

INVITATION FOR PUBLIC REVIEW AND COMMENT
[Proposed Effective Date of July 1, 2013]

Pursuant to California Government Code § 70631 and California Rules of Court, Rule 10.613 (g) and 10.815(b), the following proposed amendments to the Local Rules are hereby distributed for public comment and notice. The affected items are:

Proposed Revisions to Local Court Rules

(Click on proposal number for link to page)

Spring13-01 DIVISION IV – PROBATE DEPARTMENT

Rule 4.1 – General Provisions

Rule 4.10 – Judicial Council Orders

Spring13-02 DIVISION V – FAMILY LAW DEPARTMENT AND FAMILY COURT SERVICES

Rule 5.6 – Ex Parte Orders

Rule 5.6.1 – Request for Emergency Orders

Spring13-03 DIVISION III – FAMILY LAW DIVISION

Rule 5.5 – Alternative Dispute Resolution

Rule 5.7 – Request for Orders, Order to Show Cause, and Notice of Motion

Rule 5.8 – Trial Setting, Status Conference, and Mandatory Settlement Conference Rules

Rule 5.9 - Judgment by Default or Uncontested Hearing

Rule 5.10 – Preparation of Orders After Hearing and Judgments

Rule 5.13 – Family Court Services

Rule 5.14- Appointment of Counsel for Child

Spring13-04 DIVISION IX – OTHER SPECIAL DEPARTMENTS AND CALENDARS

Rule 6.12 – Filing of Papers and Keeping records of Northern Department

Spring13-05 DIVISION XI – CIVIL RULES

Rule 11.4 – Civil Case Assignments

Submitting Comments

- Comments must be submitted addressed to *Proposed Rules* via email at smsccomment@sanmateocourt.org.
- Please state the proposal number, the section and paragraph number on which you are commenting and your comment.
- Comments must be received **no later than 2:30 p.m. on Friday, May 10, 2013.**

Proposal Number SPR13- 01

Title	DIVISION IV – PROBATE DEPARTMENT Amendments to Rule 4.1 (B) and (C) – General Provisions and Rule 4.10 – Judicial Council Forms
Summary	<p>Amendment to LRC 4.1 (B) and (C) eliminates the expectation and automatic authorization for two continuances in conservatorship, guardianship and general probate matters.</p> <p>Amendment to LRC 4.10 (A) eliminates the reference to the local court form listed in number 5 “Declaration for Northern Branch Assignment (PR-CV-FL-14).</p>
Proposed Change(s)	<p>Rule 4.1 General Provisions</p> <p>Paragraph A is unchanged.</p> <p>B. Continuances in Conservatorship and Guardianship Matters: <u>A request for continuance should be made at the earliest possible time prior to the hearing-. Continuances requested by the attorney of record, or petitioner in pro per, may be granted upon a showing of good cause. Continuances by stipulation are subject to the approval of the Probate Judge. All fees related to the request for continuance shall be paid at the time of the request. will be allowed to continue conservatorship and guardianship matters twice; however, only one continuance will be allowed for General Plan and/or Inventory and Appraisement hearing. If a further continuance is requested, An appearance will be required by the attorney or the self-represented conservator or guardian, before the Court will consider granting a continuance more than once for a General Plan and/or Inventory and Appraisement hearing, or more than twice for any other conservatorship or guardianship matter another continuance. Nothing herein shall prevent the Probate Court Investigator from continuing a matter as necessary to complete their investigation or review.</u></p> <p>C. Continuances in Probate Matters Other Than Conservatorship and Guardianships. <u>A request for continuance should be made at the earliest possible time prior to the hearing. Continuances requested by the attorney of record, or petitioner in pro per, may be granted upon a showing of good cause. Continuances by stipulation are subject to the approval of the Probate Judges. All fees related to the request for continuance shall be paid at the time of the request. will be allowed to continue all other probate matters twice.</u> If the matter is not ready for hearing after two continuances it will be dropped from the probate calendar, and the matter will have to be reset and re-noticed before it will be heard.</p> <p>Paragraphs D and E are unchanged.</p> <p>F. Venue for Probate Cases</p> <p>All proceedings under the Probate Code are to be filed with the Probate Division’s Clerk’s Office at the Hall of Justice, 400 County Center, first floor, Room B, Redwood City, California. All Probate Court proceedings will also be heard at the Southern Division in Redwood City, California, unless otherwise ordered by the Presiding Judge or a designated Supervising Judge pursuant to Local Rule 6.9.</p> <p>(Adopted, effective July 1, 1996; Amended, effective January 1, 2003; effective July 1, 2004; Amended, effective January 1, 2013); <u>(Amended, effective July 1, 2013)</u></p>

