



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

Hall of Justice and Records

400 County Center

Redwood City, California 94063-0965

JOHN C. FITTON  
COURT EXECUTIVE OFFICER  
CLERK & JURY COMMISSIONER

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March 26, 2012

To All Interested Persons,

The Court is making changes to its Local Court Rules. These new changes will become effective on the date indicated in the proposal. The court invites you to review and provide your comment on these proposals as afforded pursuant to the State of California Rules of Court, Rules 10.613 and 10.815.

You may send your comments to:

[smssccomment@sanmateocourt.org](mailto:smssccomment@sanmateocourt.org)

with a subject line stating "Comments on Proposed Rule changes". Please state the proposal number, the section and paragraph number on which you are commenting and your comment.

Comments must be received in our office no later than 4 PM, Thursday, May 10, 2012.

Sincerely,

John C. Fitton, Court Executive Officer

A handwritten signature in black ink, appearing to read "Timothy J. Gee".

By: Timothy Gee  
Court Rules Committee Staff

## Proposal Number SPR 2012-01

Title	<b>DIVISION IV - PROBATE</b>
<b>Proposed Changes</b>	<p><u><b>Rule 4.81.4.1. Personal Appearance</b></u>  <u>All petitions for the appointment of a conservator(s), co-conservator(s) or successor conservator(s) will require the personal appearance of the proposed conservator(s) at the hearing for appointment, unless otherwise ordered by the Court. (see also Local Rule 4.6, above)</u>  <u>(Adopted, effective July 1, 2012)</u></p> <p>Rule 4.77.5 All petitions for general guardian will require <del>aan</del> <u>personal</u> appearance by the petitioner(s) <u>and, if not one in the same, the proposed guardian(s) at the hearing for appointment.</u> See <u>also</u> Local Rule 4.6, above. The petitioner, the attorney (if any) and the proposed ward if age 12 or older, shall be present. <del>Young children should be left at home or in the Court day care center, on the second floor of the Courthouse in Redwood City, unless otherwise ordered by the Court.</del>  (Adopted, effective July 1, 2004 ) <u>(Amended, effective July 1, 2012)</u></p> <p>Rule 4.6 Appearance</p> <p>A. Generally. An appearance will be required on the hearing of all matters that are not pre-granted or continued on the Court's Tentative Rulings that are reported on the tape-recorded telephone message or on the Court's website at <a href="http://www.sanmateocourt.org">www.sanmateocourt.org</a>.  <u>See Local Rule 4.77.5 (Personal Appearance- Guardianships) and 4.81.4(a).1 (Personal Appearance- Conservatorships) below.</u></p> <p>Sections B through E are unchanged.</p> <p>(Adopted, effective July 1, 1996)(Amended, effective January 1, 2000, effective July 1, 2004, effective January 1, 2011, <u>effective July 1, 2012</u>).</p>

## Proposal Number SPR 2012-02

Title	<b>LOCAL RULES – DIVISION V (Family Law)</b>
<b>Proposed Changes</b>	<p><b>I. Revise Division V – Table of Contents</b></p> <p>Rule 5.7 Order to Show Cause, <del>and</del> Notice of Motion, <u>and Request for Order</u> Rules</p> <p><b>II. Rule 5.4 Case Flow Management</b></p> <p>Sections A, C thru F are unchanged.</p> <p>B. <u>Assignment for all purposes:</u> The assigned department shall handle all proceedings in the case, including but not limited to, orders to show cause, ex parte applications, <u>request for orders,</u> law and motion, status, and settlement conferences, and trial. Post-judgment motions for enforcement and/or modification should also be heard in the initial department whenever possible. If the assigned department is disqualified, recuses itself, or there is a change in assignments, the case shall be re-assigned to another Family Law Department. Nothing herein shall be construed to interfere with the power of the supervising family law judge to assign or reassign cases pursuant to California Rules of Court.  (Adopted, effective January 1, 2000) (Amended, effective January 1, 2003; effective</p>

### III. Rule 5.5 Alternative Dispute Resolution

Paragraphs A and D. are unchanged.

