

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. (See 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 form outlining 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

Unless otherwise ordered by the court, 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; Rev. 1/1/2019)

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. If requested by a non-petitioning party, consent from the petitioner must be provided.

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. Probate Examiners have authority to continue the hearing date on uncontested matters. However, Probate Examiners do not have authority to grant requests for continuance that are made later than three court days prior to the hearing, or that are set forth in subsection 1 below. Counsel or self-represented litigants who have obtained a continuance in an uncontested matter must inform all parties entitled to notice of the continuance at the earliest possible date, so as to avoid unnecessary appearances, inconvenience and expense.

1. Matters Examiners CANNOT Continue

a. Any petition where a Citation or Summons has been issued;
b. Any petition that may be contested due to the nature of the relief sought (e.g. Petition for Removal of Trustee);

c. Any matter specially set by the court (e.g. MSC, CMC, TRC & Trial);

d. Sale of Real Property;

e. Petition for Appointment of Conservator;

f. Petition for Appointment of Guardian;

g. Petition for Order re: Guardianship Visitation;

h. Petition for Termination of Guardianship;

i. Order to Show Cause;

j. Motion;

k. Ex Parte Petition;

l. Review Hearing;

m. Any other petition the court determines may adversely affect involved parties, if continued

E. A preapproved matter will be continued if an objection is made at the 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 a 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; Rev. 1/1/2020)

Rule 4.4.4

Requests to Take Matters Off-Calendar and Resetting Matters

A. Probate Examiners have authority to take certain hearings off-calendar, if uncontested. A written request to take a matter off-calendar must be filed three court days prior to the hearing, with the exception of Ex Parte Petitions, which can be taken off-calendar up to the day of the hearing, by contacting the Examiner. For all matters, counsel or the self-represented litigant seeking to have the matter taken off calendar, must inform all parties entitled to notice that the matter has been taken off-calendar so as to avoid unnecessary appearances, inconvenience and expense. Matters the Probate Examiner cannot take off-calendar, whether uncontested or not, are set forth in subsection 1.

1. Matters Examiners CANNOT Take Off-Calendar:

- a.** Any petition where a Citation or Summons has been issued;
- b.** Any petition that may be contested due to the nature of the relief sought (e.g. Petition for Removal of Trustee);
- c.** Any matter specially set by the court (e.g. MSC, CMC, TRC & Trial);
- d.** Any petition where the court has appointed an Attorney or Guardian ad Litem;
- e.** Status Report (May be taken off-calendar if an Accounting or Waiver of Accounting is filed);
- f.** Accounting/Waiver of Accounting;
- g.** Petition for Appointment of Guardian;
- h.** Petition for Appointment of Conservator;
- i.** Order to Show Cause;
- j.** Motion;
- k.** Review Hearing (May be taken off-calendar, if required document filed);
- l.** Any other petition the court determines may adversely affect involved parties, if taken off calendar.

B. A petition that has been taken off-calendar may be reset 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. Unless otherwise ordered by the court, the verified request must demonstrate that all defects, with the exception of notice, have been cured. In the absence of such a timely request, the matter will be deemed dismissed without prejudice. Proof of proper notice of the new hearing date must be provided in accordance with applicable provisions of law.

(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; Rev. 1/1/2020; Rev. 1/1/2021)

Rule 4.4.5

Telephonic Appearances

In accordance with the provisions of the California Rules of Court, rule 3.670, 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. 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.

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