

CHAPTER 4 SPECIAL CASE CATEGORIES

Rule 2.4.1

Judgment Debtor Examination Proceedings

A. Setting Hearings. Judgment debtor examination dates are obtained by submitting the appropriate fees, an original and two copies of the order for appearance of judgment debtor, and a stamped, self-addressed envelope or messenger service return slip to the appropriate civil business office. Conformed copies with the appearance date, time, and place will be returned to the judgment creditor for service.

B. Proof of Service. Proof of service must be filed no later than five days before the date of the hearing. However, if the person ordered to appear does appear and is ready to proceed, the examination may be conducted, with or without proof of service having been timely filed, at the discretion of the court.

C. Appearance at Examination. Upon the call of the calendar, if the parties appear the examination must proceed at once, unless a continuance is ordered by the court. If the person ordered to appear does appear and the moving party fails to appear, the proceedings may, at the discretion of the court, be continued to another day or be dismissed without cost and with such additional orders as are appropriate. Appropriate orders may include an order that no future order will issue as to the person who did appear except upon a showing of new facts and a satisfactory explanation being made to the court for the moving party's failure to appear. If such future order is granted, it will be made on such terms and conditions as the court deems just and appropriate.

If the moving party does not appear and the court deems it appropriate to continue the examination to a future date, and on that day the moving party does not appear, the proceedings must be dismissed without costs being awarded to the party who secured the order.

D. Nonappearance of Party to be Examined. If the party to be examined fails to appear at the time and place set for examination, a warrant of attachment may issue requiring attendance forthwith, pursuant to the contempt procedure set forth in Code of Civil Procedure section 1209, et seq., or a warrant of arrest may issue requiring the debtor's attendance following the failure to appear notice procedure set forth in Code of Civil Procedure section 1993, et seq. A warrant will not be issued for the attachment or arrest of a person who failed to appear in court as directed in such order if the order, with the return of service thereon, has not been filed with the clerk of the court within the time specified herein, unless so ordered.

E. Continuances. One or more continuances of a judgment debtor examination may be allowed upon stipulation of all parties or their attorneys joined in by the person or entity ordered to appear and approved by the court, or upon good cause shown.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 2.4.2

Unlawful Detainer Proceedings

A. Order to Show Cause Regarding Dismissal. Consistent with the policy set forth under rule 2.1.1, a show cause hearing regarding dismissal will be set when the complaint is filed and will be held approximately forty-five days after the filing of the complaint unless:

1. The case has been set for trial;
2. The case has been designated as a general civil matter because possession is no longer in issue (Civ. Code, § 1952.3) and the case is not entitled to precedence (Code Civ. Proc., § 1179a);
3. A disposition has been entered (a dismissal, judgment, notice of settlement, or transfer terminates or disposes of the case as to all defendants named in the action); or
4. A conditional settlement has been filed.

There will be no Case Management Conferences in unlawful detainer cases, unless re-designated a general civil matter or unless specifically set by order of the court

B. Trial Setting. In unlimited unlawful detainer cases, it is the responsibility of the parties to notify the court that they are entitled to an expedited trial. In limited unlawful detainer cases, there is a mandatory Judicial Council form that must be filled out and submitted to request that the case be set for trial. In addition to filling out the front of the mandatory form, the proof of service on the reverse side of the form must be filled out and submitted after the opposing party has been served with the request or counter-request to set the case for trial. A counter-request must be filed within five days of the filing of the trial request. The mandatory form to be used for a request or counter-request to set a case for trial is Judicial Council form number UD-150, and may be obtained by going to the Judicial Council website at <http://www.courts.ca.gov>.

C. Judgment for Money Damages after Judgment for Possession of the Premises. When the plaintiff obtains a default judgment for possession of the premises, the case may be calendared for further hearing. In the alternative, a plaintiff may file an application, default checklist SDSC CIV 200 (see forms section of <http://www.sdcourt.ca.gov>), along with the necessary declarations for a default money judgment including attorney fees and costs or may file a dismissal without prejudice as to the money damages. After restitution of possession of the premises to plaintiff, plaintiff's failure to seek a money judgment or to file a dismissal may result in the court calendaring a hearing for the plaintiff to show cause why the case should not be dismissed.

