

# **SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN MATEO**



## **LOCAL COURT RULES**

**As Amended  
Effective July 1, 2006**



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO**  
**Hall of Justice and Records**  
**400 County Center, 2<sup>nd</sup> Floor**  
**Redwood City, California 94063**

**LOCAL COURT RULES**  
**FILING INSTRUCTIONS**  
**UPDATES EFFECTIVE JULY 1, 2006**

Please update your Superior Court of California, County of San Mateo Local Rules Binder by removing and inserting the attached amendments by following these instructions:

	<b>REMOVE THESE EXISTING PAGES</b>	<b>INSERT THESE NEW PAGES</b>
1.	From the front of the binder a) Cover Page and Filing Instructions b) Table of Contents (page i) c) Summary of Changes (page ii-iii) d) Filing Instructions (page iv-v) e) List of Currently Effective Rules (January 1, 2006)(pages i-x)	a) Cover Page and Filing Instructions b) Table of Contents (page i) c) Revised Summary of Changes (pages ii – iv) d) Filing Instructions (page v-vii) e) List of Currently Effective Rules (July 1, 2006) (pages i-x)
2.	Alphabetical Index (i– viii)	Revised Alphabetical Index (i-viii)
3.	Division IV, Table of Contents, pages 400-452	Division IV, Revised Table of Contents, pages 400-453
4.	Division IX, Table of Contents, pages 900-902	Division IX, Revised Table of Contents, pages 900-903

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**SUMMARY OF CHANGES**

**SAN MATEO COUNTY SUPERIOR COURT**

**Revisions effective July 1, 1996**

All prior rules of the San Mateo County Superior Court and of the San Mateo County Municipal Court have been superseded by the new restated and newly adopted rules of the coordinated San Mateo County Superior and Municipal Courts.

**Revision effective January 1, 1997**

Rule 11.4 adopted re Civil Case Assignment

**Revision effective July 1, 1997**

Rule 0.9 adopted re Standing orders

**Revision effective January 1, 2000**

Replace Rules List, Alphabetical Index, Divisions II, III, IV and V

**Revision effective January 1, 2002**

Replace Rules List, Alphabetical Index, Introduction, Division II index and pages 208-211, and Division VIII index and pages 801-802.

**Revisions effective January 1, 2003**

List of Effective Rules-amended, Alphabetical Index – amended

Introduction – Rule 0.9 amended

Division II - Table of Contents-revised; Rule 2.3 amended (code reference changes and adding sections (e)(6), (h)(2)-(3), and revising sections (i)(1) and (3)); Rule 2.3.1 amended by adding section (d); Rule 2.4-code reference change.

Division IV – Table of Contents-revised; Rule 4.1- add section (d)

Division V – Table of Contents-revised; Rule 5.4-amend (B)(1)

Division IX – Rule 9.5 repealed.

**Revisions effective July 1, 2003**

List of Effective Rules-amended, Alphabetical Index – amended

Division II - Rule 2.3 amended – added (d)(1)(C), (d)(2)(C); renumbered paragraph (e)(2) thru (6) to (e)(4) thru (8); added new paragraphs (e)(2) and (3).

Division IV – Table of Contents-revised; Rule 4.85 amended - add opening paragraph; added paragraphs (B) (6)-(9); Rule 4.88 amended – added paragraph (b) and numbered (a).

Division V – Table of Contents – revised; Rule 5.4 (C)(2) Notice to Family Law Litigants-amend; (C)(3) paragraph numbered.

Division IX – Rule 9.4 amended.

**Revisions effective January 1, 2004**

List of Effective Rules-amended, Alphabetical Index – amended

Division V – Table of Contents-revised; Rule 5.1-amended changing wording and added reference to California Rules of Court; Rule 5.2 –amended adding domestic violence calendar in the division; Rule 5.4 – amended adding in new sections A-F replacing former sections; Rule 5.5 – New; Rule 5.6- (formerly Rule 5.5) replaced former sections A-G and adding sections H-N; Rule 5.7- (formerly 5.6) amended sections A-C, adding new section B-G, renumbered H-K, deleted section L; Rule 5.8 – New, incorporates former Rules 5.8 and 5.9; Rule 5.9 - New; Rule 5.10 –(former Rule 5.14 renumbered); Rule 5.11 –(formerly 5.7 renumbered) adding sections B-C; Rule 5.12 – (formerly Rule 5.10 renumbered) amended replacing item D.2.; Rule 5.13 – (formerly Rule 5.11 renumbered) revising and renumbering section B; Rule 5.14 – (formerly section 5.12 renumbered) amended; Rule 5.15- amended adding new sections A-D; Appendix 1 – Status Conference Statement Local Form, New ; Appendix 2 – Mandatory Settlement Conference Statement Local Form, (formerly Appendix 1-Pre-trial Statement format, renamed and amended); Former Appendix 2 -Joint Case Management Conference form is repealed; Appendix 6 – Notice of ADR Options Local Form, New.

