

San Diego Superior Court
Division IV Probate
2020 Local Rule Changes

Rule #:	New/Revised Wording of Rule:	Summary of Change:
4.1.3(C)3	The clerk will pull or order a maximum of 10 cases per day, per customer.	Deleted. No longer applicable with imaging.
4.1.3(C)4	A <u>certified or informational</u> copy of the death certificate must be submitted before a will is ordered from storage;	Revised to clarify that the copy of the death certificate must be certified or informational.
4.1.3(C)5	If copies are requested from non-imaged files, a maximum of 20 pages will be copied on the date of request. If the copy request exceeds 20 pages, the customer will be required to complete and submit form SDSC ADM-004 [Court Records Request] with payment at the time of request.	Revised for clarity.
4.3.2(B)12	Documents containing digitized signatures	Documents containing “digitized signatures,” are prohibited from eFiling, pursuant to the Probate Electronic Filings Requirements.
4.3.3(B)	Prayers within a petition must be drafted so that their general effect may be determined without reference to separate paragraphs within the petition, including, <u>but not limited to</u> , attachments/ <u>exhibits</u> , supplements, or other later filed documents. <u>If documents are filed that alter the original prayer, the document shall include a comprehensive prayer.</u> If the documents substantially alter the original prayer, an amended petition should be filed.	Revised to clarify that the list is not and to add exhibits. Also revised to clarify that any changes made to the prayer will require the prayer to be restated in its entirety.
4.3.3(G)	The following items must accompany lodged material: (1) An original notice of lodgment, which includes a numbered listing of all of the items lodged; (2) The numbered exhibits, with a copy of the notice of lodgment and form SDSC <u>ADM-378</u> (should be printed on pink paper) on top; and (3) A means of return, as specified in subsection H below. The notice of lodgment must be filed with the court. An additional copy may be submitted to be conformed and returned. The lodgment and notice of lodgment must be served on all parties.	Lodgment Coversheet form number changed to ADM-378.
4.3.3(M)	All petitions, objections and responses must set forth the filing party’s name, address and their relation to the subject of the petition (decedent, trustor, beneficiary, minor, proposed conservatee, etc), on the first page.	NEW: Previously SCLR 4.3.3L (2018) – Deleted, in error, in 2019 revision.
4.3.3(N)	Any hand-written documents submitted to be construed or approved must include a typed copy of the document.	NEW: Previously SCLR 4.3.3M (2018) – Deleted, in error, in 2019 revision.

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4.3.7(C)	Where a petition is in relation to a subtrust, the petition should be filed under the specific name of the subtrust and receive a new case number, if applicable.	NEW: Added to clarify that matters involving subtrusts are to be filed in a separate case from the originating trust.
4.4.3	<p><u>Continuances of Hearings on Petitions in Uncontested Matters</u></p> <p><u>A.</u> Any request for a continuance before the time of the hearing, must be made by or with the permission of petitioner if self-represented, or by petitioner’s counsel. If requested by a non-petitioning party, consent from the petitioner must be provided.</p> <p><u>B.</u> A first and second continuance of more than two weeks may be obtained by contacting the Probate Examiner. After two continuances have been granted, further continuances must be approved by the court.</p> <p><u>C.</u> A continuance of two weeks or less will be granted only for good cause and will require judicial approval.</p> <p><u>D.</u> Probate Examiners have authority to continue the hearing date on uncontested matters. However, Probate Examiners do not have authority to grant requests for continuance that are made later than three court days prior to the hearing, or that are set forth in subsection 1 below. Counsel or self-represented litigants who have obtained a continuance in an uncontested matter must inform all parties entitled to notice of the continuance at the earliest possible date, so as to avoid unnecessary appearances, inconvenience and expense.</p> <p><u>1. Matters Examiners CANNOT Continue</u></p> <p><u>a.</u> Any petition where a Citation or Summons has been issued;</p> <p><u>b.</u> Any petition that may be contested due to the nature of the relief sought (e.g. Petition for Removal of Trustee);</p> <p><u>c.</u> Any matter specially set by the court (e.g. MSC, CMC, TRC & Trial);</p> <p><u>d.</u> Sale of Real Property;</p> <p><u>e.</u> Petition for Appointment of Conservator;</p> <p><u>f.</u> Petition for Appointment of Guardian;</p> <p><u>g.</u> Petition for Order re: Guardianship Visitation;</p> <p><u>h.</u> Petition for Termination of Guardianship;</p> <p><u>i.</u> Order to Show Cause;</p> <p><u>j.</u> Motion;</p> <p><u>k.</u> Ex Parte Petition;</p> <p><u>l.</u> Review Hearing;</p> <p><u>m.</u> Any other petition the court determines may adversely affect involved parties, if continued</p> <p><u>E.</u> A preapproved matter will be continued if an objection is made at the time of hearing and counsel for the preapproved matter is not present. Counsel will be notified of the continuance.</p> <p><u>F.</u> For contested matters, counsel seeking a continuance must obtain the advance agreement of all parties who have appeared in the matter prior to making a continuance request.</p>	Updated to reflect practice going forward.