B. Requirements for filing and service of the Notice of ADR Options In Family Law Actions: Each party to a family law action shall be informed of the alternatives to litigation to resolve their disputed issues. Notice shall be in the form of an information sheet entitled "Notice of ADR Options" (hereinafter "Notice") (see Local Court form FL-02). All parties and counsel shall file and have the Notice served on the other party with any Petition or Response under the Family Law Act or Uniform Parentage Act, ~~Order to Show Cause, Response to Order to Show Cause, Notice of Motion, Response to Notice of Motion, Request for Order, Responsive Declaration to Request for Order, or~~ other family law pleading which will result in a court hearing or trial, unless a Notice has previously been filed within the past 180 days. A Proof of Service shall be filed with the Court.

C. Except for temporary emergency court orders ~~ex parte motions~~ or an initial Request for Order ~~order to show cause~~ filed with a Petition, no hearing or trial date shall be set by the Clerk of the Court until the moving party has complied with filing and service of the Notice as set forth in this Rule.

(Adopted, effective January 1, 2000) (Amended and renumbered, formerly Rule 5.4(c), effective January 1, 2004) (Amended, effective July 1, 2004; effective January 1, 2010; [effective July 1, 2012](#))

### IV. Rule 5.7 Order to Show Cause, ~~and~~ Notice of Motion, ~~Rules and~~ Request for Orders Rules

A. Moving and Responsive Papers

1. Moving Papers: All moving papers must be prepared, filed with the court clerk, and served in accordance with the applicable provisions of Special Rules for Trial Courts Family Law, Code of Civil Procedure and Family Code. Papers not properly completed may be cause for the matter to be dismissed without prejudice. When an Order to Show Cause (OSC) or Request for Order is issued by the Court, it shall be signed by the court and filed with the court clerk before it is served.

2. Time for Serving Responsive Documents and Reply Documents: All papers responding to an Order to Show Cause or ~~Notice of Motion~~ Request for Order shall so state in the caption. Such responsive papers shall be filed with the court and served no later than the ninth (9<sup>th</sup>) court day preceding the hearing. A party who has not filed a timely written response may be denied the opportunity to offer oral argument at the hearing. All papers filed in reply to a response to an Order to Show Cause or a ~~Notice of Motion~~ Request for Order shall so state in the caption. All reply papers shall be filed with the court and served no later than the fifth (5<sup>th</sup>) court day prior to the hearing. Any papers not timely filed may not be considered by the court, absent a showing of good cause.

3. Unchanged.

4. Family Court Services Information Sheet--Mediation and Evaluation form: When filing an ~~Order to Show Cause or Notice of Motion~~ Request for Order regarding custody or visitation, whether disputed or not, the moving party must also complete a Family Court Services Information Sheet--Mediation & Superior Court of California, County of San Mateo Evaluation Form. (see Local Court

form FCS-04 ) This is not to be filed with the court, rather submitted to Family Court Services at the time of the scheduled mediation appointment.

5. Post-Judgment Request for Order~~motions~~: Service of post-judgment Request for Orders ~~motions~~ shall be pursuant to Family Code §215. However, Family Code §215 shall not apply to on-going matters where a judgment of dissolution of status has been entered, but further judgment on reserved issues is pending. [See CRC 5.92 (a)(6)(A) and (C)].

B. See Proposal 2012-03 for changes.

Sections C and D. 1 are unchanged

D. 2. Transfer Prior to Initial Hearing: If, after service of the Order to Show Cause, ~~or~~ Notice of Motion, or Request for Order, but before the hearing date, both counsel and/or self represented parties agree that the hearing of a matter will exceed 20 minutes, the matter may be transferred by the courtroom clerk in the assigned department to a Short Cause Calendar.