D. Redesignation of Case when Possession is No Longer in Issue (Civ. Code, § 1952.3). The plaintiff must immediately notify the court when possession is no longer in issue and request the matter be redesignated as an unlimited or limited civil matter. The case will be monitored as follows:

1. If the defendant has not filed an answer, the case will be monitored for timely entry of default; or

2. If the defendant has filed an answer, the case will be set for a Case Management Conference.

(Adopted 1/1/1998; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2004; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010)

Rule 2.4.3

Uninsured/Underinsured Motorist Actions

If a complaint includes an uninsured/underinsured motorist claim as defined under section 68609.5 of the Government Code and section 11580.2 of the Insurance Code, plaintiff must file a declaration stating the case is an uninsured/underinsured motorist case, the name of insurance carrier, and amount of coverage. The court will suspend the time requirements and the action will be stayed for a period of one hundred and eighty days. Any party who claims to be exempt from the stay and who desires to further prosecute the action must object by noticed motion in the stayed action. Upon the expiration of the one hundred and eighty-day stay period, the action will be dismissed unless, upon noticed motion, good cause is shown to the contrary. If such motion is granted, the stay may be extended, but such an extension will not exceed one hundred and eighty days.

In addition to the above, if a complaint includes an uninsured/underinsured motorist claim as defined under section 68609.5 of the Government Code and section 11580.2 of the Insurance Code, plaintiff must appear ex parte within sixty calendar days of the filing of the complaint and indicate whether a stay of the action or a portion of the action is requested in accordance with rule 2.1.13, and/or whether the case will proceed against all other appearing defendants.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2013)

Rule 2.4.4

Small Claims

To facilitate compliance with the Standards of Judicial Administration relating to case disposition time standards and delay reduction, a notice will be given to the plaintiff by the clerk at the time of filing a small claims case advising the following: (1) Failure to appear at the scheduled hearing may result in the case being dismissed; (2) If the defendant(s) is (are) not served by the date of trial and the plaintiff elects not to reset the matter, the case will be dismissed without prejudice when the case is called. Requests for resetting may be made at the time of trial or before. If the case is dismissed on the date of trial for lack of service and resetting, and the plaintiff wishes to further litigate the matter, the case must be refiled and a new filing fee paid.

A. Filings

North County Division: All filings pertaining to small claims actions must be filed at the North County Regional Center, 325 S. Melrose Drive, Vista, CA 92083.

Central Division: All filings pertaining to small claims actions must be filed at the Hall of Justice, Central Facility, 330 West Broadway, San Diego, CA 92101. Small claims trials are heard at this facility. Small Claims cases that fall within the jurisdiction of the East and South Divisions of the court will be heard in the Central Division.

The appropriate division is determined by the zip code as set forth on the Superior Court form ADM-254 zip code list (see Forms/Administrative section of www.sdcourt.ca.gov).

B. Reassignment. If the parties do not stipulate to the attorney sitting as a temporary judge to which their case is assigned, the matter will be set for hearing before another temporary judge, commissioner, or judge, when available. If the parties do not stipulate to allowing any attorney to hear the case as a temporary judge, the matter will be set for hearing before a commissioner or judge, when available.

C. Proof of Service. Proof of service must be filed not later than five days before the date set for hearing. Failure to timely file proof of service may cause the court to remove the hearing from the calendar, or dismiss the case without prejudice.

D. Appeal Procedures. In addition to the requirements of the Code of Civil Procedure and the California Rules of Court, the following procedure applies in small claims appeals: Parties are not required to file trial briefs in small claims appeals. However, if a party feels a brief is necessary, it must be filed at least five court days prior to the hearing and must not exceed five pages in length.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 2.4.4.1

Copies of Attachments – Small Claims Filings

When a party files with the court a document or form, which the court is required to copy and serve, the document or form is accompanied by a/an attachment(s), the filing party must provide an adequate number of copies of the attachment(s) sufficient to allow the court to serve a copy with the form or document on all parties to the action.