Rule #:	New/Revised Wording of Rule:	Summary of Change:
4.4.4	<p>Requests to Take Matters Off-Calendar and Resetting Matters</p> <p>A. Probate Examiners have authority to take certain hearings off-calendar, if uncontested. A written request to take a matter off-calendar must be filed three court days prior to the hearing, with the exception of Ex Parte Petitions, which can be taken off-calendar up to the day of the hearing, by contacting the Examiner. For all matters, counsel or the self-represented litigant seeking to have the matter taken off calendar, must inform all parties entitled to notice that the matter has been taken off-calendar so as to avoid unnecessary appearances, inconvenience and expense. Matters the Probate Examiner cannot take off-calendar, whether uncontested or not, are set forth in subsection 1.</p> <p>1. Matters Examiners CANNOT Take Off-Calendar:</p> <ul style="list-style-type: none"> a. Any petition where a Citation or Summons has been issued; b. Any petition that may be contested due to the nature of the relief sought (e.g. Petition for Removal of Trustee); c. Any matter specially set by the court (e.g. MSC, CMC, TRC & Trial); d. Any petition where the court has appointed an Attorney or Guardian ad Litem; e. Status Report (May be taken off-calendar if an Accounting or Waiver of Accounting is filed); f. Accounting/Waiver of Accounting; g. Petition for Appointment of Guardian; h. Petition for Appointment of Conservator; i. Order to Show Cause; j. Motion; k. Review Hearing (May be taken off-calendar, if required document filed); l. Any other petition the court determines may adversely affect involved parties, if taken off calendar. <p>B. A petition may be reset for hearing only upon the written, signed and verified request of the petitioner filed with the court no later than three months from the hearing date previously taken off calendar. In the absence of such a timely request, the matter will be deemed dismissed without prejudice. A petition may not be reset for hearing unless all defects, with the exception of notice, have been cured. Proof of proper notice of the new hearing date must be provided in accordance with applicable provisions of law.</p> <p>C. If the matter was previously set and taken off calendar because of defects or nonappearance, the material necessary to correct the defects must accompany the request for setting. The request for setting may be refused without the corrections.</p>	Updated to reflect practice going forward.
4.5.1(B)	All petitions, objections, and/or responses must allege the names and addresses of all persons entitled to notice, including persons who have submitted Requests for Special Notice, so that the court may determine the adequacy of notice given.	Revised to include objections and/or responses.

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4.5.2(B)	Ordinarily, such notice will be required whenever it appears that the interests of any person <u>or entity</u> may be adversely affected by the determination of the issues raised by the pleadings, such as when the status of property is to be determined, substantial fees for extraordinary services are requested, <u>or granting the petition would reduce the taxes or other revenue that would otherwise be paid to a public entity, or will result in a public entity paying benefits that would not otherwise be owed.</u>	Revised to add notice requirement to public entities impacted by order
4.5.2(E)	Notice to the Public Administrator/Public Guardian will be required in all appointment proceedings for decedent's estates when the proposed fiduciary is a creditor or not related to the decedent, and Letters of Administration are requested, <u>unless nominated by a person with a higher priority than the Public Administrator;</u> or when a non-resident of the United States is proposed.	Revised to clarify that notice to the Public Administrator is not required, if the proposed fiduciary is nominated by a person with higher priority than the Public Administrator.
