

## **CHAPTER 22 CONTESTED MATTERS**

### **Rule 4.22.1**

#### **Introduction**

A. When objections are filed to a petition or other pleading seeking affirmative relief in the Probate Court, the matter becomes a "contested matter" as the term is used in these rules. These rules apply to all contested matters. They supplement applicable general statutes and other rules of court and are intended to further the policies of the Legislature and the San Diego Superior Court for the prompt completion of probate administration and efficient resolution of disputes.

B. If an interested party appears in person or by counsel when a petition is called for hearing and declares a desire to file a written objection or contest, the court may continue the hearing with the understanding that if an objection or contest is not actually on file at the new hearing date, the hearing will proceed.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2016)

### **Rule 4.22.2**

#### **Filing of Petitions and Contests and Setting Contested Matters for Hearing**

All petitions, will contests and other pleadings seeking affirmative relief or adjudication by the Probate Court must be set as follows:

A. By Statute or Rule of Court.

B. Notice Not Prescribed. If the time for notice of hearing on a particular matter is not set forth in a statute or a rule of court, the time for notice of hearing must be 30 days. The provisions of Code of Civil Procedure section 1013 apply.

C. Will Contests. A probate summons must be presented by the contestant and issued by the court at the time of filing of a will contest. A will contest filed before admission of the will to probate constitutes an objection to the petition to admit the will, and the hearing on the petition to admit the will must be continued to a date no less than 30 days from the date of filing the will contest, in order to allow sufficient time to complete service in the will contest. If all service, including personal service of the summons as required by law, is not completed by the date of the continued hearing on the petition to admit the will, contestant must appear ex parte at least two court days prior to the hearing to request additional time for service. If a continuance is granted ex parte and service is not thereafter completed prior to the continued hearing, the court at the hearing may further continue the matter or may impose sanctions. When service has been completed, the will contest will be set for trial or short cause hearing pursuant to these rules. The petition to admit the will may be continued until the date of trial or short cause hearing on the will contest.

(Adopted 1/1/1993; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2013; Rev. 1/1/2015)

### **Rule 4.22.3**

#### **Service of Notice**

All notice requirements on contested matters, including personal service when required, must be completed prior to the date of the hearing (whether the hearing date originally assigned to the matter by the clerk of the court or a later date if the matter has been continued). If a party on whom personal service is required has not been served timely, the contestant must appear ex parte at least two court days prior to the hearing and set forth the cause for the lack of service.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/12/2002; Renum. 1/1/2006; Rev. 1/1/2015)

### **Rule 4.22.4**

#### **Filing of Objections**

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 pm 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.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2013)

### **Rule 4.22.5**

#### **Determination of Contested Matters**

A. **General.** Contested matters will be determined as set forth herein. At the earliest appropriate hearing after a contested matter is at issue, the court may determine the type of hearing required, the length of the hearing and the manner of disposition.

**B. Submission Without Evidentiary Hearing.** If all parties agree in writing or on the record in open court, the court may decide the matter based on the pleadings, evidentiary materials filed prior to the conclusion of the hearing, and the arguments of counsel, or as otherwise agreed.

**C. Short Cause Matter Hearing.** If the court determines that the matter will require an evidentiary hearing of three hours or less (a “hearing”), the court may establish guidelines to govern discovery proceedings, if any are required, and may set the matter for hearing as a “short cause” matter. Trial briefs must be filed in the trial department and faxed (in accordance with Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for the short cause hearing unless the court orders otherwise.

Due to the “Short cause” nature of this hearing, the court will not entertain, receive or read responses to said trial briefs. The trial briefs submitted are deemed sufficient to allow the parties the opportunity to state their positions regarding the contested issue(s) to be addressed at the short cause hearing. The provisions of rule 4.22.11 and 4.22.9 do not apply to short cause hearings.

**D. Trial.** If the court determines that the matter will require an evidentiary hearing of more than three hours (a “trial”), the court may set the matter for a Case Management Conference (see Rule 4.22.7 below).

**E. 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.

**F. Other Procedural Orders.** If none of the foregoing procedures are appropriate for the matter before the court, the court may make any other procedural orders the court deems appropriate.

(Adopted 1/1/1993; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2013)

#### **Rule 4.22.6**

##### **Meet and Confer, Joint Case Management Report**

If a contested matter is set for a Case Management Conference, counsel must, unless excused by the court:

**A.** Meet and confer no later than 20 days before the Case Management Conference.

**B.** File with the court a “Case Management Statement” (PR-157).

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2015)

#### **Rule 4.22.7**

##### **Case Management Conference**

At the Case Management Conference, the court may take any one or more of the following actions:

**A.** Determine whether or not all applicable procedures have been complied with and, if not, order appropriate remedial action, including the imposition of sanctions considered appropriate in the court’s discretion;

**B.** Set the following dates based upon review of the “Case Management Statement” (PR-157) and the representations of counsel:

1. Trial date;
2. Trial readiness conference date;
3. Discovery cut-off date;
4. Law and motion cut-off date;
5. Dates for the exchange of experts;
6. Settlement conference date, if requested (see Rule 4.22.10).

**C.** Make appropriate assignments and orders upon approval of a written agreement to refer the dispute to a temporary judge or to arbitration (Prob. Code, §§ 9620-9621) or to a Special Master or Referee (Prob. Code, § 1000; Code Civ. Proc., §§ 638-645.1).