(Adopted 1/1/2013)

Rule 2.4.5

Eminent Domain

A. Case Management Conference. Absent the granting of a motion to treat an eminent domain proceeding as a complex case or a motion to enlarge time, it will be set for a Case Management Conference approximately one hundred and eighty days after the filing of the complaint. By the date of this Case Management Conference, all parties must either have appeared, been defaulted, disclaimed any interest in the subject property, or been dismissed, and the case must be ready to be placed on the civil active list. A Case Management Statement must be completed by all parties and filed with the court at the time of this Case Management Conference. The parties may stipulate to ADR or a temporary judge at that time. A trial date will be set not sooner than one hundred and twenty days after the case is "at issue."

B. Settlement Conference. A settlement conference on the issue of compensation will be set fifteen days before the trial date if the parties have complied with the settlement conference rules. The plaintiff must attend the conference with its negotiating agent, and all defendants who claim compensation must be present except lienholders, if any.

C. Trial Readiness Conference. A trial readiness conference on the issue of compensation will be set ten days before the trial date. The plaintiff and other parties presenting valuation testimony at the trial must meet prior to the scheduled conference and complete, sign, and file a joint trial readiness conference statement in the form provided by the court. The completed statement must be presented to the judge at the scheduled conference.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.4.6

Minors/Incompetents/Conservatees

A. Guardians ad Litem. As provided in Code of Civil Procedure section 372, a guardian ad litem must be appointed for a minor, incompetent person, or a person for whom a conservator has been appointed. Due to potential conflicts of interest, parents asserting individual claims or defenses may not serve as guardians ad litem for their minor children, absent a court order to the contrary. Petitions for appointment of a guardian ad litem must be filed at the same time as the underlying complaint is filed.

B. Petitions to Compromise the Claim of a Minor. A petition to compromise claims on behalf of minors may be filed in a limited civil case only if an action is already pending in that case. Otherwise, it must be filed as an unlimited civil case. Any petition meeting the requirements of California Rules of Court, rule 7.950.5(a) will proceed in an expedited manner pursuant to California Rules of Court, rule 7.950.5(b) and (c). In all other circumstances, the petition must be filed and set for hearing in the department designated by the presiding or supervising department unless the case has been assigned to a judge or independent calendar department, in which case the petition must be filed and heard in that department.

The person compromising the claim on behalf of the minor and the minor must be in attendance at the hearing of the petition, unless the court orders otherwise.

At the time of the hearing, the court will determine the amount of costs, expenses, and attorney's fees to be allowed from the proceeds of the settlement. The funds must be disbursed in accordance with the order approving

the settlement. It is the duty of the attorney to ensure that the minor's funds are deposited in accordance with the court order referenced above. Attorney's fees are not due or payable unless and until the money is deposited in the blocked account and a receipt executed by the depository is returned to the court.

C. Trusts

1. In all cases where a petition to approve the compromise of a claim of a minor or person with disability filed under Probate Code section 3600 et. seq. proposes to have the settlement funds distributable to the minor or person with disability administered under a guardianship, conservatorship, discretionary trust or special needs trust, as provided in Probate Code sections 3602, 3604 or 3611, the petition to establish the guardianship, conservatorship, discretionary trust or special needs trust shall be filed for approval in the Probate Department of the Court. Except as provided in subdivision 2 below, no payment or transmittal of the proceeds of the settlement agreement or judgment distributable to the minor or person with disability shall be made to the guardian, conservator or trustee until a certified copy of the Order appointing the guardian, conservator, or trustee has been filed in the Civil Department of the Court approving the compromise and settlement under Probate Code section 3600 et. seq.

2. In any proceeding to approve the compromise of a claim of a minor or person with disability filed under Probate Code section 3600 et. seq., the judge in the civil proceeding approving the compromise petition may order that the settlement funds distributable to the minor or person with disability be distributed to a temporary guardian, temporary conservator or temporary trustee appointed by a judge of the Probate Department of the court, pending Probate court determination of the petition to establish the guardianship, conservatorship, discretionary trust or special needs trust. In no event shall any funds distributable to a minor or person with disability in a proceeding under Probate Code section 3600 et. seq. be distributed to any person not authorized by court order pursuant to the provisions set forth in Probate Code section 3602, 3604 or 3611.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2004; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011)

Rule 2.4.7

“Other” Civil Actions

Civil actions classified as "other," including but not limited to petitions for extraordinary relief and small claims appeals, will be noticed for dismissal one hundred and eighty days after the filing of the first document conferring court jurisdiction, unless the parties appear ex parte in the appropriate department and obtain an extension of time. The court, on its own motion, may at any time reclassify such cases as "unlimited civil." Cases designated as "eminent domain" must follow the procedures under rule 2.4.5.