Section E is unchanged

F. 7. Manner of Presentation: Participants shall present Orders to Show Cause, Request for Orders, and motions in the following order:

(Adopted, effective January 1, 2000) (Amended and renumbered (formerly Rule 5.6), effective January 1, 2004) (Amended, effective January 1, 2000; January 1, 2005; January 1, 2007; January 1, 2010; July 1, 2010; July 1, 2011; July 1, 2012)

## Proposal Number SPR 2012-03

Title	LOCAL RULES – DIVISION V (Family Law)
Proposed Changes	<p>I. <b>Alphabetical index(amend)</b></p> <p><b>Page iii</b></p> <p>-Children, involvement in <del>mediation</del> <u>child custody recommending counseling</u>, <del>process</del>, 522</p> <p><b>Page iv</b></p> <p><del>Mediation</del> <u>Child Custody Recommending Counseling</u>, Family Court Services, 520</p> <p><del>Child Custody Recommending Counselors</del> <del>Mediators</del>, Complaints and Requests for Change of, 522</p> <p><del>Child Custody Recommending Counseling</del> <del>Mediation</del>, Failure to Appear, 521</p> <p><del>Child Custody Recommending Counseling</del> <del>Mediation</del>, subsequent appointments, 521</p> <p><u>(Amended, effective July 1, 2012)</u></p> <p>II. <b>Rule 5.7</b></p> <p>A. 1. to 3 and 5. and Section D. see Proposal 2012-03 for changes; Section C unchanged.</p> <p>4. Family Court Services Information Sheet--<del>Mediation and Evaluation form</del>: When filing an Order to Show Cause or Notice of Motion regarding custody or visitation, whether disputed or not, the moving party must also complete a Family Court Services Information Sheet--<del>Mediation &amp; Evaluation Form</del>. (see Local Court form FCS-04 ) This is not to be filed with the court, rather submitted to Family Court Services at the time of the scheduled <del>mediation</del> appointment.</p>

- B. 1. If temporary restraining orders pursuant to the Domestic Violence Prevention Act have been granted pending a hearing, the Clerk must set the hearing date within 25 days of the filing date. When mediation ([child custody recommending counseling](#)) at Family Court Services is required in these cases, the hearing will be calendared within 25 days of the filing date, but hearing on the custody and visitation aspects of the case may be continued to another setting unless a Family Court Services [appointment mediation date](#) is available at least 5 court days prior to the hearing.
2. If no restraining orders are requested and mediation ([child custody recommending counseling](#)) at Family Court Services is required, the hearing should be set at least 7 court days after the Family Court Services appointment.

(Adopted, effective January 1, 2000) (Amended and renumbered (formerly Rule 5.6), effective January 1, 2004) (Amended, effective January 1, 2005; January 1, 2007; January 1, 2010; July 1, 2010; July 1, 2011; [July 1, 2012](#))

### III. Rule 5.8

- A. thru C.5. are unchanged
- C. 6. a. thru p. and r. thru u. are unchanged.
- q. Refer to Family Court Services for [child custody recommending counseling mediation of custody and/or visitation](#) \_\_\_;

(Adopted, effective January 1, 2004) (Amended, effective January 1, 2005; July 1, 2005; January 1, 2007; January 1, 2008; January 1, 2009; January 1, 2010; January 1, 2010; [July 1, 2012](#))

### IV. Rule 5.13 Family Court Services

A. Mediation Required: Whenever custody or visitation are in dispute, the parties are required by Family Code §3170 to participate in court ordered mandatory mediation with either Family Court Services or a private mediator retained by the parties. Family Court Services (FCS) provides mediation also called “child custody recommending counseling” without charge to help parties resolve disagreements about the care of their child(ren). The child custody recommending counselor will meet with both parties in mediation to help them make a parenting plan. If the parties are unable to reach an agreement, the child custody recommending counselor will give a written recommendation about the parenting plan to the court.