4.5.2(F)	Thirty (30) days "Notice of Hearing" to the Department of Health Services is required on petitions requesting termination, approval of an accounting, amendment or addition to a first party Special Needs Trust by the Probate Court.	Deleted. Repeats the Probate Code.
4.5.3(B)	Where notice must be served other than by regular mail, the proof of service must show that notice was served by <u>international mail</u> , by registered or certified mail, by mail with a written acknowledgment of receipt of the notice or by either personal or electronic service.	Revised "airmail" to "international mail" in compliance with the revision made to Prob. Code 1215(a)(1)(B).
4.7.1(D)	In cases where the minute order constitutes the order of the court and Court Appointed Attorney or Guardian Ad Litem fees have been granted, counsel may submit a formal written order for payment of those fees.	NEW: Added to specify that Court Appointed Attorney/Guardian ad Litem formal orders for fees may be submitted after the hearing to facilitate the payment of fees by the county.
4.7.2(A)	All orders or decrees in probate matters must be complete in themselves, in that they must set forth all matters actually passed on by the court, the relief granted, the names of persons, descriptions of property and/or amounts of money affected with the same particularity required of judgments in general civil matters. The introductory paragraph must include the title and <u>ROA number</u> of the petition, date/time of hearing, department number, <u>and judge's name</u> and names of the parties and attorneys who appeared and whether the appearance was in person, telephonic, or that the matter was preapproved and no appearance was necessary.	Revised to remove the requirement that submitted orders contain appearance information and whether the matter was preapproved. This information appears in the minute order and is not required by any other rule or statute.
4.9.2(B)	If a petition references a will, the will must be on deposit with the court pursuant to Probate Code section 8200 and a copy of the Receipt of Deposited Will must be attached to the <u>petition.</u>	Revised to require a copy of the receipt for deposited will to help verify the will is on deposit at the time of filing the petition.

Rule #:	New/Revised Wording of Rule:	Summary of Change:
4.11.4(A-B)	<p>A. Ex parte petitions for family allowance may be made during the six-month period following the qualification of the personal representative, or if an inventory has not been filed. Consent to the allowance or waiver of notice of the personal representative must accompany the ex parte petition when the petitioner is not the personal representative. Ex parte orders for family allowance may be made for a period commencing with the date of death and continuing for a period not to exceed 12 months.</p> <p>B. If an application for family allowance is made more than six months after the qualification of the personal representative, or after the inventory is filed, or is a petition for a second or additional allowance, a petition may not be filed ex parte and the petition must be set for hearing and required notice must be given.</p>	Deleted. Duplicates code requirements (secs. 6540 et seq.).
4.12.3(B)	An allowance or rejection form must be submitted to the court with a copy of the creditor's claim attached.	Revised for clarity.
4.12.3(C)	The court, on its own motion, may set the creditor's claim for hearing which will require that 15 days' notice of hearing on form DE-120, as well as a copy of the creditor's claim filed with the court, be given by the creditor to all heirs and devisees.	Revised to expand on definition of "Notice."
4.15.1(C)	<u>On a Waiver of Final Accounting in a decedent's estate, when a loss occurs, it must be calculated into the statutory fee and applicable schedule must be attached to the petition.</u>	NEW: Added to clarify that losses must be included in the statutory fee calculation even on a waiver of account.
4.15.9(E)	For conservatorship accountings, petitioner must submit an additional copy of any current account for the court investigator with a completed and updated Referral Information and List of Relatives form [SDSC PR-020].	Deleted. With imaging, an additional copy of the accounting is not required for the Court Investigator.
4.18.2(G)	The court must set a review hearing within six court days whenever an ex parte temporary conservatorship is granted. The court may reconsider the propriety of the temporary conservatorship, or other matters as appropriate, at the review hearing.	Deleted. This is no longer the Court's practice.
4.18.2(I)	All petitions for temporary conservatorships, including "short set" temporary conservatorships, must be submitted with an extra copy of the petition and all related documents for the Court Investigator.	Deleted. With imaging, an additional copy of the petition is not required for the Court Investigator.