Rule 4.10 Judicial Council Forms

A. All Judicial Council adopted Probate forms must be used where applicable (Probate Code § 1001, California Rules of Court, Rule 7.101). In addition, the Superior Court in San Mateo County requires the use of the following local court forms:

1. Conservatee's Information and List of Relatives (PR-1)
2. Notification to Court of Addresses for Guardianship (PR-2)
3. Request for Appointment of Probate Referee [Probate Estates](PR-5)
4. Uncontested Calendar Request [All Probate](PR-CV-FL-7)
- ~~5. Declaration for Northern Branch Assignment (PR-CV-FL-14)~~
- ~~6-5.~~ Guardianship Affidavit, Questionnaire, and Declaration (PR-18)
- ~~7-6.~~ Confidential Status Report (Conservatorship) (PR-19) (or a more detailed pleading that contains, at the minimum, all of the information that is required in PR 19).

B. All pertinent information requested on a form must be completed in its entirety before being submitted to the Probate Clerk's office for filing.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)
(Amended, effective July 1, 2005)(Amended, effective July 1, 2006) (Amended,
effective July 1, 2013)

Title	DIVISION V – FAMILY LAW DEPARTMENT Amendment to Rules 5.6 and 5.6.1
Summary	This amendment to LRC 5.6 and 5.6.1 eliminates all provisions which are duplicative or contrary to those newly enacted in California Rule of Court 5.151 entitled “Request for Emergency Orders (Ex Parte Orders)” and limits the local rule provisions to those processes and procedures specific to San Mateo County.
Proposed Change(s)	<p>Rule 5.6 Ex Parte Orders (except Requests for Emergency Orders under CRC, 5.151, et seq., please see Rule 5.6.1). <u>Please see California Rules of Court (CRC), Rules 5.151, et seq., for procedures governing requests for “Emergency Orders” . The following local policies and procedures shall be considered and followed when making a request for emergency orders under CRC 5.151</u></p> <p>A. Court’s Policy. Ex parte applications are strongly disfavored. Orders will be issued thereon only upon a substantial showing of need. An evidentiary declaration shall contain facts that demonstrate why the matter is appropriately heard as an ex parte matter, as opposed to being heard on the court’s law and motion calendar (with or without an order shortening time). The court’s policy is to decide ex parte applications solely based upon the affidavits/declarations submitted in favor of, or in opposition to, the applications.</p> <p>B. Ex Parte Applications . The court requires strict compliance with the provisions of Code of Civil Procedure §1008, and the California Rules of Court, Rules 3.1200-3.1207. California Judicial Council Forms must be used where applicable. The party seeking any ex parte order has an absolute duty to inform the court that a requested order will change the status quo.</p> <p>1. Represented Parties. Applications for ex parte orders in family law matters <u>when there is a pending Family Law case</u> shall be presented to the judge assigned to the case for all purposes through the family law clerk’s office at the Hall of Justice and Records in Redwood City. <u>When there is no pending Family Law case, the application shall be submitted to the Family Law Clerk’s office and will be assigned a department by the Family Law Supervising Judge for review and determination.</u></p> <p>2. Self-Represented Parties. Self-Represented parties seeking an ex parte order must present their papers to the Family Law Facilitator’s office for review prior to submission to the assigned department. After review of the Ex Parte papers by the Family Law Facilitator’s office, the self-represented party will be directed to the Family Law Clerk’s Office to file their Ex Parte papers and for assignment by the Family Law Supervising Judge to a department for review and determination.</p> <p>3. Ex Parte Applications. Ex Parte Applications, where there is no pending Family Law case and a party is represented by counsel, shall be submitted to the Family Law Clerk’s office and will be assigned a department by the Family Law Supervising Judge, for review and determination.</p> <p>4.3. Filing Fees. All parties are required to pay all applicable filing fees associated with filing Ex Parte Applications as required by law, unless the party has obtained a Fee Waiver Order. The filing fee must be paid prior to the application being presented party going to the appropriate Department for review and determination, of their Application. [Changes indicated in bold and italicized] <u>Superior Court of California, County of San Mateo</u></p>

C. Application and Supporting Documentation. It is the court's policy to decide ex parte applications solely based on the affidavits/declarations submitted in favor of, or in opposition to, the applications. All affidavits or declarations must set forth factual information within the personal knowledge of the affiant/declarants. Conclusions, feelings, wishes, or unsubstantiated fears will not justify an order. Counsel or a party will not be permitted to augment affidavits or declarations by statements in court. If the affidavit or declaration does not contain a sufficient factual basis for a particular order, it will not be granted.