## Superior Court of California, County of San Mateo

### Revisions effective July 1, 2004

Filing Instructions – amended; List of Effective Rules – amended, Alphabetical Index – amended  
Division II – Table of Contents – revised; Rule 2.6 repealed and renumbered to new Rule 2.7.6; Rule 2.7.6 (formerly Rule 2.6); Rule 2.30 (new)  
Division IV – Table of Contents – revised; **Amended** - Rules 4.1, 4.2, 4.4 to 4.10, 4.12, 4.14, 4.24, 4.26, 4.27, 4.28 to 4.34, 4.36 to 4.38, 4.76, 4.82, 4.85, 4.88, 4.89  
**Renumbered and Amended** – 4.19(b) as 4.19.1; 4.19(c) as 4.19.2; 4.26 as 4.26.1; 4.77 (a), (c), and (d) as 4.77.1; 4.77(e) as 4.77.17; 4.81(a) as 4.81.1; 4.81(d) as 4.81.2; 4.81 (c) as 4.81.4; 4.81(g) as 4.81.5; 4.81(f) as 4.81.7; 4.81(e) as 4.81.9; 4.81(b) as 4.81.10; 4.81 (j) and (k) as 4.81.15; 4.81(h)(2) as 4.81.16; 4.81(h)(1) as 4.81.17; 4.81(h)(1) as 4.81.18; 4.81(l) as 4.81.20; 4.86 as 4.81.21; 4.81(m) as 4.81.22;  
**New** – 4.14.1, 4.24.1 to 4.24.4, 4.27.1; 4.77.2 to 4.77.16, 4.81.3, 4.81.6, 4.81.8, 4.81.11 to 4.81.14, 4.81.19; 4.90 to 4.100  
**Repealed** - Rules 4.3, 4.11, 4.13, 4.23, 4.35, 4.49 through 4.54, 4.77, 4.81, and 4.87.  
Division V – Table of Contents – revised; Rule 5.5 amended changing the filing of the ADR Notice requirement.

### Revisions effective January 1, 2005

Filing Instructions – amended; List of Effective Rules – amended, Alphabetical Index – amended  
Division II – Table of Contents – **revised**; **Amended** Rules 2.3 and 2.7.1, 2.7.2, 2.7.3  
Division IV – Table of Contents – **revised**; **Amended** - Rules 4.81.1  
Division V – Table of Contents – **revised**; **Amended**-Rules 5.4, 5.7, 5.8 and 5.13  
Division VIII – Table of Contents – **Revised**; **Amended** Rule 8.10.  
Division X – Table of Contents – **Revised**; **Amended** Rule 10.1

### Revisions effective July 1, 2005

Filing Instructions – amended; List of Effective Rules – amended, Alphabetical Index – amended  
Division II – Table of Contents – **revised**; **Amended** Rules 2.4 and 2.30  
Division III – Table of Contents – **revised**, **Amended** Rule 3.13  
Division IV – Table of Contents – **revised**; **Amended** - Rules 4.10, 4.77.14, 4.81.1  
Division V – Table of Contents – **revised**; **Amended**-Rules 5.8  
Division VIII- Table of Contents – **revised page numbers**  
Division IX – Table of Contents – **New** Rule 9.8.  
Division XI – **Revised title of Division**

### Revisions effective January 1, 2006

Filing Instructions – amended; List of Effective Rules – amended, Alphabetical Index – amended  
Division II – Table of Contents – **revised**; **Amended** Rules 2.3, 2.7.1, 2.7.2 and 2.30  
Division V – Table of Contents – **revised**; **Amended**-Rules 5.13

### Revisions effective July 1, 2006

Filing Instructions – amended; List of Effective Rules – amended, Alphabetical Index – amended  
Division V – Table of Contents – **Amended**-Rules 4.2, 4.10, 4.76, 4.77.1, 4.77.14, 4.81.4, 4.81.16, and 4.81.18.  
Division IX- Table of Contents – **Added new Rule 9.9**

**FILING INSTRUCTIONS**

**Revisions effective July 1, 1996**

To update your Local Rules of Court, please replace entirely all existing Rules of both the Superior Court and the Municipal Court of San Mateo County.