**D.** Dispense with any of the procedures provided for herein for good cause, which includes agreement of the parties.

**E.** Direct counsel to submit an order setting forth the dates and directives of the court.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2013; Rev. 1/1/2015)

#### **Rule 4.22.8**

##### **Trial Readiness Conference Report/Advance Trial Review Order**

**A.** Unless dispensed with by the court at the Case Management Conference, no later than five days prior to the trial readiness conference, counsel must meet and confer in person to prepare in good faith a Trial Readiness Conference Report/Advance Trial Review Order. The Trial Readiness Conference Report/Advance Trial Review Order must be in the format set forth on CIV-252 which can be viewed under the Civil Forms section of the San Diego Superior Court’s website, <http://www.sdcourt.ca.gov>.

**B.** Matters deemed too lengthy to be heard by one of the Probate Departments shall be sent to the master civil assignments department or to one of the civil departments as appropriate. Counsel must file the Trial Readiness Conference Report/Advance Trial Review Order at least two days prior to the Trial Readiness Conference. Failure to complete the Trial Readiness Conference Report/Advance Trial Review Orders may cause the Court to vacate the trial date and set another Trial Readiness Conference.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2016)

#### **Rule 4.22.9**

##### **Trial Readiness Conference; Sanctions**

**A.** Counsel completely familiar with the case and possessing authority to enter into stipulations must be present at the scheduled hearing; however, clients need not appear unless specifically ordered by the court. Orders made will be binding on trial counsel and will not be subject to reconsideration due to counsel's unfamiliarity with the case at the time of the trial readiness conference.

**B.** If the court determines that a party, or counsel, has failed to reasonably comply with these rules, including the diligent preparation of a Trial Readiness Conference Report/Advance Trial Review Order, the court may impose appropriate sanctions against that party or counsel including a summary determination of any contested issues in accordance with the other party's papers filed in compliance with these rules, the levy of sanctions pursuant to Code of Civil Procedure section 575.2, the issuance of citations or bench warrants, or any other appropriate action.

(Adopted 1/1/1993; Rev. 7/1/1995, 7/1/1996; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 2010; Rev. 1/1/2011)

#### **Rule 4.22.10**

##### **Mandatory Settlement Conference (MSC)**

**A.** Calendaring: Before the court will set a trial date, and unless otherwise ordered by the court, a Mandatory Settlement Conference (MSC) will be scheduled by the court in all contested matters except in guardianships and conservatorships of the person only. The MSC will be set at the case management conference. Absent a court order allowing a party to appear by telephone, the parties and their attorneys of record must personally attend the MSC. Counsel and all parties must be present for the calendar call. The court will continue the MSC only for demonstrated good cause. A party seeking a continuance of the MSC must appear ex parte in the department to which the case is assigned. There will be no continuances on the day of the MSC absent extraordinary circumstances.

**B. Settlement Conference Panel:** The court will appoint an attorney pursuant to the qualifications set forth in the California Rules of Court, rule 2.812, as settlement conference judge to each case to assist the parties and trial counsel in reaching a settlement at the MSC. If available, two settlement conference judges will be assigned to more complex cases. Any judge not otherwise engaged may be available for additional assistance.

**C. Meet and Confer Requirements:** Counsel must meet and confer either in person or by telephone at least 10 calendar days before the MSC to resolve as many issues as possible and to identify those issues which remain unresolved. The results of this conference will be included in the Settlement Conference Brief.

**D. Settlement Conference Briefs:** Each party must prepare a Settlement Conference Brief which will be submitted to all parties, plus the required number of additional copies submitted to the designated MSC clerk, no later than 4:00 p.m. seven calendar days before the MSC. Email submission is acceptable. This Brief must not exceed ten pages in length. At a minimum, the Brief must contain a summary of the dispute, the procedural background of the case, any pending motions or other dispositive pleadings, a brief description of any legal issues or material facts which are not in dispute, any stipulations reached by the parties affecting trial of the matter, a specific proposal for the resolution of each contested issue and the reasons for the proposed resolution, and an addendum listing all witnesses expected to be called at trial, all documents expected to be introduced at trial, and any evidentiary objections by the opposing party. The Settlement Conference Brief shall not become part of the court file and will be available for retrieval by the filing party at the MSC.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2014; Rev. 1/1/2016)

#### **Rule 4.22.11**

##### **Trial Briefs and Motions in Limine**

**A.** Unless otherwise directed by the court, all motions in limine (as authorized by law) and trial briefs must be filed with the clerk of the trial court and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for trial. Opposition pleadings to in limine motions must be filed and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 12 noon of the day prior to the date set for trial.

**B.** Unless otherwise directed by the court, three court days before trial, the parties must provide the clerk of the trial court with a final joint witness list and joint exhibit list.

**C.** At trial call, the parties must provide two joint exhibit binders, one for the court and one for the witnesses, containing a complete set of all exhibits. The exhibits must be marked to correspond to the joint exhibit list. Copies of exhibits to be offered by the petitioner must not be duplicated by the respondent.

(Adopted 1/1/1993, Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. & Renum. 1/1/2012; Rev. 1/1/2013)

**Rule 4.22.12****Mediation Statements and Documents not Admissible Evidence**

All responsive pleadings and all other documents filed with the court or with an ADR neutral concerning mediation under these rules, and all matters disclosed verbally concerning any such mediation, are not admissible evidence in any later contested proceeding between the parties solely by reason of their disclosure under these rules. Evidence Code section 1119 governs statements and documents disclosed in mediation.

(Adopted 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2012; Rev. 1/1/2013; Rev. & Renum. 1/1/2014)