D. Declaration Regarding Noticing of Ex Parte Application. An application for an ex parte order must be accompanied by a written affidavit or declaration that shall include the following information [See Local Form FL-8]:

- 1) Information on whether the opposing party is represented by counsel; and
- 2) The name, address, and telephone number of the opposing attorney or the opposing self-represented party; and
- 3) Explanation of how notice of submitting the application was given to the other party pursuant to California Rules of Court 3.1203-3.1204 by either:

- a) Providing the date, time and manner of giving notice; or
- b) Specifying reasons why notice has not been given.

This rule applies to initial applications whether or not the other party has appeared in the proceedings or is represented by counsel.

E. Notice Requirements Generally. Ordinarily, an ex parte application will not be considered nor an order issued without the following:

1. Give reasonable notice of the filing of the ex parte application to the opposing party so that the party might oppose the application. Reasonable notice is defined according to the California Rules of Court, Rules 3.1203-3.1204 as notifying all parties no later than 10:00 a.m. the court day before the ex parte is considered by the court. The court may waive this notice requirement in extraordinary circumstances if good cause is shown that imminent harm is likely if notice is provided to the other party.
2. Absent good cause, the Ex Parte application and all documents in support of the application must be delivered to all of the other parties at the same time when Notice is given, as specified in paragraph E.1 above. Delivery of the documents can be achieved by either personal delivery or facsimile transmission. Delivery of the documents cannot be made by facsimile alone unless there is prior agreement between the parties, which is set forth in the moving party's declaration. If served by facsimile transmission, the moving party shall include in their declaration evidence that the opposing party or their counsel actually received said transmission during normal business hours.
3. The moving party shall notify the opposing party of the specific date, time and location the ex parte application will be submitted to the court.
4. Responding/opposing attorneys or self-represented parties shall submit and serve their written response to the party seeking the ex parte relief and to the court within 24 hours of receiving notice of the Ex Parte Application. The Court will notify the parties if it requests an expedited response, which may occur in some instances.
5. Notwithstanding the failure of an applicant to comply with the requirements as set forth in this Rule, the clerk must not reject an ex parte application for filing and must promptly present the

~~F. Notice Requirement – Emergency Circumstances.~~ If the moving party alleges that notification may negate the benefit of the requested relief, ex parte relief may be granted without the required notice if the necessary statutory requirements have been met. The Declaration of Notice shall set forth the factual basis upon which such claim is based. This includes an adequate showing that giving notice would frustrate the purpose of the proposed order or that the applicant would suffer immediate and irreparable injury before the adverse party can be heard in opposition.

~~G. Excuse of Notice Requirement.~~ Notice may be excused if, following a good faith attempt, the giving of notice is not possible or if notice ought not to be required. All of the foregoing must be established by declaration accompanying the Application.

CH. Exceptions to the Notice Requirements. Requests for the following types of ex parte relief do not require notice to the opposing party or the opposing party's counsel:

1. Signature of an order or judgment for which opposing counsel has approved or agreed not to oppose entry;
2. Signature of an order or judgment after default proceedings;
3. Wage and earning assignment orders for support orders made on or after July 1, 1990 (Family Code §5230). Earning assignment orders may be granted ex parte for support orders made on or after July 1, 1990 by submitting the assignment order separately or with the underlying support order or judgment.
4. Ex parte assignment orders for arrearages accrued under any support order may be requested by completing a detailed declaration and calculation, signed under penalty of perjury, setting forth the month to month accrual of amounts paid and unpaid. Ex parte assignment orders for arrearages are granted without prejudice to subsequent attack by a motion to quash.
5. Orders to locate prepared by the Department of Child Support Services.
6. Order for the restoration of a former name.
7. Order for payment through the Department of Child Support Services.
8. Request for a child protective services report for a minor child requested by Family Court Services.

ID. Application for Ex Parte Temporary Custody Order. In addition to those requirements set forth in rule 5.151(d)(5), California Rules of Court, A party requesting an ex parte custody order shall include information on any existing custody order(s) and, by affidavit/declaration, accurately describe the provisions of any existing order, the current custody arrangement, the requested relief, the immediate harm or irreparable injury, and the status of any previous related referrals to any law enforcement agency or child protective services in their supporting affidavit/declaration.

JE. Order Shortening Time for Hearing and/or Deposition. When a request for requesting an order shortening time for hearing and/or taking of a deposition is granted, ~~the supporting evidentiary declaration(s) must set forth the necessity for the order shortening time. For good cause shown,~~ time for service may be shortened up to two court days before the hearing date and five calendar days before the taking of a deposition.

