

**CHAPTER 4
SETTINGS, ASSIGNMENTS
AND CONTINUANCES**

Rule 4.4.1

Calendar Settings of Probate Matters

A. All petitions in probate matters which require a hearing will, upon being filed with the court, be set by the clerk on the next available court calendar day, unless a later date is requested by Petitioner at the time of filing.

B. Calendar times may be obtained from the court's website at <http://www.sdcourt.ca.gov> or by calling the Probate Court Business Office.

C. Calendar times are subject to change. (Cross Reference: Contested Matters, Chapter 22.)

D. All petitions for appointment of a Personal Representative, Conservator or Guardian must be filed along with the appropriate completed mandatory Judicial Council form outlining the duties of the proposed fiduciary. The duties must be signed by the proposed fiduciary.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2015; Rev. 1/1/2016)

Rule 4.4.2

Probate Hearing Once Noticed Cannot be Advanced

When a hearing on a probate matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, either by means of a new petition, an amended petition, or by a new notice.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.4.3

Continuances of Hearings on Petitions in Uncontested Matters

A. 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.

B. 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.

C. A continuance of two weeks or less will be granted only for good cause and will require judicial approval.

D. For matters set forth in subsection 1 below, Probate Examiners have authority to continue the hearing date on non-contested petitions. However, Probate Examiners do not have authority to grant requests for continuance that are made later than 5:00 p.m. three court days prior to the hearing, or which are set forth in subsection 2 below. For non-contested matters, counsel seeking a continuance must inform all counsel and any parties who may appear of the continuance at the earliest possible date so as to avoid unnecessary appearances, inconvenience and expense.

1. Matters Examiners CAN Continue

- a.** Petition for Probate;
- b.** Petition to Determine Succession to Real Property;
- c.** Spousal Property Petition;
- d.** Accountings/Waiver of Accountings;
- e.** Status Report;
- f.** 850 Petition;
- g.** Petition for Appointment of Temporary Conservator;
- h.** Petition for Appointment of Temporary Guardian;
- i.** Petition for Appointment of General Guardian (If there is no Temporary Guardianship in place);
- j.** Petition for Termination of Guardianship;
- k.** Most miscellaneous petitions;
- l.** Review Hearing- first continuance only;

2. Matters Examiners CANNOT Continue

- a.** Sale of Real Property;
- b.** Petition for Appointment of General Conservator;
- c.** Petition for Removal of Trustee;
- d.** Petition for Removal of Personal Representative;
- e.** 3100 Petition;
- f.** Order to Show Cause;
- g.** Motion;
- h.** Ex Parte Petition

E. A preapproved matter will be continued if an objection is made at time of hearing and counsel for the preapproved matter is not present. Counsel will be notified of the continuance.

F. For contested matters, counsel seeking the continuance must obtain the advance agreement of all parties who have appeared in the matter prior to making a continuance request.

(Adopted 1/1/1990; Rev. 1/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev & Renum. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2015; Rev. 1/1/2017; Rev. 1/1/2018)

Rule 4.4.4

Setting Matters Already on File

A. “Off Calendar.” A petition may be taken “off calendar” by the petitioner or by order of the court. Taking a petition “off calendar” vacates all future hearing dates for that petition, although the petition remains a pending proceeding. A petition may be re-set 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 re-set 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.

B. 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.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2013)

Rule 4.4.5

Telephonic Appearances

In accordance with the provisions of the California Rules of Court, rule 3.670(1), the court designates CourtCall, LLC, as the provider that must be used for telephonic court appearances. A party who intends to appear telephonically must provide notice as specified in the California Rules of Court, rule 3.670(g). The party also must arrange the appearance with CourtCall, including following any notice requirements and payment of fees as required by CourtCall. Information on arranging an appearance and payment of fees may be obtained directly from CourtCall at (888) 882-6878.

The court may deny a request to appear telephonically and require the parties to appear in person pursuant to the California Rules of Court, rule 3.670(h).

(Adopted 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2012)