4.18.4(C)	A request for <u>major neurocognitive disorder</u> powers under Probate Code section 2356.5 may be made in a petition for general conservatorship or a petition for limited conservatorship.	Revised to include new terminology for dementia.
4.18.5(A-J)	"Dementia" replaced with, "major neurocognitive disorder," where referenced.	Revised to include new terminology for dementia.

Rule #:	New/Revised Wording of Rule:	Summary of Change:
4.18.8(A)	Unless an exception to the general requirements regarding a Court Investigator's Report applies (i.e., as provided in Probate Code section 1826, 1848 or other appropriate section), A Referral Information and List of Relatives (Confidential) [form SDSC PR-020] must be filed with the Petition for Appointment of Probate Conservator. An updated Referral Information and List of Relatives must be filed with each accounting or subsequent petition following the establishment of a conservatorship.	Revised to remove the exception for not filing the Referral Form.
4.18.8(C)	If it is alleged that the petitioning or nominating proposed conservatee will attend the hearing, but before the hearing becomes unable or unwilling to attend, the petition must be supplemented and Counsel must <u>notify</u> the business office to alert the court of the need for an investigation. If this is not accomplished at least 10 days before the hearing date, a continuance ordinarily will be required.	Revised "call" to "notify."
4.18.11	Successor Conservator / Co-Conservator Appointment of a successor conservator <u>or co-conservator</u> does not require service of a citation or personal service of notice on the conservatee, nor does it require a physician's affidavit of inability to attend the hearing or a Probate Code section 811 declaration per rule 4.18.3, subsection G. Unless the petition for appointment of successor states that the conservatee will attend the hearing, it will be necessary to file a Referral for Court Investigator. the court investigator must interview the conservatee and file a report before the hearing. The notice of hearing and a copy of the petition must be served on the conservatee, either personally or by mail, at least 15 days prior to the hearing, and other notice must be given pursuant to Probate Code section 2683 (successor) or 1460 (co-conservator).	Revised to add Petitions for Appointment of Co-Conservators. Also revised to remove the exception for not filing the Referral Form.
4.18.16	EADACPA Proceedings <u>A. Where a conservator of the person and/or estate has been appointed, any EADACPA action can be filed by petition in the Probate Court and will be part of the conservatorship case file.</u> <u>1. The petition will be set for hearing at least 30-days away, on the Miscellaneous Probate calendar.</u> <u>2. Notice of Hearing, pursuant to applicable statutes, must be filed prior to the hearing.</u> <u>B. If a jury trial is demanded, or if the time estimate exceeds what Probate Court has the ability to hear, and the matter does not settle, at the Case Management Conference, the matter will be reassigned to an available Civil department.</u> <u>C. If the conservatee dies while an action is pending in the Probate Court, the Probate Court will retain jurisdiction of the action in the conservatorship case file. (Prob. Code, § 2630.)</u> <u>1. A personal representative or successor in interest to the conservatee must substitute in.</u>	Revised EADACPA section to be in line with current procedure. Related Civil Local Rule, 2.4.9, also updated.
