

CHAPTER 3
PLEADINGS: FORM OF PAPERS PRESENTED FOR FILING

Rule 4.3.1

Format Requirements and Copies

A. The probate filing clerk is not required to read the body of the petition or the prayer to determine intent of the filing party. The caption should clearly set forth the filer's intent.

B. A petition captioned as "amended" will supersede the former petition and will be set for hearing in due course.

C. "Register of Actions" number (ROA) will be assigned at the time the petition is set for hearing. The ROA must be stated directly below the case number in the caption of all subsequently filed documents related to that petition. The party giving notice of the hearing on the petition must include the ROA in the notice.

D. The court will conform only one copy of each original submitted for filing. If conformed copies are to be returned by mail or messenger, a stamped, self-addressed envelope or messenger slip must be included.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015; Rev. 1/1/2016; Rev. 1/1/2017)

Rule 4.3.2

Electronic Filing (e-Filing)

A. e-Filing Requirements

1. All documents electronically filed must be submitted in a PDF format using Adobe Acrobat version 7 or higher and must also be in a text searchable format, i.e. Optical Character Recognition (OCR).

2. Fillable forms are not accepted.

3. Each document should be filed as a stand-alone document.

4. Documents that contain exhibits must be bookmarked.

5. Notices of lodgment must not have the lodged documents attached. The submitting party must provide the business office with hard copies of the lodged documents, along with a filed stamped copy of the notice of lodgment, a means of return, and must include the e-Filing Transaction ID # noted in the upper right hand corner.

6. When submitting an original Will to the business office for a Petition for Probate of Will and for Letters Testamentary or Letters of Administration with Will Annexed that was e-Filed, the submitting party must provide a cover letter that includes the case number assigned to the petition.

7. If submitting a proposed order in the same transaction as other documents (i.e. petitions or other subsequent documents), an attorney service or e-mail address must be noted in the, "Message to the e-Filing Clerk," section for a conformed copy to be returned.

8. Any document that is filed on a day that the Court is closed or after 5:00 p.m. shall be deemed to have been filed on the next court business day.

9. Original signatures are not required on e-Filed documents, but must be maintained by the filing party, pursuant to California Rules of Court, rule 2.257.

B. Documents Ineligible for e-Filing

1. Wills

2. Letters of Appointment

3. Bonds

4. Out-of-State Commission Subpoena

5. Request for Payment of Trust Funds

6. Writs

7. Abstracts

8. Settlement Conference Briefs

9. Affidavit re: Real Property of Small Value

10. Warrants

11. Lodged Documents

(Adopted 1/1/2015; Rev. 1/1/2016; Rev. 1/1/2017)

Rule 4.3.3

Filing Documents for Calendared Matters

A. The case number, hearing date, time, department, and ROA number are required on documents filed in connection with matters already set for hearing, and must appear on the first page of the document, below the caption.

1. On all pleadings filed after the initial case originating filing, the words "IMAGED FILE" must be placed in all capital letters immediately under the title of the pleading for the duration of the case.

2. The paper filings that are imaged and stored electronically will be physically stored by the court for 30 days after filing, after which time they will be shredded and recycled, except for original wills and bonds which will be physically retained by the Court for the period required by law. The paper filings that are imaged and stored temporarily are not accessible to the public, including the party and/or attorney who submitted the imaged document.

B. Prayers within a petition must be drafted so that their general effect may be determined without reference to separate paragraphs within the petition, attachments, supplements, or other later filed documents. If documents are filed that substantially alter the original prayer, an amended petition should be filed with the new and comprehensive prayer.

C. Petitions, Applications and Accountings. In order to be considered at the calendared hearing, documents filed after the calendared petition must be filed no later than 5:00 p.m. three full court days prior to the hearing. This does not include the date of filing or the date of hearing (e.g. for a court hearing on Wednesday, the documents must be filed by 5:00 p.m. the preceding Thursday). Any document filed after the deadline will be considered late and will not be reviewed by Probate Examining for the calendared hearing.

D. When the court authorizes a petition to be set for hearing on a particular date, unless otherwise ordered by the court, the petition must be filed no later than 5:00 p.m., five full court days prior to the authorized date. This does not include the date of filing or the date of the hearing. Any petition filed after the deadline will be set in due course according to the court's availability.

E. Accounting Format. Accounting schedules must be attached to the Petition. They may not be lodged. You must lodge originals of account statements, closing escrow statements, and bill statements for a residential or long-term care facility in support of Probate Code section 2620. Lodged documents will not be imaged or made part of the Court file.

F. Form and Lodging of Exhibits. Other than accounting schedules and copies of documents sought to be approved, construed or modified by the court, if the exhibits accompanying a petition, motion, or other filing exceed ten pages cumulatively, on non-imaged cases they must be lodged with the court, rather than attached to the pleadings, which will remain in the court file. Such exhibits must be lodged at the same time as the corresponding papers are filed with the court. For e-filed and imaged cases no limit will be enforced with regard to number of pages.