FK. Stay Away From Residence Orders. Ex parte residence exclusion orders will not be issued unless there is a clear showing, under Family Code §6321, ~~of assault against and/or threats to assault the party, or a person under the control of the party, that such party has a right to possession of the premises, and that physical or emotional harm would otherwise result.~~ The showing must include a full description of the most recent instance(s) of actual assault, or threats to assault, disposition towards violence, substance abuse or other such facts, and shall specify the

date of each occurrence.

LG. Exclusive Use of Vehicle. An ex parte order granting exclusive use of a vehicle ordinarily will not be granted unless ~~the~~ declaration demonstrates a true emergency and specific facts to support the order, including a discussion of the relative hardships to the parties and a compelling need for the order. Whenever possible, any request for orders with respect to a vehicle should include the year, make and license number of the vehicle.

HM. Set Aside of Ex Parte Order. If a responding party requests an ex parte order to be set aside prior to the date set for hearing, notice shall be given to the moving party. The court may order an earlier hearing date or modify the orders on a proper showing in lieu of setting aside the orders.

N. Time and Place. ~~Ex Parte Applications will be considered by the Supervising Judge of the Family Law Division, or designee, at 2:00 PM Monday through Friday, except for court holidays.~~

(Adopted, effective January 1, 2000) (Renumbered *(formerly 5.5)* and Amended, effective January 1, 2004) (Amended, effective January 1, 2008) (Amended section E, effective July 1, 2008) (Amended, effective January 1, 2012) (Amended, effective January 1, 2013) (~~Amended, effective July 1, 2013~~)

Rule 5.6.1 Request for Emergency Orders (~~REPEALED~~)

~~Please see California Rules of Court (CRC), Rules 5.151, et seq., for procedures governing requests for “Emergency Orders” as defined in CRC, Rule 5.151(a) and (b). For all other Ex Parte matters not covered under CRC 5.151, et seq. please see the procedures in Rule 5.6 above.~~

(Adopted, effective January 1, 2013) (~~Repealed, effective July 1, 2013~~)

Proposal Number SPR 13-03

Title	DIVISION V – FAMILY LAW DEPARTMENT Various Rule Sections
Summary	Update of references to the California Rules of Court in our Local Court Rules resulting from 2012 revisions to the Family Law CRC's and changes necessary to clarify and correct information within the Rules
Proposed Changes	<p><u>Rule 5.5</u> <u>Alternative Dispute Resolution</u> Paragraphs A. – D. are unchanged</p> <p><u>E. The Court has existing procedures in adherence to California Rules of Court, Rule 5.420.</u> (Adopted, effective January 1, 2000) (Renumbered (<i>formerly Rule 5.4(c)</i>)) and Amended, effective January 1, 2004) (Amended, effective July 1, 2004) (Amended, effective January 1, 2010) (Amended, effective July 1, 2012) (<u>Amended, effective July 1, 2013</u>)</p> <p><u>Rule 5.7</u> <u>Request for Orders, Order to Show Cause, and Notice of Motion, and Request for Orders Rules</u></p> <p>A. Moving and Responsive Papers</p> <p>1.—1. Moving and Responsive Papers – See California Rules of Court, Rules 5.90 through 5.94. :— 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.</p> <p>2.—Time for Serving Responsive Documents and Reply Documents:— All — papers responding to an Order to Show Cause or 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 (9th) 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 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 (5th) court day prior to the hearing. Any papers not timely filed may not be considered by the court, absent a showing of good cause.</p> <p><u>32. Extra-Courtesy Copies of Moving and Responsive Papers: Counsel and parties are advised to bring an extra set/courtesy copy of all relevant moving or responsive papers to the hearing. Due to last-minute filings and the volume of business, the court file may be incomplete at the time of the hearing. Courtesy copies are welcomed and encouraged. Parties shall check with individual departments that will be hearing you the motion for preferences regarding providing hard copies, email, or fascimilies and the timeframe preferences within which to provide the courtesy copies.</u></p>

~~43.~~ Family Court Services Information Sheet: When filing a Request for Order regarding custody or visitation, whether disputed or not, the moving party must also complete a Family Court Services Information Sheet. (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 appointment.

~~54.~~ Post-Judgment Request for Order: Service of post-judgment Request for Orders 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)(1)(6)(B)(a)(6)(A) and (C)].

B. Initial Calendaring: All motions and Orders to Show Cause shall be initially set on the law and motion calendar of the assigned family law department. The initial hearing date shall be assigned by the clerk's office at the time the matter is filed. Approximate setting dates are available on the updated clerk's office hotline at (650)599-1180 and may be requested on a messenger slip or other memorandum addressed to the clerk.

~~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 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.~~

Sections ~~C. and B. through~~ D. are unchanged.