4.19.2(A)	Counsel and <u>Self-Represented Litigants</u> must refer to the Guardianship Protocol available on the Court's website and in the Probate Business Office to determine if the matter is properly filed in the Probate Division.	Revised to clarify that rule applies to self-represented litigants

<p>4.19.5</p>	<p>Probate Code section 1513 requires that, unless waived by the court, in each proposed appointment of a guardian, an investigation be made and a report submitted to the court. Investigations will be conducted by Family Court Services (FCS), the Court Investigator (CI) or Health and Human Services Agency (HHSA) as follows:</p> <p>A. RELATIVE GUARDIAN - PERSON OR PERSON/ESTATE</p> <p><u>1. FCS will conduct an investigation upon appointment only (location and phone number can be found at www.sdcourt.ca.gov). Appointments can only be made in person. Conformed copies of the following documents must be provided to FCS :</u></p> <ul style="list-style-type: none"> <u>a. Petition for Appointment of Guardian of Minor(s) (JC Form #GC-210P).</u> <u>b. Order Directing or Waiving Investigation signed by Judge of the Superior Court (SDSC Form #PR-063).</u> <u>c. Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (JC Form #FL-105/GC-120).</u> <u>d. Confidential Guardianship Screening Form (JC Form #GC-212).</u> <u>e. Guardianship Questionnaire (SDSC Form #FCS-045). (Submit original to FCS. Do not file with Probate Business Office)</u> <p><u>2. Since FCS conducts screenings for prior referrals of neglect or abuse of minors in relative guardianship petitions, notice pursuant to Probate Code section 1516, subdivision (a) for relative guardianships is not required.</u></p> <p>B. NON-RELATIVE GUARDIAN - PERSON OR PERSON/ESTATE</p> <p><u>1. Probate Code 1542 requires that notice be given to the Director of Social Services in Sacramento and HHSA.</u></p> <p><u>2. When providing notice to HHSA, conformed copies of the following documents must be provided:</u></p> <ul style="list-style-type: none"> <u>a. Petition for Appointment of Guardian of Minor(s) (JC Form #GC-210P).</u> <u>b. Order Directing or Waiving Investigation signed by Judge of the Superior Court (SDSC Form #PR-063).</u> <u>c. Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (JC Form #FL-105/GC-120).</u> <u>d. Confidential Guardianship Screening Form (JC Form #GC-212).</u> <p><u>3. HHSA will provide the petitioner with a packet of materials to complete and return prior to its investigation.</u></p> <p>C. RELATIVE OR NON-RELATIVE GUARDIAN - ESTATE ONLY</p> <p><u>1. Guardianship Questionnaire – Estate (SDSC Form # PR-064) must be filed with the Probate Business Office.</u></p> <p><u>2. CI will contact the petitioner and conduct an investigation prior to the hearing.</u></p> <p>D. RELATIVE OR NON-RELATIVE GUARDIAN - ESTATE ONLY- WAIVER REQUESTED</p> <p><u>1. The following documents must be submitted to the Probate Business Office:</u></p> <ul style="list-style-type: none"> <u>a. Application for Waiver of Investigation (SDSC Form # PR-062)</u> <u>b. Probate Ex Parte Request and Order (SDSC Form #PR-136)</u> <u>c. Guardianship Questionnaire (SDSC Form #PR-064)</u> <u>d. Order Directing or Waiving Investigation (SDSC Form #PR-063). (Complete information in caption only.)</u> <p><u>2. If request is approved, no investigation will be required. If denied, a CI will contact the petitioner and conduct an investigation prior to the hearing.</u></p>	<p>Revised to update outdated/incomplete information.</p>
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Rule #:	New/Revised Wording of Rule:	Summary of Change:
4.20.5	<p><u>A. Trusts created or funded by court order, including trusts created pursuant to Probate Code sections 2580 et seq. (“substituted judgment”), 3100 et seq. (relating to particular transactions for disabled spouses or registered domestic partners), and 3600 et seq. (relating to the compromises of claims of minors and persons with disabilities) are governed by California Rules of Court, rule 7.903. All such trusts must include provisions for protection of the trust assets against misuse and continuing supervision by the court, except as provided in subsections H and I, or unless the court otherwise orders.</u></p> <p><u>B. With respect to Special Needs Trusts and Discretionary Trusts presented for establishment pursuant to rule 2.4.6, subsection C, or otherwise, the following must be included in the proposed trust:</u></p> <p><u>1. A payback provision upon termination of the trust Medi-Cal or any other Medicaid agency which has paid benefits to the beneficiary shall receive all amounts remaining in the trust up to an amount equal to the benefits paid (42 U.S.C. § 1396p(d)(4)(A)). The Department of Health Services provides general guidelines regarding special needs trusts, and the guidelines can be obtained by contacting that agency.</u></p> <p><u>2. Notice requirements upon death of the trust beneficiary, termination of the trust, additions to the trust or changes of trustee.