B. ~~Mediation-Location of~~ Family Court Services

1. ~~Location of Family Court Services:~~ Family Court Services is located on the 6th floor of the Hall of Justice and Records, 400 County Center, Redwood City, California. Phone number: 650 363-4561; Fax 650 363-4966. FCS maintains limited hours in the Northern District Branch for day of court [referrals mediation](#) and appointments.
2. [Setting an appointment with](#) ~~Initiating~~ Family Court Services ~~mediation~~: If ~~an Order to Show Cause or Notice of Motion requests a court order~~ [a Request for Order concerning concerns](#) custody or visitation and FCS mediation, [also called](#) ~~or~~ “child custody recommending counseling” appears necessary, the moving party, or their attorney, must contact FCS after the moving papers are filed and served to schedule an [mediation](#) appointment. If the responding party determines that a custody or visitation dispute exists, which is not set forth in the moving papers, the responding party is responsible for scheduling the earliest possible FCS ~~mediation date~~ [appointment](#) and promptly notify the moving party of the time

and date for the meeting. (Providing the requested relief is available pursuant to Family Code section 213).

3. Parent Orientation Workshop: All parties filing an ~~OSC~~ [Request for Order](#) ~~or motion~~ related to custody and visitation of minor children are required to complete a parent orientation workshop prior to [their FCS appointment](#) ~~mediation~~. Parties can meet this requirement by:

a) Viewing the Orientation and Parent Handbook online at [www.sanmateocourt.org/fcs](http://www.sanmateocourt.org/fcs). Parties are required to bring their certificate of completion to their ~~mediation~~ appointment.

b) Parties may attend the Family Court Services Parent Orientation in person at the Court by calling FCS at 650 363-4561 or register on-line at [www.sanmateocourt.org/fcs/signup/](http://www.sanmateocourt.org/fcs/signup/)

4. Failure to Appear at [FCS Appointment](#) ~~Mediation~~: Family Court Services will impose a fine of \$100 on a party who receives reasonable notice of the ~~mediation~~ appointment at FCS and fails to appear without good cause or who cancels within 48 hours of the appointment. The Court may order additional sanctions.

5. Submitting Information Sheet to Family Court Services: At or before the appointment with FCS, each party must submit a completed Information Sheet. Blank Information Sheets may be obtained at [www.sanmateocourt.org/forms\\_and\\_filing](http://www.sanmateocourt.org/forms_and_filing). If [a day of court](#) [referral to FCS](#) ~~mediation~~ is going to be requested, the parties are expected to have completed the day of court Family Court Services ~~Mediation~~ Information Sheet prior to having their matters called in court. Similarly, if a party is appearing by telephone, an Information Sheet may be obtained online and faxed or mailed to FCS prior to the appointment. The parties should indicate to the courtroom clerk that they plan to request a referral to Family Court Services.

Prior to their appointment, the parties, or their attorneys, may provide FCS with filed-endorsed moving papers, responsive papers, and/or declarations signed under penalty of perjury. Absent a court order to the contrary, FCS will not accept these documents unless they have been served on the opposing party or their attorney. FCS may review further documents submitted by either party if the counselor, at the counselor's sole discretion, determines them relevant.

6. Unchanged

7. Initial Meeting: The assignment of [child custody recommending counselors](#) ~~mediators~~ is an administrative function of Family Court Services. Cases are equitably distributed amongst staff on a rotational basis according to availability, except by specific order of the court. Other than a statutorily authorized support person, only parents shall attend the appointment, unless requested by the court or FCS counselor. The parties' attorneys do not participate ~~in the FCS~~ [session](#) ~~mediation~~. If the [recommending](#) counselor wants to interview the child(ren), or other parties, the counselor will arrange for such interviews after the initial meeting.

8. Subsequent Appointments: Unless a review appointment is requested by the Court or the [recommending](#) counselor, parties may not set an appointment with Family Court Services sooner than twelve (12) months after their last session. In general, it is the policy of Family Court Services to assign the parties the same

counselor in order to provide for continuity of services.