**Revision effective January 1, 1997**

Replace Division XI Index, Page 1; Replace Page 1100/1101 in Division XI.

**Revision effective July 1, 1997**

Replace Introduction{ "Class Actions – Pretrial Proceedings: Introduction" } Index, Page 4;  
Replace page 7 of Introduction

**Revision effective January 1, 2000**

Replace Rules List, Alphabetical Index, Divisions II, III, IV and V

**Revision effective January 1, 2002**

Replace Rules List, Alphabetical Index, Introduction Division II index and pages 208-211, and Division VIII index and pages 801-802.

**Revisions effective January 1, 2003**

To update your Local Court Rules, please replace the following sections and pages:

- List of Effective Rules and Alphabetical Index
- Introduction Section – Replace entire section
- Division II-Table of Contents, Replace entire section
- Division IV – Table of Contents; Replace entire section
- Division V – Table of Contents; Replace entire section
- Division IX – Table of Contents; replace page 901 with new page 901

**Revisions effective July 1, 2003**

To update your Local Court Rules, please replace the following sections and pages:

- List of Effective Rules and Alphabetical Index
- Division II-Table of Contents, Replace entire section
- Division IV – Table of Contents; Replace entire section
- Division V – Table of Contents; Replace entire section
- Division IX – Table of Contents; Replace entire section

**Revisions effective January 1, 2004**

To update your Local Court Rules, please replace the following sections and pages:

- Summary of Changes
- Filing Instructions
- List of Effective Rules and Alphabetical Index
- Division V-Table of Contents and Rules, Replace entire section

**Revisions effective July 1, 2004**

To update your Local Court Rules please replace the following sections and pages:

- Cover Page and Filing Instructions
- Table of Contents
- Summary of Changes
- Alphabetical Index
- List of Currently Effective Rules and Alphabetical Index
- Division II (Revised Table of Contents and Rules text)
- Division IV (Revised Table of Contents and Rules text)
- Division V (Revised Table of Contents and Rules text)

**Revisions effective January 1, 2005**

To update your Local Court Rules please replace the following sections and pages:

- Cover Page and Filing Instructions
- Table of Contents
- Summary of Changes
- Alphabetical Index
- List of Currently Effective Rules and Alphabetical Index
- Division II (Revised Table of Contents and Rules text)
- Division IV (Revised Table of Contents and Rules text)
- Division V (Revised Table of Contents and Rules text)
- Division VIII (Revised Table of Contents, Rules text and Appendicies I through VI)
- Division X (Revised Table of Contents and Rules text)

**Revisions effective July 1, 2005**

To update your Local Court Rules please replace the following sections and pages:

- Cover Page and Filing Instructions
- Table of Contents
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- List of Currently Effective Rules and Alphabetical Index
- Division II (Revised Table of Contents and Rules text)
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- Division IV (Revised Table of Contents and Rules text)
- Division V (Revised Table of Contents and Rules text)
- Division VIII (Revised Table of Contents, Rules text and Appendicies I through VI)
- Division IX (Revised Table of Contents and Rules text)
- Division XI (Revised Table of Contents and Rules text)

**Revisions effective January 1, 2006**

To update your Local Court Rules please replace the following sections and pages:

- Cover Page and Filing Instructions
- Table of Contents
- Summary of Changes

Superior Court of California, County of San Mateo

Alphabetical Index

List of Currently Effective Rules and Alphabetical Index

Division II (Revised Table of Contents and Rules text)

Division V (Revised Table of Contents and Rules text)

**Revisions effective July 1, 2006**

To update your Local Court Rules please replace the following sections and pages:

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Division IX (Revised Table of Contents and Rules text)



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO - LOCAL RULES**

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JULY 1, 2006**

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## Superior Court of California, County of San Mateo

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## Superior Court of California, County of San Mateo

