|----------|-----------|
| 1. Notice of Appointment published: | YES _____ | NO _____ | N/A _____ |
| 2. Affidavit of mailing notice required by: | | | |
| (A) Iowa Code sections 633.230 and 633.304; | YES _____ | NO _____ | N/A _____ |
| (B) Iowa Code sections 633.231 and 633.304A: (medical assistance claims) | YES _____ | NO _____ | N/A _____ |
| 3. Fiduciaries fees ordered or waived and affidavit of compensation filed: | YES _____ | NO _____ | N/A _____ |
| 4. Attorney fees ordered and affidavit of compensation filed: | YES _____ | NO _____ | N/A _____ |
| (A) Itemization was requested and provided: | YES _____ | NO _____ | N/A _____ |
| (B) If not, statement required by Iowa Code section 633.477(11) was made: | YES _____ | NO _____ | N/A _____ |
| 5. Income tax acquittance filed: | YES _____ | NO _____ | N/A _____ |
| 6. Inheritance tax clearance filed or certification required by Iowa Code section 450.58 made: | YES _____ | NO _____ | N/A _____ |
| 7. A list of distributees is shown: | YES _____ | NO _____ | N/A _____ |
| 8. A description of real estate is shown: | YES _____ | NO _____ | N/A _____ |
| 9. Certificates of change of title to real estate, as required: | YES _____ | NO _____ | N/A _____ |
| 10. All claims filed have been paid, disallowed, or released: | YES _____ | NO _____ | N/A _____ |
| 11. Notice of hearings on this Report waived: | YES _____ | NO _____ | N/A _____ |
| (A) If not waived, proper proof of service of notice is on file: | YES _____ | NO _____ | N/A _____ |
| 12. Accounting is waived: | YES _____ | NO _____ | N/A _____ |
| 13. Court costs have been paid: | YES _____ | NO _____ | N/A _____ |
| 14. Election filed by or for surviving spouse under section 633.236: | YES _____ | NO _____ | N/A _____ |
| 15. Receipts for all specific bequests: | YES _____ | NO _____ | N/A _____ |
| 16. Federal estate tax closing letter and proof of payment is on file (not required for closing): | YES _____ | NO _____ | N/A _____ |
| 17. Remarks: _____ | | | |

Dated this _____ day of _____, 20 ____.

Referee in Probate

[Court Order November 14, 1979; December 3, 1981; November 14, 1984, effective November 26, 1984; Report September 5, 1985, effective November 15, 1985; February 18, 1987, effective July 1, 1987; September 23, 1994, effective January 3, 1995; November 9, 2001, effective February 15, 2002; July 23, 2003, effective October 1, 2003; November 30, 2005, effective March 1, 2006; April 11, 2008, effective July 1, 2008]

Rule 7.11 — Form 2: Initial/Annual/Final Report of Guardian and Order.

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

IN THE MATTER OF THE GUARDIANSHIP OF _____	Probate No. _____ (check one) <input type="checkbox"/> INITIAL REPORT <input type="checkbox"/> ANNUAL REPORT <input type="checkbox"/> FINAL REPORT AND ORDER
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The undersigned duly appointed and qualified guardian in the above-entitled matter, states to the court:

1. This report covers the period from _____, 20____, to _____, 20____.
2. The current mental and physical condition of the ward is:
3. The present living arrangement of the ward, including a description of residence where the ward has resided during the reporting period is (indicate with whom ward resided at each residence):
4. The following is a summary of the medical, educational, vocational, and other professional services provided for the ward:
5. The following is a description of the guardian's visits with and activities on behalf of the ward:
6. (On initial report only.) The ward's date of birth is: _____.
7. The ward is: Single _____ Married _____ Divorced _____.
8. If the ward is a minor, names and addresses of parents:
9. It is recommended the guardianship be: continued _____; terminated _____.
If termination is recommended, give reason: (A hearing may be required on the matter of termination.)
10. Other information requested by the court or useful in the opinion of the guardian:
11. Final court costs (have) (have not) been paid.