E. Continuances: A request for a continuance should be made at the earliest possible time prior to the hearing, except as otherwise noted in rule 5.113(f) of the California Rules of Court. A request by the moving party for continuance at the time of the hearing ~~shall~~may be looked upon with disfavor and in the absence of good cause, ~~shall~~may be denied. Once a matter has been set for hearing, no more than two continuances ~~shall~~may be granted unless good cause is shown. Absent good cause, if a case is not ready to proceed to hearing on the date established as a result of the second continuance the court ~~shall~~may take the matter off calendar. Once approved, counsel should advise the assigned department of the continuance at the earliest possible date prior to the hearing.

1. Stipulated continuances prior to hearing: Requests for continuances should be directed to the clerk's office via facsimile, email or in person, ~~until no later than~~ 12:00 Noon the court day before the scheduled hearing. If timely made, the Clerk will grant the continuance provided that:

- a. proper service was effected;
- b. the requesting party represents that all parties have agreed to a continuance;
- c. all parties have agreed to continue the matter to a specific date which is provided to the Clerk at the time of the request (counsel and parties are

reminded that available dates may be obtained from the court's hotline (650) 599-1180);

- d. the parties send written confirmation to the Clerk by letter or using local court form "Stipulation and Order Re: Continuance"; and
- e. the proper fees have been paid or arrangements for payment have been made.

Paragraph 2 is unchanged.

3. ~~If custody or visitation are at issue and the Family Court Services report is not available at least 2 days prior to the hearing, the court may grant a continuance upon request of a party who has been prejudiced by the inability to review the report sufficiently in advance of the hearing.~~

Paragraph 4 ~~is unchanged~~ becomes Paragraph 3.

F. Conduct of Hearings:

1. Meet and Confer Requirements: Once responsive papers have been filed, the moving party shall contact the opposing party prior to the scheduled hearing and arrange to meet and confer (personally or by telephone) prior to the hearing. All parties and counsel are to make good faith efforts to resolve the issues pending before the court, and to inspect documents and exchange information so that issues may be resolved, facts agreed to by stipulation, and those issues remaining for determination be clearly delineated and expeditiously presented to the court at the time of the hearing. Failure to comply with the meet and confer requirements in good faith may result in the award of attorney's fees and/or sanctions against the non-cooperating counsel or party. The inability of counsel to get along or communicate effectively is not an excuse for failure to meet and confer. The professional obligation of counsel to meet and confer in an effort to resolve disputes is an obligation owed to clients, the court, witnesses, children, and other litigants. *This rule does not apply to harassment or domestic violence matters ~~unless both parties are represented by counsel.~~ (See rule 5.98 of the California Rules of Court)*

Sections 2 through 8 are unchanged.

G. ~~Presentation of Evidence at the Hearing~~ Evidence at Hearing: Presentation of testimony at the hearing is dictated by the provisions of Family Law Code section 217 and any rules of court adopted by the Judicial Council regarding implementation of Family Code section 217 (i.e. rule 5.111 of the California Rules of Court (declarations) and rule 5.113 of the California Rules of Court (live testimony)).

H. and I. Unchanged.

(Adopted, effective January 1, 2000)(Amended and renumbered (formerly Rule 5.6), effective January 1, 2004) (Amended, effective January 1, 2005) (Amended, effective January 1, 2007) (Amended, effective January 1, 2010)(Amended, effective July 1, 2010) (Amended, effective July 1, 2011) (Amended, effective July 1, 2012) (Amended, effective July 1, 2013)

Rule 5.8 Trial Setting, Status Conference, and Mandatory Settlement Conference Rules

A. Unchanged

B. Trials:

Please refer to rule 5.393 of the California Rules of Court.

- ~~1. Trial matters may be short cause or long cause. Trials are defined as:
 - a. Those family law matters referred for trial from a status or settlement conference and in which the trial or hearing requires time on the Court's calendar in excess of 20 minutes;
 - b. Those family law matters set on, or transferred from the law and motion calendar to the family law trial calendar because the time required to hear the matter will exceed 20 minutes; and
 - c. Those family law matters directed by the Court to be placed on the family law trial calendar.
 - d. For purposes of Government Code §26830 only, a trial is considered to be a matter with a setting of one day or more.~~

~~2. Memorandum that Civil Case is at Issue ("At Issue Memorandum"): No At Issue Memorandum to set the matter for trial shall be filed in any case commenced after January 1, 2004. Pending cases as of January 1, 2004 shall be assigned to a department pursuant to Local Rule 5.4 such that cases shall be randomly assigned to a department and given an date for a status conference upon filing of an At Issue Memorandum. Except as noted herein, counsel and all self-represented parties are advised that compliance with all provisions of Local Rule 5.8(C) is required for all cases, whether pending or not as of the effective date of this rule.~~

