

## **CHAPTER 23 LAW AND MOTION**

### **Rule 4.23.1**

#### **Preliminary Definitions and Procedure**

A. An application for relief based upon the Probate Code must be brought as a petition. An application for relief based upon the Code of Civil Procedure or Civil Code must be brought as a motion.

B. Parties may not bring unrelated requests for relief in a single motion but must file each in a separate motion.  
(Adopted 1/1/2006; Rev. & Renum. 1/1/2010)

### **Rule 4.23.2**

#### **Applicability of Division Two in Probate Proceedings**

A. Except to the extent the Probate Code provides otherwise, counsel and parties appearing in propria persona must comply with the pertinent sections (as amended from time to time) of Division II of these Rules and the California Rules of Court beginning at rule 3.1100 et seq., with respect to demurrers, motions to strike, requests to take judicial notice, motions for summary judgment, and all other pretrial motions. Counsel and parties appearing in propria persona must also consult Department Rules of the various Probate Departments for further requirements.

B. The form and format of discovery proceedings in probate are governed by the California Rules of Court, rule 3.1000 et seq., which will be enforced in all probate proceedings.  
(Adopted 1/1/2006; Rev. & Renum. 1/1/2009)

### **Rule 4.23.3**

#### **Filing Motion Papers**

A. Unless a specific greater or lesser time is authorized by statute, court rule, or order, moving papers must be filed at least sixteen court days prior to the scheduled hearing. This rule may be waived by an order shortening time upon ex parte application.

B. Unless otherwise ordered by the court, motions must be presented to the Probate Business Office prior to the issuance of a hearing date.

C. The phrase “LAW & MOTION” must appear at the beginning of the title of all papers submitted to the court in support of the motion.

D. Pursuant to section 4.3.2 of these rules, all cases initiated on or after 01/01/2010 will be imaged. Within ninety days of the date of filing, with the exception of lodged documents, all documents filed with the court will be shredded and recycled without further notice.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2013)

### **Rule 4.23.4**

#### **Hearings**

Once set, a matter may be continued only with a written order of approval from the court. A matter “continued” by stipulation without court approval will be taken off calendar. Once the court publishes a Tentative Ruling, the motion may not be taken off calendar or withdrawn.

(Adopted 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010)

### **Rule 4.23.5**

#### **Filing and Serving Opposition or Support Papers on Motion**

A. Opposition, joinder and reply papers must be filed and served as provided in Code of Civil Procedure section 1005. In this regard, the court is not obligated to, and may not without good cause shown, consider any late-filed or surreply papers in a matter.

B. The phrase “LAW & MOTION” must appear at the beginning of the title of all papers submitted to the Court in opposition, joinder and reply to a pending motion.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009; Rev. 1/1/2010)

### **Rule 4.23.6**

#### **Filing of Proof of Service**

Proof of service of the moving papers must be filed no later than five calendar days before the time set for hearing.

(Adopted 1/1/2006; Renum. 1/1/2014)

**Rule 4.23.7****Tentative Rulings**

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) by 3:00 p.m. on the day prior to the hearing.

(Rev. & Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2009; Rev 1/1/2011; Rev. 1/1/2012; Renum. 1/1/2014)