Guardian

Address

Telephone Number

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Date

Guardian

Address

(NOTE: Bank statements, checks, receipts, stubs, and other items evidencing receipt of funds and payment must be available to the court on demand.)

ORDER

The above (initial) (annual) (final) report is approved and the guardianship of said ward shall be (continued) (terminated, guardian discharged, bond released) (set for hearing on matter of termination).

Hearing date is: _____, 20____ at _____ o'clock ____ .m.,
 at _____.
 Dated: _____, 20____.

Judge of the _____ Judicial District
 Referee in Probate

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; March 10, 1987, effective July 1, 1987; Report November 9, 2001, effective February 15, 2002]

Rule 7.11 — Form 3: Initial Report of Conservator and Inventory.

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

IN THE MATTER OF THE
CONSERVATORSHIP OF

Probate No. _____

**INITIAL REPORT OF
CONSERVATOR AND
INVENTORY**

The undersigned duly appointed and qualified conservator states as follows:

1. The ward's real and personal property as of the date your conservator was appointed and the valuation of each item is itemized on the schedules attached hereto, and a summary of such schedules is as follows:

<u>Conservatorship Assets</u> (Attach Descriptions)	<u>Total Value</u>
A. Real Estate	\$ _____
B. Stocks and Bonds	\$ _____
C. Mortgages, Notes, Deposits and Cash	\$ _____
D. Life Insurance	\$ _____
E. Jointly Owned Property	\$ _____
F. Miscellaneous Property	\$ _____
TOTAL OF ALL SCHEDULES	\$ _____

2. The ward resides at: _____
 Street City State Zip
 and (check one):
 A. Does not have a guardian.
 B. Has a natural guardian whose name is: _____
 and whose address is: _____
 Street City State Zip
 C. Has a court-appointed guardian whose name is: _____
 and whose address is: _____
 Street City State Zip
3. Your conservator (has) (has not) established a (noninterest bearing) (interest bearing) conservatorship checking account at: _____
 Name of Financial Institution
 located at _____
 Street City State Zip
 The account number is: _____.
4. A conservatorship savings account (has) (has not) been established at the _____
 Name of Financial Institution
 located at _____
 Street City State Zip
 The account number is: _____.
5. Other assets (have) (have not) been changed into conservatorship's name.
6. The ward's sources of income and monthly or annual amounts are:

Conservator

Address

Telephone Number

Initial Report of Conservator and Inventory (*cont'd*)

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Date

Conservator

Address

(NOTE: Bank statements, checks, receipts, stubs and other items evidencing receipt of funds and payment must be available to the court on demand.)

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; Report November 9, 2001, effective February 15, 2002]

Rule 7.11 — Form 4: Annual Report of Conservator.

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

IN THE MATTER OF THE
CONSERVATORSHIP OF

Probate No. _____

ANNUAL REPORT

1. This report is for the period from _____, 20 ____, to _____, 20 ____. (Use ending date of last accounting where applicable.)

2. Total cash on hand at close of the last accounting was \$ _____.

3. Total sum of funds received during this report period was \$ _____. (Attach as Exhibit "A" itemization showing date received, source of funds and amount.)

4. Total sum of disbursements made during this report period was \$ _____. (Attach as Exhibit "B" itemization showing date, who was paid and amount paid for item or service.)

5. The balance of cash on hand at the close of this report period is \$ _____.

6. The other assets of the ward at the close of this report are: (Attach listing of assets held and the value or remaining balances marked Exhibit "C". If assets remained the same as of the last report, a copy of the last listing may be used.)

7. Changes (were) (were not) made in investment during this report period. (Attach as Exhibit "D" itemized list of changes when applicable.)

8. The total value of assets of the ward at the close of this report period is \$ _____.

9. Amount of conservator's bond is: \$ _____. Surety is: _____.

10. (Check one)

____ The ward has no guardian.

____ The name of the ward's guardian is: _____.

11. (Answer Number 11 only if ward has no guardian.)