C. and D. are unchanged.

E. Short Cause Trials

1. Short cause trials are any evidentiary hearings of up to 2.5 hours~~may not exceed 3 hours~~, including time for the judge to review the file, read the trial briefs, conduct chambers conferences and issue a ruling. Cases may be assigned to a department's Short Cause trial calendar by court order from the law and motion calendar or at the conclusion of a status or settlement conference that did not fully resolve all pending issues. A trial date will not be set except by the assigned department after determination is made that subsequent conferences would not settle the case. Cases that exceed the estimated time for hearing~~3-2.5 hours time limit~~ may be mis-tried by the trial judge and set for a status or Mandatory Settlement conference with a revised time estimate, continued, or dismissed from the trial calendar.

2. through 7. are unchanged

F. Long Cause Trials

1. A long cause trial is defined as any trial estimated to require more than 2.5 hours (rule 5.393 of the California Rules of Court)~~3 hours of court time~~.

2. through 4. are unchanged.

5. Trial Briefs: Trial briefs are required. If a case involves complex or novel points of law or otherwise required by California Rules of Court, the trial brief shall include legal points and authorities. The format of the trial brief is left to each attorney's discretion. Trial briefs shall be exchanged as set forth in Appendix "2" (See rule 5.394 of the California Rules of Court).

(Adopted, effective January 1, 2004) (Amended, effective January 1, 2005)
(Amended, effective July 1, 2005) (Amended, effective January 1, 2007)
(Amended, effective January 1, 2008) (Amended, effective January 1, 2009)
(Amended, effective January 1, 2010) (Amended, effective July 1, 2012) (Amended, effective July 1, 2013)

Rule 5.9 Judgment by Default or Uncontested Hearing

Refer to rules 5.401 through 5.415 of the California Rules of Court.

~~A.—A dissolution or legal separation may proceed by way of default or stipulation. The judgment is obtained by testimony at a default prove-up or uncontested hearing, or by stipulation and/or affidavit pursuant to Family Code §2336.~~

~~B.—To obtain entry of default, the Petitioner must complete and file a Proof of Service of Preliminary Declaration of Disclosure, a Request to Enter Default, and provide the clerk with a stamped envelope bearing sufficient postage addressed to the spouse who has defaulted, with the address of the family court clerk's office as the return address. After default is entered, the Petitioner may apply to the court for the relief sought in the Petition by submitting an original and two copies of a judgment packet. A judgment packet must contain the following documents:~~

~~1.—Declaration of Default or Uncontested Dissolution or Legal Separation, Judgment (Family Law) with or without a Marital Settlement Agreement, Notice of Entry of Judgment and envelopes, with the court's address as the return address, stamped and addressed to each party.~~

~~2.—If a default judgment is submitted with a Marital Settlement Agreement, the judgment package must also include a Declaration Regarding Service of Final Declaration of Disclosure from each party unless waived consistent with state law (Family Code §2105). Respondent's signature on the Marital Settlement Agreement must be notarized.~~

~~3.—If the proposed uncontested judgment is not a stipulated judgment and includes a division of property, a fully completed property declaration, including values, must be filed. The court cannot divide assets or debts that are not listed on the Petition or property declarations served on Respondent.~~

~~4.—If the proposed uncontested judgment is not a stipulated judgment and includes provisions for child support, spousal support or a waiver thereof, attorney's fees or costs, the moving party must also file a current income and expense declaration. Neither child nor spousal support will be granted unless the moving party sets forth an estimate of the other party's income in the income and expense declaration. If the moving party does not know the other party's present income, this requirement may be met by evidence of the other party's ability to earn, work history or other relevant facts.~~

~~5. Requests for default in a nullity action must be accompanied by a declaration setting forth the factual basis for the request.~~

~~C. Stipulated judgments in cases which are not proceeding by default, must contain the following waivers:~~

- ~~1. The matter may proceed on the default or uncontested calendar before a judge pro tem; and,~~
- ~~2. The parties waive their right to notice of trial, a statement of decision, to move for a new trial, and to appeal.~~

(Adopted, effective January 1, 2000) (Renumbered (formerly Rule 5.13), and Amended, effective January 1, 2004) (Amended, effective July 1, 2013)

Rule 5.10 Preparation of Orders After Hearing and Judgments

~~*[Pending this Court's review of and action on this Local Rule, please refer to California Rules of Court, Rule 5.125 effective on January 1, 2013.]*~~