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## IMPORTANT INSTRUCTIONS FOR USING THESE RULES

### 1. State Rules and Corresponding Local Rules

The California Rules of Court are not printed as part of the San Mateo County local rules, but are considered incorporated within them. Proceedings in the Superior and Municipal Courts of San Mateo County are governed by the California Rules of Court as supplemented by these local rules. **EACH LOCAL RULE MUST BE READ IN CONJUNCTION WITH THE CALIFORNIA RULES OF COURT (CRC).**

### 2. Page Numbers

All page numbers are printed at the bottom center of the page. *Numbers at the bottom left corner of any page are word processing codes and should be disregarded.*

### 3. Amendments

Amendments adopted after July 1, 1996 will be issued as replacement pages and are to be inserted in this booklet according to the instructions provided with the amendments.

### 4. Application

Each rule shall be enforced in all departments to which the rule may apply, except as specifically modified or distinguished in the applicable division of these rules.

### 5. Effective date

**The Rules of the Superior and Municipal Courts of San Mateo County have been restated, amended and adopted effective July 1, 1996.**

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## INTRODUCTION

### Rule 0.1 Adoption and Amendment of Rules

- (a) Each of these rules is effective as of the date stated in parentheses at the end of the particular rule.
- (b) No action taken in compliance with a rule of this court before it is amended or repealed shall be made invalid or ineffective by the subsequent amendment or repeal of that rule.
- (c) These rules may be amended by a majority of the judges of this court in accordance with state law.

(Adopted, effective July 1, 1996.)

### Rule 0.2 Sanctions

Failure to comply with any provisions of the Code of Civil Procedure, the California Rules of Court, or any of these local rules may result in any or all of the following sanctions, on motion of a party or on the court's own motion:

- (a) Dropping the matter from the calendar;
- (b) A fine paid to the Clerk of the Court by the responsible party or counsel;
- (c) Order for payment of reasonable costs and expenses, including attorney fees, to the opposing party;
- (d) Other sanctions authorized by CCP Section 575.2, GC 68608(b), CRC 227, infra or other law.

(Adopted, effective July 1, 1996.)

### Rule 0.3 Court Security

The Sheriff is designated as the Court Security Officer, and is responsible to the Court for all matters relating to security of courtrooms, buildings, and grounds. The Court Security Officer shall prepare a Court Security Plan in accordance with California Rules of Court, Standards of Judicial Administration, Section 7 which shall be reviewed annually by the judges. Pursuant to G. C. Section 26602 the sheriff shall ensure that all reasonable precautions are taken to maintain court security including, but not limited to, searching of persons and their possessions for weapons and explosive devices as allowed by law.

(Adopted, effective July 1, 1996.)(Amended, effective January 1, 1999)

Rule 0.4 Reserved.

(Adopted, effective July 1, 1996)

Rule 0.5 Civil Appeals Fees

Pursuant to CRC 4, the reporter shall commence preparation of the transcript on appeal when a notice of appeal from the Appellate Clerk is received and after deposit by appellant with the Appellate clerk of a sum of \$325.00 for each half day and \$650.00 for each full day of trial included in the reporter's transcript on appeal. The actual fee for the transcript shall be set by statute.

(Adopted, effective July 1, 1996)

Rule 0.6 Court Consolidation and Coordination

(Adopted, effective July 1, 1996) (Repealed, effective January 1, 2002)

Rule 0.7 Court Designation/Caption

This Court shall be known as the "Superior Court of California, County of San Mateo".

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2002)

Rule 0.8 Contents of Proof of Service

When service is made by mail, Section 1013(a) of the Code of Civil Procedure provides the language to be used in the proof of service. When service is by personal delivery (CCP 1011), the declaration of service must be signed by the person who actually accomplished service. When service is by FAX, CRC 2008 must be complied with. A declaration which simply recites that the declarant "caused the papers to be served" by handing them to a messenger is not adequate proof of service. In the absence of opposition, a motion accompanied by a defective proof of service will be continued, placed off calendar, or denied. The proof of service must show service on all parties who have appeared in the action, not just the party to whom the motion is directed. (See CCP1014.)

(Adopted, effective July 1, 1996)

Rule 0.9 Standing Orders

All standing orders of the Superior Court shall be signed by the Presiding Judge, shall (unless otherwise noted) specify each is in effect indefinitely until vacated or superseded by the Presiding Judge, shall be numbered sequentially and filed chronologically by the Clerk in a special file marked "Standing Orders", shall be distributed to all judicial officers of the court and shall be published by the San Mateo County Bar Association as an appendix to the Local Rules of the Superior Court at such times as the Local Rules are published.

