

Honorable John B. Scherling

Probate Department Courtroom Staff:

Court Clerk: Lorena Alvarez
Bailiff: Glenn Parian

Courtroom: (619) 844-2052

Virtual Appearances

Court appearances may be made either in person or virtually, unless otherwise ordered by the Court. Virtual appearances must be made using the department's Microsoft Teams ("MS Teams") video link or by calling the department's MS Teams conference phone number and using the assigned conference ID number. The MS Teams video conference links and phone numbers can be found at <http://www.sdcourt.ca.gov/ProbateVirtualHearings>.

All Ex Parte Matters

A party seeking ex parte relief must provide notice in compliance with California Rule of Court 3.1203 to all persons entitled to notice. A separate Declaration of Notice that complies with California Rule of Court 3.1204 must accompany every request for an Ex Parte order. The Court will not consider a request to waive notice when the recipient or the recipient's address is unknown unless the declaration required by California Rule of Court 7.52 is submitted.

In addition to compliance with California Rules of Court 3.1200 et seq., all applicants for ex parte relief must comply with San Diego Superior Court Rules 4.7.5 and 4.7.6, including submission of a separately prepared proposed order.

Counsel are reminded that, per California Rule of Court 3.1202(c), an Ex Parte Application requires an affirmative factual showing by declaration containing competent testimony based on personal knowledge of irreparable harm, immediate danger or some other statutory basis for ex parte relief.

Contested and/or Personal Appearance Ex Parte Applications

Contested Ex Parte Applications, or those where counsel wishes to see the Judge, will be heard on Tuesdays at 1:30 p.m. and Fridays at 8:30 a.m. Moving papers, and declarations, should be filed by 10:00 a.m. on the court day preceding the hearing. A reservation may be obtained by submitting to the Business Office the Probate Ex Parte Coversheet (PR-136) with an Ex Parte Application and order. There is a limit on the number of reservations.

Parties appearing ex parte must serve the application, or any written opposition, on all other appearing parties at the first reasonable opportunity. Absent exceptional circumstances, no hearing shall be conducted unless such service has been made. See California Rule of Court 3.1206.

Law and Motion

Law and Motion matters are heard on Fridays at 2:00 p.m. on Friday. In most cases the Court will post a Tentative Ruling by 3:00 p.m. the preceding Thursday. The ruling may be accessed [here](#). If all counsel wish to submit on the Tentative Ruling rather than appear for argument, please contact the department clerk to advise the Court.

Deadlines for filing Law and Motion Pleadings are governed by the Code of Civil Procedure and the California Rules of Court. Provisions of Division IV of the San Diego Superior Court Rules that are otherwise applicable to probate matters are not applicable to Law and Motion matters and will not be observed by the Court to the extent that they are inconsistent with the Code of Civil Procedure.

If a matter settles, or a hearing otherwise becomes unnecessary, counsel should notify the Clerk at the earliest opportunity so that limited Court resources will not be wasted reviewing the matter.

Case Management Conferences

The Court expects compliance with San Diego Superior Court Rule 4.22.6 in advance of all Case Management Conferences, unless compliance is expressly waived by the Court.

Trials and Evidentiary Hearings

The Court's trial/hearing schedule is from 9:00 a.m. to 12:00 p.m., and 1:30 p.m. to 4:30 p.m., with a 15-minute recess in the morning and afternoon. The parties must complete their matters within the time allotted.

Parties are reminded of the provisions of San Diego Superior Court Rules 4.22.8 and 4.22.9 relating to Trial Readiness Conferences and Rule 4.22.11 relating to trial briefs, motions in limine, witness and exhibit lists, and marking of exhibits. Counsel are to meet and confer in advance as to the admissibility of exhibits. Trial briefs should include: (a) enumeration of the issues to be tried and the parties' positions thereon, including the relief sought (and any specific dollar amounts sought) on the enumerated issues; (b) statements of the applicable facts and law, including the applicable standard(s) of proof, the party bearing the burden of proof and any burden shifting; (c) any unusual evidentiary or legal issues anticipated at trial; and (d) all matters of fact to which the parties stipulate.

Guidelines for parties and witnesses appearing virtually for trials and evidentiary hearings in this department can be found [here](#).

Please confirm with the Clerk that exhibits have been properly marked prior to the commencement of trial.

If the parties are providing a court reporter, the court appreciates (but does not require) the parties arranging for real-time reporting technology for the court's use at the parties' expense.

Hearings on Sales of Real Property

Reports of Sale and Petitions for Order Confirming Sale of Real Property in Probate ([JC Form #DE-260/GC-060](#)) are heard on Tuesdays at 11:00 a.m.

When there is a successful overbid in open court on a sale of real property, an "Increased Bid in Open Court" ([SDSC PR065](#)) must be completed, signed, and filed with the court before the conclusion of the hearing; otherwise, confirmation is not effective. Any overbidding party must present proof of an appropriate deposit when submitting the SDSC PR-65 form at the hearing.

Probate Code § 10311(a)(2) requires that an Increased Bid in Open Court be made by a responsible person. In making the determination whether the "responsible person" requirement has been met, the court will consider whether the overbidding party has in his or her possession at the confirmation hearing sufficient certified funds or cashier's checks as a deposit in an amount equal to at least 10% of the amount he or she will bid, and a loan qualification letter or bank statements verifying the buyer's ability to complete the sale.

A potentially overbidding party is encouraged to confer with the moving party in advance of the hearing so the moving party can ascertain whether the overbidding party is qualified to bid, typically by presenting the above-referenced deposit.

Due to the foregoing logistical requirements, the court encourages the moving party and any overbidding party to appear in person (rather than virtually) at the hearing to minimize the necessity for a continuance.

Additional requirements regarding sales of real property are found in Chapter 13 of the San Diego Superior Court Rules.

Telecourt

Beginning March 1st, 2024, Telecourt will be suspended. The Court will reassess its ability to resume this service when a fourth Probate Department is added.

Thank you,

Judge John B. Scherling