A. Reference rule 5.125 of the California Rules of Court and note paragraph B. below.

~~A.B. Unless otherwise ordered by the court, counsel for the moving party shall prepare a formal order or judgment. The order or judgment shall be prepared within ten (10) calendar days of the hearing, unless a transcript has been ordered within five (5) days of the hearing and paid for in a timely manner, in which case the order shall be prepared within seven (7) calendar days of receipt of the transcript. The party preparing the order or judgment shall ensure be prepared so that at least two lines of text appear on the page upon which the judge's signature is affixed. No text may appear after the judge's signature.~~

~~B. The party preparing the order or judgment shall send it to the opposing side for approval as to form and content unless the court authorizes the preparer to submit it directly to the court. The recipient shall have ten (10) calendar days from the date of mailing to review the order and, either sign it as prepared, or notify the proponent in writing of objections to its content. If the parties cannot agree on the language of the order, then, within 45 days, of the hearing or trial either party may submit the proposed order with a copy of the transcript of the recited order and any written objections by the other party to the judicial officer who made the ruling.~~

~~C. If the responding party fails to timely approve or object to the order or the judgment, the party who prepared the order shall send a second letter stating that he or she will submit the order or judgment drafted to the court for signature, if no written response to the order is received with five (5) calendar days of the date of the letter. If there is no written response to the second letter, the party preparing the order may transmit the proposed order to the Court for signature by the assigned judicial officer with a declaration explaining the circumstances and with copies of both communications attached.~~

(Adopted, effective January 1, 2000) (Renumbered (formerly Rule 5.14) and amended, effective January 1, 2004) (Amended, effective July 1, 2013)

Rule 5.13 Family Court Services

- A. Unchanged.
- B. Location of Family Court Services

Paragraphs 1. and 2. are unchanged.

3. Parent Orientation Workshop: All parties filing a Request for Order related to custody and visitation of minor children are required to complete a parent orientation workshop prior to their FCS appointment. Parties can meet this requirement by:

- a) Viewing the Orientation and Parent Handbook online at www.sanmateocourt.org/fcs. Parties are required to bring their certificate of completion to their 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/court_divisions/family_court_services/signup.php

4. Failure to Appear at Family Court Services Appointment: Family Court Services will impose a fine of \$100 on a party who receives reasonable notice of the appointment at FCS and fails to appear without good cause or who cancels within 48 hours (two court business days) 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. If a day of court referral to FCS is going to be requested, the parties are expected to have completed the day of court Family Court Services 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 must be faxed to or received by ~~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.

Paragraphs 6. through 10. are unchanged

11. Involvement of a Child in the Process: As part of the recommendation 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,

a child's participation in Family Court is governed by Family Code §3042 and related California Rules of Court, see rule 5.250 of the California 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 14. are unchanged

13. Sealing reports and Filing Recommendations Reports submitted by FCS or other mental health professionals shall ~~always~~ be sealed in the civil file.

C. Court Ordered Private Child Custody Evaluations:

1. Court appointed evaluators shall abide by the requirements of rules 5.220 through 5.230 of the California Rules of Court, et seq. Uniform Standards of Practice for the Court Ordered Child custody evaluation in the California Rules of Court.

2. through 4. are unchanged.

5. Notwithstanding rule 5.235 of the California Rules of Court, The evaluator may initiate an ex parte communication with the court to define the scope, process and methods of the evaluation when authorized by the order appointing the evaluator.

6. through 12. are unchanged.

(Adopted, effective January 1, 2000)(Renumbered (formerly 5.11)and Amended, effective January 1, 2004) (Amended, effective January 1, 2005) (Amended, effective July 1, 2010) (Amended, effective January 1, 2011).(Amended, effective January 1, 2012) (Amended, effective January 1, 2013) (Amended, effective July 1, 2013)

Rule 5.14 Appointment of Counsel for Child

A. Reference, rules 5.240 through 5.242 of the California Rules of Court.~~The court may appoint counsel for a child at any time the court determines that the appointment is justified by the specific facts of that case and may do so over the objection of the parties.~~

B. ~~Once the decision to appoint counsel for a minor has been made, the court shall determine which of the following methods will be used for the selection of counsel:~~

~~1. By the judge's selection of a member from the San Mateo County Private Defender Program; or,~~

~~2. By the parties' stipulation to a member from the San Mateo County Private Defender Program.~~

~~3. By stipulation to a private attorney as approved by the court and for which the parties shall bear full financial responsibility.~~

C. Upon appointment of counsel for a child, the judge shall designate who shall contact the attorney and determine his or her availability. Once the attorney has agreed to accept the appointment, an order of appointment of counsel for minor shall be prepared, filed and served

upon the appointed counsel, counsel for the parties or unrepresented parties. Should the appointed counsel be unavailable for any reason, this information shall be reported to the clerk of the judge making that appointment and another appointment shall be made.