A. The residence and physical location of the ward is:

_____.

B. The ward's general physical and mental condition is:

_____.

12. Other information relating to affairs of the conservatorship: (If conservatorship has special circumstances which do not adapt to this form, add Exhibit "F" setting out special circumstances in detail.)

13. Fees for conservator are (hereby applied for) (waived).

(Attach Affidavit per Iowa Code section 633.202.)

14. Fees for conservator's attorney (check one): _____ should be set by the court;
_____ no fees requested; _____ waived or not applicable.

(Attach Affidavit per Iowa Code section 633.202, if fees requested.)

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Date

Conservator

Address

(NOTE: Bank statements, checks, receipts, stubs and other items evidencing receipt of funds and payment must be available to the court on demand.)

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; Report November 9, 2001, effective February 15, 2002]

Rule 7.11 — Form 5: Final Report of Conservator.

IN THE IOWA DISTRICT COURT FOR _____ COUNTY

IN THE MATTER OF THE
CONSERVATORSHIP OF

Probate No. _____

FINAL REPORT

1. This report is for the period from _____, 20 ____, to _____, 20 ____. (Use ending date of last accounting where applicable.)
2. Total cash on hand at close of the last accounting was \$ _____.
3. Total sum of funds received during this report period was \$ _____. (Attach as Exhibit "A" itemization showing date received, source of funds and amount.)
4. Total sum of disbursements made during this report period was \$ _____. (Attach as Exhibit "B" itemization showing date, who was paid and amount paid for item or service.)
5. The balance of cash on hand at the close of this report period is \$ _____.
6. The other assets of the ward at the close of this report are: (Attach listing of assets held and the value or remaining balances marked Exhibit "C". If assets remained the same as of the last report, a copy of the last listing may be used.)
7. Changes (were) (were not) made in investment during this report period. (Attach as Exhibit "D" itemized list of changes when applicable.)
8. The total value of assets of the ward at the close of this report period is \$ _____.
9. (Check one) (Attach as Exhibit "E" statement of reasons for termination.)
 The court on the _____ day of _____, 20 ____ ordered termination.
 The termination is concurrently being sought along with approval of final report.
10. On termination funds and assets of this conservatorship will be distributed to (name, address, relationship to ward, if any):
 _____.
11. Notice of hearing on final report (has) (has not) been waived. (If waived attach copy of waiver.)
12. Amount of conservator's bond is: \$ _____. Surety is: _____. Order approving final report and termination should discharge surety and release bond.
13. (Check one)
 The conservator is also the guardian and has filed final guardian's report on _____, 20 ____.
 The ward has no guardian.
 The name of the ward's guardian is: _____.
14. (Answer Number 14 only if ward has no guardian.)
 A. The residence and physical location of the ward is:
 _____.
 B. The ward's general physical and mental condition is:
 _____.
15. Other information relating to affairs of the conservatorship: (If conservatorship has special circumstances which do not adapt to this form, add Exhibit "F" setting out special circumstances in detail.)
16. Final court costs (have) (have not) been paid.
17. Fees for conservator are (hereby applied for) (waived).
 (Attach Affidavit per Iowa Code section 633.202.)

Final Report of Conservator (*cont'd*)

18. Fees for conservator's attorney (check one): _____ should be set by the court; _____
no fees requested; _____ waived or not applicable.

(Attach Affidavit per Iowa Code section 633.202, if fees requested.)

19. Receipt(s) of the distributee(s) for the funds and assets of the conservatorship (check one):

____ Are attached.

____ Will be attached to supplemental report after court approves final report.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

Date

Conservator

Address

(NOTE: Bank statements, checks, receipts, stubs and other items evidencing receipt of funds and payment must be available to the court on demand.)

[Court Order November 15, 1984, effective December 10, 1984; December 4, 1984, effective December 10, 1984; Report November 9, 2001, effective February 15, 2002]