9. Complaints and Requests to Change Counselors (pursuant to Family Code 3163):

a) All requests for a change of [recommending](#) counselor and/or formal complaints shall be in writing. The Client Comment Policy and Complaint Form is available online at [www.sanmateocourt.org/forms\\_and\\_filing](http://www.sanmateocourt.org/forms_and_filing) or by contacting the Family Court Services office at (650) 363-4561.

b) Comments about the ~~mediation~~[FCS](#) process, complaints, and/or requests to change counselors shall be directed to the Manager of Family Court Services and should be made at the earliest possible time after the appointment, but in no event later than 10 calendar days after the report.

c) thru f) are unchanged.

10. Meeting separately: If there is a restraining order, the parties will be seen separately during the same session. A party who alleges under penalty of perjury that they have been a victim of domestic violence may request to meet separately even though there is no current restraining order. Protected parties or parties who allege domestic violence may have a support person in the session. The support person must be at least 18 years of age and cannot be the attorney of record for either party. The support person must sign a FCS form agreeing to keep the session confidential. The support person is for emotional support and is not present to speak or offer comments during the session, or to offer advice to the parent. If the support person is disruptive to the ~~mediation~~[session](#), the counselor will exclude the support person.

11. Involvement of a Child in the Process: As part of the [recommendation](#) ~~mediation~~ process, minors are occasionally interviewed [by FCS](#). Parents should not bring children to appointments unless specifically requested by the [recommending](#) counselor or Court. In general, children are interviewed by the counselor without the parents present. Family Court Services does not provide the type of parent-child interaction/attachment assessment that is included in a private child custody evaluation. Beyond [minor interviews with FCS](#)~~mediation~~, a child's participation in Family Court is governed by Family Code §3042 and related Rules of Court. As such, a counselor will inform the court if they have information indicating that a child in a pending matter wishes to address the court.

12. and 13. are unchanged.

14. Confidentiality of Reports: Family Court Services Report to the Court shall be confidential and unavailable to any person except the court, the parties, their attorneys and any person to whom the court expressly grants access by written order made with prior notice to all parties. Except for the section of the report labeled "Recommendations" or "Agreements" the report should never be attached to any pleadings made part of the Court file. Minors should not have access to the report.

Anyone receiving the child custody recommending counselor's report shall not give copies of, or parts of the report to anyone who is not assisting in the preparation of the case. These reports usually contain sensitive information and shall not be used to cause unnecessary embarrassment or harm to the parties but shall be handled in a responsible, confidential manner for purposes limited to the litigation. The court reserves the right to impose appropriate sanctions upon any



person who violates this rule.

Family ~~Ceourt~~ Services ~~mediation~~-proceedings shall be held in private and shall be confidential. All communications, verbal or written, from the parties to the ~~mediator-child custody recommending counselor~~ made in the proceeding are official information, and FCS staff ~~mediators must protect the confidentiality of the parties and the child and must~~ will not release information about the case to any individual except as authorized by the ~~Ceourt~~ or statute.

If any person subpoenas or otherwise attempts to obtain confidential case ~~mediation~~-information, ~~the mediator~~ FCS staff will be deemed to have asserted the privilege for official information, and said information will not be provided without an order of the court.

Section C is unchanged.

(Adopted, effective January 1, 2000) (Amended and renumbered (formerly Rule 5.11), effective January 1, 2004) (Amended, effective January 1, 2005; January 1, 2010; January 1, 2011; July 1, 2012)

## **V. RULE 5.16 COORDINATION OF COURT PROCEEDINGS AND SHARING OF CASE INFORMATION INVOLVING MINORS**

### **A. Coordination and Determination of Forum.**

It is the policy of the Superior Court to identify and coordinate proceedings involving the same minor which may be scheduled in multiple legal settings. It is further the policy of the Superior Court to coordinate the efforts of the different court divisions so that the minor's needs are served and the resources of the family and the court are not wasted. To these ends, the Superior Court and the agencies serving the court shall establish policies and procedures for the Human Services Agency's Department of Children & Family Services ("DCFS"), Family Court Services ~~mediators~~, ("FCS"), the Probate Court investigators ("PCI"), and, Juvenile Probation Officers ("JPO"), Victims of Violent Crimes Unit of the District Attorney's Office ("VC") and the Family Law Facilitators ("FLF"), to exchange information and to determine the most appropriate forum for the resolution of the issues relating to the minor. The Juvenile Mediation Program ("JMP") staff and/or mediators shall be an included recipient of such information when a minor and/or his/her family has been referred to the program.