D. No judicial officer shall appoint counsel for a minor ~~through the Private Defender panel~~ and authorize the payment for services of said counsel to be made without the prior approval of the supervising judge of the Family Law Department.

E. **Payment for Court appointed counsel services (Fam.C. sections 3150 & 3153, Rules 5.240 & 241 of the California Rules of Court(CRC))**~~All requests for payment for services of said counsel to be made by the Private Defender Program shall be submitted to the supervising judge for his or her approval.~~

1. Payment by Party(ies). If the Court determines that the party(ies) has/have the ability to pay all or a portion of the the appointed counsel's compensation, the Court must state the rate of compensation and the manner of payment as provided for in CRC, rule 5.241. Failure of the party(ies) to pay pursuant to the Order may result in legal action by the appointed counsel under CRC 5.241(c)(3).

2. Payment by the Court.

a. If the Court determines that the party(ies) is/are unable to pay all or a part of the appointed counsel's compensation or if counsel is appointed to represent a child under CRC 5.241(c)(2), the Court will compensate counsel for his/her services.

b. If during the course of the proceedings or after counsel is relieved as attorney of record the court may redetermine the party(ies) ability to pay for counsel's services (CRC 5.241(b)(3)).

c. Court appointed counsel under this section must follow the Court's invoice processing procedures as set forth in Local Form FL-024 that is attached as an addendum to the Order Appointing Counsel.

d. All invoices for services shall be submitted immediately to the judicial officer appointed for your case or their designee, upon the conclusion of the billed for event, but in any case not less than on a quarterly basis (by January 6, April 6, July 5 or October 5, or the next court business day) for services performed during the previous quarter.

(Adopted, effective January 1, 2000) (Renumbered (formerly Rule 5.12) and amended, effective January 1, 2004) (Amended, effective July 1, 2013)

Proposal Number SPR 13-04	
Title	DIVISION IX – OTHER SPECIAL DEPARTMENTS AND CALENDARS RULE 6.12 Filing of Papers and Keeping Records of Northern Department
Summary	This Rule is being repealed since it is a holdover from the previous Municipal Court jurisdictions structure.
Proposed Changes (insert text of new rule or changes here with track changes)	<p><u>Rule 6.12 Filing of Papers and Keeping Records of Northern Department (REPEALED)</u></p> <p>a. Original Files and Documents, Where Kept. All papers filed in the Northern Department shall be transmitted by the clerk to the office in the county seat for indexing, entry in the register of actions, recording or other processing and placement in the file of the proceedings. No duplicate documents or records, not otherwise provided by law or order of court, shall be required to be kept in either office of the clerk.</p> <p>b. Use of Original Papers at Northern Department. All files, original pleadings, petitions and other papers on file in the office of the clerk at the county seat may be transmitted by the clerk to the office at the Northern Department whenever its presence there is necessary in connection with the business of the Northern Department; but in any such case, the original file or other papers shall not be kept in the Northern Department longer than is reasonably necessary for the purpose for which it was taken there, and upon the expiration of such time shall be returned to the office of the clerk in the county seat.</p> <p>c. Exhibits. Any exhibit admitted in evidence in the Northern Department, or there offered in evidence and left in the custody of the clerk, shall be taken by the clerk to and kept in the office in the county seat for safekeeping, except during the trial or when such exhibit is wanted by the court for inspection in the Northern Department.</p> <p>d. Minutes. The minutes of the proceedings of the Northern Department shall be entered in minute books kept by the clerk in the office in the county seat.</p> <p>e. Judgments. All judgments rendered by the court in the Northern Department shall be entered by the clerk in the judgment books kept in the office in the county seat, and no other entry thereof shall be required of the clerk.</p> <p>f. Writs of Execution. Writs of execution or other process customarily executed by the clerk for the enforcement of judgments shall be issued only at the county seat.</p> <p>(Adopted, effective July 1, 1996) <u>(Repealed, effective July 1, 2013)</u></p>

Proposal Number SPR 13-05	
Title	DIVISION XI – CIVIL RULES RULE 11.4 – Civil Case Assignment
Summary	Proposal to repeal Rule 11.4 for being obsolete since the Municipal Court no longer exists.
Proposed Changes	<p>Rule 11.4 Civil Case Assignment <u>(REPEALED)</u></p> <p>—— All civil cases will be assigned at the time the complaint is filed to the program judge assigned to hear Municipal Court cases. The case shall be managed by the assigned program judge until disposition</p> <p>or until the case is assigned to a trial department.</p> <p>(Amended, effective January 1, 1997) <u>(Repealed, effective July 1, 2013)</u></p>