Standing Orders that relate to Juvenile Court matters may be signed by the Presiding Judge of the Juvenile Division on behalf of the Superior Court's Presiding Judge. All other administrative requirements, as stated above, shall also be applicable.

(Adopted, effective July 1, 1997) (Amended, effective January 1, 2003)



**DIVISION I**  
**RULES ON APPEAL TO THE APPELLATE DEPARTMENT**

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**CALIFORNIA RULES OF COURT AS SUPPLEMENTED HEREIN,**  
**GOVERN ALL LOCAL PROCEDURES**

**DIVISION I**  
**RULES ON APPEAL TO THE APPELLATE DEPARTMENT**

CHAPTER I. APPELLATE DEPARTMENT RULES

Rule 1.1 Sessions

Regular sessions of the appellate department shall be held on the second Friday of each month at 2:00 p.m. unless otherwise ordered. Special sessions may be called by the presiding judge of the appellate department.

(Adopted, effective July 1, 1996)

Rule 1.2 Briefs

When filing any original brief, each party shall deposit with the clerk three additional copies.

(Adopted, effective July 1, 1996)

Rule 1.3 Decisions

Unless otherwise ordered, each party shall be allowed no more than fifteen minutes for oral argument. The appellant or moving party shall be permitted to open and close.

(Adopted, effective July 1, 1996)

Rule 1.4 Rehearing and Finality of Judgments

Judgment is pronounced when the court announces its decision in open court following oral argument. If the court does not announce a judgment in open court, judgment is deemed to be pronounced on the date the judgment is filed by the clerk.

(Adopted, effective July 1, 1996)

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**DIVISION II**  
**COURT MANAGEMENT - SUPERIOR COURT**  
**CHAPTER 1. FORM AND SERVICE OF PAPERS**

Rule 2.0 Transfer of Court-Related Functions of the County Clerk to the Superior Court

Pursuant to the authority contained in Government Code section 69898, the court hereby transfers from the County Clerk to the Superior Court Executive Officer, under the direction of the Presiding Judge, all of the powers, duties, and responsibilities required or permitted to be executed or performed by the County Clerk in connection with judicial actions proceedings, and records.

(Adopted, effective July 1, 1996.)

Rule 2.1 Form of Papers Presented for Filing

Reference, CRC, rule 201.

(Adopted, effective July 1, 1996) ( Amended effective January 1, 2000.)

Rule 2.1.1 Citations to Non-California Authorities.

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 2.1.2 Requests for Judicial Notice

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 2.1.3 California Environmental Quality Act (CEQA)

If a petition for writ of mandate includes claims under CEQA (Public Resources Code section 21000 et. seq.), the case will be assigned to a judge designated to hear CEQA actions pursuant to Public Resources Code section 21167.1. Plaintiff shall identify the petition as being filed pursuant to “CEQA” on the face of the petition.

(Adopted, effective January 1, 1999)(renumbered from 2.1.4 effective January 1,2000)

Rule 2.1.4 Documents Produced Through a Nonparty

If a party proposes to obtain documents in the custody of a nonparty, as by a subpoena duces tecum, and such documents may be produced by certification or otherwise in lieu of personal appearance by a witness custodian, the request for such documents should specify that they be delivered not later than the first day for which the trial is calendared.

(Adopted, effective January 1, 2000)

**CHAPTER 2. CIVIL TRIAL COURT MANAGEMENT RULES**  
**PART 1. MANAGEMENT DUTIES**

Rule 2.2 Trial Court Management

Reference CRC, rules 204-208

(Adopted, effective January 1, 2000)

**PART 2. CASEFLOW MANAGEMENT**

Rule 2.3 New Case Management

This rule applies to all civil cases with the exception of the following: (1) juvenile court matters; (2) probate matters; (3) family law matters; and (4) civil cases which, based on subject matter, have been assigned to a judge, or to more than one judge, for all purposes. For rules applicable to these exceptions, see CRC 201-209, and 210-298.