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 PR-163 (should be printed on pink paper) on top; and (3) A means of return, as specified in item 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.

H. Return and Retention of Lodged Exhibits. Lodged materials will be returned to the tendering party after the resolution of the calendared matter, unless the party requests their destruction. Therefore, when submitted, lodgments must be accompanied either by a self-addressed, stamped envelope or an attorney service pick-up slip. Following the return of the lodged documents by the court, the tendering party should retain them until the applicable appeal period has expired.

I. Fax Filing. A faxed document may be filed in accordance with the California Rules of Court, rule 2.300 et seq. However, direct fax filing under California Rule of Court 2.304 is not available.

J. A copy of the Trust and any amendments must be submitted for filing with all trust cases. The copy of the Trust and/or amendments must be submitted with a coversheet. The coversheet may indicate that the Trust is confidential and will then be retained at a security level that is not available to the general public. Any after filed petitions must reference the date of filing of the copy of the Trust. Local form, SDSC PR-167 [Trust Coversheet] may be used for this purpose.

K. On Petitions for Probate of Will and for Letters Testamentary or Letters of Administration With Will Annexed a copy of the receipt for deposit must be provided.

(Adopted 1/1/1990; Rev. 7/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. & Renum. 1/1/2015; Rev. 1/1/2016; Rev. 1/1/2017)

Rule 4.3.4

Use of Judicial Council Forms

A. The latest version of applicable printed forms of petitions, orders and other documents approved by the Judicial Council must be used in all cases, unless otherwise permitted or directed by the court. If a form is inadequate for a given circumstance, an addendum may be attached to the form. When no applicable form has been so approved, counsel must draft their own documents following requirements for pleading format.

B. On non-imaged cases, when printed forms are reproduced on the front and back of a single sheet, the back sheet must be inverted ("tumbled") so that it can be read when clipped at the top in a file folder.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. & Renum. 1/1/2012; Rev. 1/1/2015)

Rule 4.3.5

Affidavits and Declarations Under Penalty of Perjury

A. A declaration must meet all of the requirements of Code of Civil Procedure section 2015.5 to be acceptable in lieu of an affidavit and may contain the following language, whether executed within or without California:

“I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date].

[signature of fiduciary]

[name of fiduciary]”

B. If such declaration is executed within California, it may take either the above form or the following form:
“I declare [or certify] under penalty of perjury that the foregoing is true and correct and that this Declaration is executed on [date] at [city], California.

[signature of fiduciary]

[name of fiduciary]”

C. Where a corporation is the fiduciary, the verification must be made by an officer on its behalf and should take the following form:

“I am [title of officer] of the petitioner in the above-entitled matter, and I am authorized to make this verification on its behalf. I have read the foregoing petition and know its contents, which are true of my own knowledge, except as to the matters that are stated on my information and belief, and as to those matters, I believe them to be true. I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on [date] at [city] California.

[signature of officer]

[name of officer]”

(Adopted 1/1/1990; Renum. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2012; Renum. 1/1/2015)

Rule 4.3.6

Complete Address in Petition or Report

A. Where a petition or report is required to include an address, a full and complete number, street, city, state and zip code for the person's place of business or place of residence must be set forth. Where the mailing address is a different address, it must also be included.

B. If a Post Office Box is the only known address, a statement of due diligence must accompany the petition or report.

C. Where a petition requests relief, authority or approval related to real property, the complete address, Assessor Parcel Number (APN), and legal description must be set forth in the prayer.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012; Renum. 1/1/2015; Rev. 1/1/2016)

Rule 4.3.7

Multiple Minors and Conservatees

A. Where several minors share the same parent, a Petition for Guardianship may be filed under one case number and include all the minors.

B. Where a husband and wife are to be conserved, a separate Petition for Conservatorship for each may be filed under the same case number if all of the assets of the estate are community property. If both petitions are approved, separate Order and Letters must be submitted for each conservatee. In all other cases, the conserved husband and wife must have separate case numbers.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Renum. 1/1/2015)

Rule 4.3.8

Declinations and Consents to Serve

A. It is insufficient merely to allege that the person or entity named in the decedent's will or trust as executor, successor trustee, guardian or conservator is not qualified or declines to act. A written declination to act, signed by such person or entity, must be filed with the court. If the entity is no longer in business, the petitioner should file the declination of its successor entity, if any.

B. If a petition for appointment of one or more personal representatives, successor trustee, guardian or conservator is filed and any of the proposed individuals is not a petitioner, then a consent to act, signed by each such non-

petitioning appointee must be filed with the court. If a consent to act cannot be obtained, the petition must state facts regarding both the efforts to obtain consent and the results of those efforts.

C. All documents pursuant to this rule must be filed, not lodged.
(Adopted 1/1/2016; Rev. 1/1/2017)