Paragraph B. is unchanged

(Adopted, effective July 1, 2007) (Amended, effective July 1, 2012)

## **VI. RULE 5.16.1 INFORMATION SHARING PROTOCOL BETWEEN AND AMONG THE COURT AND DEPARTMENT OF CHILDREN & FAMILY COURT SERVICES (DCFS), FAMILY COURT SERVICES (FCS), PROBATE COURT INVESTIGATORS (PCI), FAMILY LAW FACILITATOR (FLF), DISTRICT ATTORNEY'S VIOLENT CRIME UNIT (VC), AND JUVENILE PROBATION OFFICERS (JPO) STAFF.**

Paragraphs A. thru C., E. and F. are unchanged.

D. Designation of Staff for Information Access. FCS and PCI will designate an appropriate staff person to maintain a current list of FCS counselors, ~~court mediators~~, ~~and~~ facilitators and probate investigators who are authorized to receive information exchanged under this Rule, and periodically distribute this list to DCFS, VC and JPO or when ever there is any change in the make up of those lists.

(Adopted, effective July 1, 2007;(Amended, effective January 1, 2008; July 1, 2012)



The following Local Rules were adopted last year and became effective January 1, 2012, but are being re-posted pursuant to California Rules Of Court, Rule 10.613 and 10.815

	<b>Proposal Number Fall 11 - 05</b>
<b>Title</b>	<b>DIVISION II, COURT MANAGEMENT – SUPERIOR COURT CHAPTER 4. JURY RULES New Rule 2.7.7 regarding copying and processing juror questionnaires.</b>
<b>Proposal</b>	<p>Addition of a new Rule</p> <p>Rule 2.7.7 Juror Questionnaires for all case types, with the exception of death penalty cases (NEW)</p> <p>A. Printing of juror questionnaires.</p> <ol style="list-style-type: none"> <li>1. If juror questionnaires are proposed by any party, the requesting party must provide a copy of the proposed questionnaire to all parties and they must meet and confer to agree on a questionnaire that will be distributed to prospective jurors. The juror questionnaire must be presented to the trial judge on the day of trial at the very latest. The trial judge has discretion to determine whether a juror questionnaire will be allowed.</li> <li>2. The proposed questionnaire shall be presented to the trial judge for review and approval prior to it being used. Once the trial judge has approved the questionnaire, it is the responsibility of the requesting party to bear the cost of creating and copying the blank questionnaire and present the copies to the courtroom staff of the trial department prior to the juror selection process. Counsel shall be responsible to provide sufficient number of copies of the blank questionnaire for the entire juror selection process.</li> </ol> <p>B. Printing and Distribution of Completed Juror Questionnaires.</p> <ol style="list-style-type: none"> <li>1. As juror questionnaires are completed by prospective jurors, the court staff will collect the questionnaires, process them and deliver them to the requesting party for copying. It is the responsibility of the requesting party to print copies of the completed questionnaires for all parties in the case and the court and to distribute the copies to the parties and the court within the timeframe as specified by the trial judge. All originals must be returned to the courtroom clerk of the trial department hearing the trial immediately after they have been copied.</li> <li>2. The parties in the case may agree to share in the cost of printing the questionnaires at which time they are to notify the court of their agreement.</li> </ol> <p>(Adopted, effective January 1, 2012)</p>

	<b>Proposed Local Court Fee 11 - A</b>
<b>Title</b>	<b>Local Fee – Records Division Off site Records Retrieval Fee of \$10</b>
<b>Proposal</b>	A fee of \$10 will be charged per file request that requires retrieval and return of the file from an off-site location. This fee is authorized by Government Code section 70631 and California Rules of Court, Rule 10.815 (b)(13).