(a) Purposes and Goals

The purposes and goals of the San Mateo Superior Court Civil Case Management System effective January 1, 1992 are:

- (1) To manage fairly and efficiently, from commencement to disposition, the processing of civil litigation.
- (2) To prepare the bench and bar for full implementation of the Trial Court Delay Reduction Act (A.B. 3820) on July 1, 1992; and
- (3) To encourage parties to agree to informal discovery early in the life of the case, to use standard form interrogatories and to promote alternative dispute resolution. Nothing in these rules is intended to prevent the parties from stipulating to an earlier intervention by the court by way of a case management conference, settlement conference or any other intervention that seems appropriate.
- (4) In accordance with Sections 205 through 210 of the California Rules of Court, Local Rule 2.3 is adopted to advance the goals of Section 68603 of the Government Code and Section 2 of the Standards of Judicial Administration recommended by the Judicial Council.

(b) Team concept

Beginning January 1, 1994 civil litigation will be managed primarily by a team of two program judges.

The clerk will assign the case to a program judge at the time the complaint is filed. The case shall be managed by the assigned program judge until disposition or until the case is assigned to a trial department.

(c) Cases filed after July 1, 1992

Upon the filing of a complaint after July 1, 1992, the case shall be subject to all of the civil case management system rules set forth below. Cases filed before July 1, 1992 shall also be subject to these rules except for subsection (d) (Filing and service of pleadings; exceptions).

(d) Filing and service of pleadings; exceptions.

(1) Complaint: Except as provided in paragraph 5 below, plaintiff shall within 60 days after filing of the complaint serve the complaint on each defendant along with:

- (A) A blank copy of the Judicial Council Case Management Statement;
- (B) A copy of Local Rule 2.3;
- (C) The Notice of Case Management Conference.

If a matter has been submitted to arbitration pursuant to uninsured motorist insurance, the plaintiff shall file a notice to that effect with the court at the time of filing the complaint, or at the time the matter is submitted. The notice shall include the name, address and telephone number of the insurance company, along with the claim number or other designation under which the matter is being processed.

(2) Cross-complaint: Except as provided in paragraph 5 below, each defendant shall within 30 days after answering the complaint file any cross-complaint (within 50 days if compliance with a governmental claims statute is a prerequisite to the cross-complaint) not already served with the answer under Code of Civil Procedure section. 428.50 and serve with that cross-complaint:

- (A) A blank copy of the Judicial Council Case Management Statement;
- (B) A copy of Local Rule 2.3;
- (C) The Notice of Case Management Conference.

(3) Responsive pleadings: Except as provided in paragraph 5 below, each party served with a complaint or cross-complaint shall file and serve a response within 30 days after service. The parties may by written agreement stipulate to one 15-day extension to respond to a complaint or cross-complaint.

If the responsive pleading is a demurrer, motion to strike, motion to quash service of process, motion for a change of venue or a motion to stay or dismiss the case on forum non conveniens grounds, and the demurrer is overruled or the motion denied, a further responsive pleading shall be filed within 10 days following notice of the ruling unless otherwise ordered. If a demurrer is sustained or a motion to strike is granted with leave to amend, an amended complaint shall be filed within 10 days following notice of the ruling unless otherwise ordered. The court may fix a time for filing pleadings responsive to such amended complaint.

(4) Proofs of service: Proofs of service must be filed at least 10 calendar days before the case management conference.

(5) Exceptions for longer periods of time to serve or respond:

(A) Time to serve may be extended for good cause: Upon ex parte application to the court, *in compliance with California Rule of Court 379(g)*, within 60 days of the date the complaint was filed, plaintiff may obtain an extension of time to serve to a date on or before the case management conference, if good cause is shown by declaration of counsel (or plaintiff filing in propria persona). An additional extension of the time to serve (an initial extension if the application is by a cross-complainant) may be obtained upon written application to the court upon good cause shown before the prior extension has expired. The filing of a timely application for an extension will automatically extend the time to serve by five days, whether or not the application is granted.

Good cause will be found if the declaration shows that the action is filed against a defendant who is an uninsured motorist, and the plaintiff's claim is subject to an arbitration provision in plaintiff's contract of insurance. In determining good cause in other cases, the court will give due consideration to any standards, procedures and policies which have been developed in consultation with the bar of the county through the bench-bar trial court delay committee.