</u></p> <p><u>3. Established for a disabled individual under the age of 65. The disabled individual is the sole beneficiary of the trust.</u></p> <p><u>4. The Trust is irrevocable.</u></p> <p><u>5. Dispositive provisions after reimbursement to all State Agencies required by title 42 of the United States Code section 1396p(d)(4)(A).</u></p> <p><u>C. All petitions to establish a special needs trust must be “short set” by the Probate Business Office on the next available miscellaneous calendar. The petition will be set at a shortened date and time to allow 15 days’ notice to parties so entitled. Notice must include the notice required by Rule 4.5.2.B.</u></p> <p><u>D. A copy of the order directing settlement proceeds to be placed in a Special Needs trust must be filed with the petition to establish the Special Needs Trust.</u></p> <p><u>E. The proposed Trust must include a schedule A or a schedule of assets that will be used to fund the trust upon approval of the court.</u></p> <p><u>F. The order establishing the special needs trust must set forth the provisions of the trust entirety.</u></p> <p><u>G. After the petition to establish a Special Needs Trust or Discretionary Trust is approved, a copy of the executed trust must be filed if the matter remains under court supervision.</u></p> <p><u>H. Third Party Special Needs Trusts need not be presented for court approval or include the requirements listed in listed in rule 7.903 of the California Rules of Court and as set forth in subsection B (1-4) above.</u></p> <p><u>I. Unless otherwise ordered by the court, for good cause shown, this rule does not apply to trust instruments or trusts that have a total asset value of \$20,000 or less</u></p>	Revised the entire section to provide clarification and update outdated requirements.

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4.20.5(C)	All petitions to establish a special needs trust must be “short set” by the Probate Business Office on the next available miscellaneous calendar. The petition will be set at a shortened date and time to allow 15 days’ notice to parties so entitled. Notice must include the notice required by Rule <u>4.5.2.B</u>	Revised to refer to new notice requirement under 4.5.2(B).
4.20.9	<p>Uniform Trust Decanting Act</p> <p>A. If a petition to appoint a guardian ad litem is filed pursuant to Probate Code section 19507(d) or (e), notice must be given to the parties listed in Probate Code section 19507(c).</p> <p>B. If a petition is filed pursuant to Probate Code section 19509 the following must be filed with the court:</p> <ol style="list-style-type: none"> 1. A copy of the notice of intent to exercise the decanting power, as specified by Probate Code 19507(c). 2. Copies of the first trust instrument and all second trust instruments, in compliance with rule 4.3.3.J. 	NEW: Added to clarify procedure for portions of the new statute.
4.22.4	A person with standing may appear and object orally at the first hearing on any matter before the Probate Court. Thereafter objections, including grounds of opposition, to any petition or other pleading filed in Probate Court must be set forth in writing, filed and served either as required by statute or, in the absence of specific statutory requirements, by 4:30 p.m. at least three full court days before the next scheduled hearing date on the petition or pleading, e.g., for a court hearing on Wednesday, the objections must be filed by 4:30 p.m. the preceding Thursday. If written objections have not been filed in accordance with this rule, the court may decide the matter pursuant to California Rules of Court, rule 7.801 as if no objection had been made. In any event, written objections may not thereafter be made without leave of court by the party orally objecting. <u>This Rule is not applicable to law and motion matters governed by Chapter 23.</u>	Revised to clarify that rule does not apply to law and motion matters.
4.22.5(F) & Civil Rule 2.4.9	EADACPA Complaints. When filing a civil action citing the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) involving an individual whose estate or person is under conservatorship, refer to rule 2.4.9 for procedural guidelines.	Deleted. Addressed in 4.18.16 & Civil Rule, 2.4.9.
4.22.6(A)	Meet and confer no later than <u>7</u> days before the Case Management Conference.	Revised to change meet and confer requirements from 20 days to 7 days.
4.23.7	At the option of the judicial officer sitting in Probate, tentative law and motion rulings will be made available in accordance with rule 2.1.19. Tentative rulings will be made available on the court's website at http://www.sdcourt.ca.gov (click on “tentative rulings” from the probate webpage). <u>Pursuant to the California Rules of Court, rule 3.1308(a)(2), the court does not require notice of intent to appear at oral argument.</u>	Modified to comply with the California Rules of Court, rule 3.1308(c)