(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2004; Renum. 1/1/2006)

Rule 2.4.8

Extraordinary Writs

A. In seeking mandamus or prohibition relief, it is not necessary to obtain an alternative writ (Code Civ. Proc., § 1088). The noticed motion procedure should be used whenever possible.

B. If an alternative writ is sought in the first instance, the petition must be filed in the civil business office and the petitioner must appear ex parte to seek issuance of an order to show cause.

C. Petitions for extraordinary writs in limited civil, misdemeanor and infraction cases that name the Superior Court as the respondent are governed by Division VII rules (Appellate).

D. Petitions for extraordinary writs arising out of all other criminal cases are governed by Division III rules (Criminal).

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 2.4.9

EADACPA Proceedings

A. When a civil action has been filed which cites the “Elder Abuse and Dependent Adult Civil Protection Act” (EADACPA), pursuant to Welfare & Institution Code section 15600 et seq., that action will be transferred to the Probate Court for litigation if the following apply:

1. A conservator of the person and/or estate has been appointed for the plaintiff and has qualified prior to the initiation of the action for abuse. (Welf. & Inst. Code, § 15657.3, subd. (a).)

2. No good cause is shown to retain the action in the Civil Court. (Welf. & Inst. Code, § 15657.3, subd. (b).) The action will remain as a civil case file and civil Rules of Court and procedures will apply.

B. Where a conservator of the person and/or estate has been appointed, any EADACPA action can also be filed by petition or complaint in the Probate Court and will be part of the conservatorship case file. It will be processed like a civil action, with the requirements of a summons and responsive pleadings.

1. The title of the case must be a dual title “In the Matter of the Conservatorship of (name)” and below that title the civil title, “(Name of conservatee) Through (name of conservator), Conservator of (Person or Estate) v. (name(s)) (of) Defendant(s)”.

2. Although a civil summons will be issued, the petition or complaint will be set for hearing at least forty days away, on a regular probate calendar, and that first hearing will be handled as a review hearing.

a. A Certificate of Service of summons must be filed prior to the hearing.

b. Proof of service of probate notices pursuant to applicable statutes must be filed prior to the review hearing.

3. The petition or complaint will thereafter be handled pursuant to probate “fast track” rules for contested matters pursuant to Probate Rules, Division IV, Chapter 22.

4. 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 Joint Disposition conference, the litigants will be instructed to contact the independent calendar clerk for assignment to a civil court.

5. 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.)

a. A personal representative or processor in interest to the conservatee must substitute in as plaintiff. (Welf. & Inst. Code, § 15657.3.)

b. A first appearance fee for the substituted party will be required. (Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2013)

Rule 2.4.10

Collection Cases

Case management in Collection Cases is handled in accordance with the California Rules of Court, rules 3.740 and 3.741.

(Adopted 1/1/2009; Rev. 1/1/2010)

Rule 2.4.11

Class Actions Deemed Complex

Due to the complexities involved with class actions, including multiple plaintiffs, specialized case management, extensive pre-trial activity, difficult and/or novel issues, extended trial times, and extensive post judgment supervision, class actions filed with the San Diego Superior Court are deemed provisionally a complex action pursuant to California Rules of Court, rule 3.400, subdivision (c)(6) and remain a complex case until the Independent Calendar Judge to whom the case is assigned has the opportunity to decide whether the action meets the definition in California Rules of Court, Rule 3.400, subdivision (a).

Pursuant to Government Code section 70616(a), a complex case fee shall be paid in addition to the first appearance fee at the time of the filing of the first paper in a class action proceeding.

(Adopted 1/1/2012)