(B) Additional extension of time if uninsured motorist arbitration is pending. In addition to any extension of time obtained pursuant to subsection (5)(A) above, if an uninsured motorist arbitration is still pending between plaintiff and plaintiff's insurance carrier 30 days prior to the expiration of the extension, plaintiff may obtain an additional extension of time by an ex parte application supported by a declaration showing the scheduled or anticipated date of the arbitration hearing and the diligence of plaintiff in pursuing arbitration.

(C) Time to respond may be extended for good cause: Before the time to respond has expired, any party served with a complaint or cross-complaint may, with notice to all other parties in the action, make ex parte application to the court upon good cause shown for an extension of time to respond. The filing of a timely application for an extension will automatically extend the time to respond by five days, whether or not the application is granted.

(e) Case management conference

(1) Date of conference: Unless the parties stipulate in writing and the court orders that the case be earlier referred to arbitration, a case management conference will be set by the clerk at the time the complaint is filed. (Government Code 68616)

(2) Attendance at the case management conference is mandatory for all parties or their attorneys of record.

(3) Plaintiff must serve the Notice of Case Management on all parties no later than 30 calendar days before the conference, unless otherwise ordered by the Court.

(4) The Court will deem the case to be at-issue at the time of the conference (Reference: CRC 209(a)) absent a showing of extraordinary circumstances.

(5) The conference may be set at an earlier date by order of the Court or by written stipulation of the parties.

(6) Designation of trial counsel: Trial counsel and, except for good cause shown, back-up trial counsel, must be specified at the case management conference. If such counsel is not



specified, relief from the scheduled trial date may not be obtained based upon the ground that counsel is engaged elsewhere.

(7) Conference orders: At the initial conference, the program judge will make appropriate pre-trial orders that may include the following:

- (A) An order referring the case to arbitration, mediation or other dispute resolution process;
- (B) An order transferring the case to the limited jurisdiction of the superior court;
- (C) An order assigning a trial date;
- (D) An order identifying the case as one which may be protracted and determining what special administrative and judicial attention may be appropriate, including special assignment;
- (E) An order identifying the case as one which may be amenable to early settlement or other alternative disposition technique;
- (F) An order of discovery; including but not limited to establishing a discovery schedule, assignment to a discovery referee, and/or establishing a discovery cut-off date;
- (G) An order scheduling the exchange of expert witness information;
- (H) An order assigning a mandatory settlement conference date pursuant to Local Rule 2.3(k) and 2.4; and
- (I) Other orders to achieve the interests of justice and the timely disposition of the case.

(8) CourtCall Telephonic Appearances

(A) Reference CRC, Rule 298

(B) Procedure. Telephonic appearances through the use of CourtCall, an independent vendor, are permitted at case management conference hearings. A party wishing to make a telephone appearance must serve and file a Request for Telephone Appearance Form with CourtCall not less than five court days prior to the case management conference hearing. Copies of the Request for CourtCall Appearance form and accompanying information sheet are available in the Clerk's office. There is a fee to parties for each CourtCall appearance and fees are paid directly to CourtCall. CourtCall will fax confirmation of the request to parties.

(C) On the day of the case management conference hearing, counsel and parties appearing by CourtCall must check-in five minutes prior to the hearing. Check-in is accomplished by dialing the courtroom's dedicated toll-free teleconference number and access code that will be provided by CourtCall in the confirmation. Any attorney or party calling after the check-in period shall be considered late for the hearing and shall be treated in the same manner as if the person had personally appeared late for the hearing.

(D) At a case management conference, parties may be referred to an appropriate dispute resolution (“ADR”) process (e.g., mediation, binding arbitration or neutral evaluation). If parties are referred ADR, they must redial the dedicated toll-free teleconference number immediately following their case management conference appearance and use a second CourtCall access code to telephonically appear at the ADR referral meeting with ADR staff. If a case has been referred to ADR, a party’s case management conference appearance is not complete until they have also telephonically appeared at the mandatory ADR referral. If parties are referred to judicial arbitration, they do not have to appear at the ADR referral.

(f) Case Management Statement

At least 15 calendar days before the scheduled case management conference, each party shall file with the court and serve on all other parties a completed Judicial Council Case Management Statement. If the case is set for further case management conference hearing(s), all parties must file updated Case Management Statements 15 (fifteen) calendar days prior to the scheduled hearings(s).

(g) Appropriate Dispute Resolution, ADR, Policy Statement

The Court finds it is in the best interests of parties to litigation to participate in appropriate dispute resolution procedures, including but not limited to mediation, neutral evaluation, private or judicial arbitration, voluntary settlement conferences, and the use of special masters and referees. Therefore, all parties shall stipulate to, or be referred to, an appropriate form of dispute resolution before being set for trial, unless there is good cause to dispense with this requirement. Parties are encouraged to stipulate to judicial arbitration or ADR prior to the case management conference.

(h) Stipulations to Arbitration

(1) If the case is at issue, and all counsel and each party appearing in propria persona stipulate in writing to judicial arbitration prior to the case management conference, discovery will remain open following judicial arbitration. A written stipulation to judicial arbitration must be filed with the clerk and a copy immediately sent to the Master Calendar Coordinator at least 10 calendar days before the case management conference in order to avoid the need to appear at that conference. A written stipulation to arbitrate will be deemed to be without a limit as to the amount of the award unless it expressly states otherwise.

(2) It is the policy of this court to make every effort to process cases in a timely manner. Parties who elect or are ordered by the court to judicial arbitration must complete the arbitration hearing within the time frame specified by the court.

Parties who wish to continue the arbitration hearing after the jurisdictional time frame must submit a court provided form entitled “*Ex Parte Motion and Stipulation for continuance of Judicial arbitration Hearing.*” Parties can obtain a copy of the form by contacting the court’s judicial arbitration administrator [See Local Rule 10.1(d)(1). Continuances without adequate grounds will not be considered. A case management judge will either grant or deny the request for continuance. If the request is denied, the case may be assigned a trial date. If the request is granted, the judge will impose a new deadline by which the arbitration must be completed.

(3) Parties who wish to change their election from judicial arbitration to another form of ADR must file a “Stipulation and [Proposed] Order to [Mediation, Neutral Evaluation, etc.] in Lieu of [Court-Ordered] Judicial Arbitration” with the Clerk of the Court. The Stipulation must

state that parties have: (i) notified both the judicial arbitration and ADR coordinators; (ii) cancelled the judicial arbitration hearing; (iii) scheduled the ADR session within five months of the previously scheduled judicial arbitration hearing; and (iv) stipulated to a trial date, which is not more than six months from the previously scheduled judicial arbitration hearing.

(i) Stipulations to Private ADR

(1) If a case is at issue and all counsel and each party appearing in propria persona stipulate in writing to ADR and file a completed Stipulation and Order to ADR with the clerk of the court at least ten (10) calendar days before the first scheduled case management conference, that conference shall be continued 90 days. The court shall notify all parties of the continued case management conference.

(2) If counsel and each party appearing in propria persona are unable to agree upon an appropriate ADR process, they shall appear at the case management conference.

(3) Following an appearance at a case management conference hearing, parties shall, within 21 calendar days, file a completed Stipulation to ADR and Proposed Order identifying the name of the ADR provider, date of ADR session and the names of those who will be in attendance at the ADR session. The completed Stipulation to ADR and Proposed Order shall be filed with the court by plaintiff's counsel. The parties, through counsel, if represented, shall confer with the court's Multi-Option ADR Project (M.A.P.) staff if they cannot agree on a provider. Plaintiff's counsel, shall additionally, send a copy of the completed Stipulation to the court's M.A.P. offices within the same 21-day period.

(4) All parties and counsel shall participate in the ADR process in good faith.

(5) To maintain the quality of ADR services the court requires cooperation from all parties, counsel and ADR providers in completing ADR evaluation forms, and returning these forms to the M.A.P. offices within 10 calendar days of the completion of the ADR process.

(6) In accordance with the Code of Civil Procedure, section 1033.5(c)(4), the court, in its discretion, may allow the prevailing party at trial the fees and expenses of the ADR provider, unless there is a contrary agreement by the parties.

(j) Setting Short Cause Matters

If the parties agree that the time estimated for trial is 5 hours or less prior to the conference, a written stipulation shall be filed at least 10 calendar days before the case management conference in order to avoid the need to appear at that conference and a copy immediately sent to the Master Calendar Coordinator. In the absence of a stipulation, either party may file a motion to have the matter designated a "short cause" and set the case accordingly. All such matters shall be presumed short cause unless the contrary is established at the hearing on the motion.

(k) Law and Motion

All law and motion matters shall be heard by the regularly assigned Law and Motion judge.

(l) Settlement Conferences

All cases not assigned to arbitration or some other dispute resolution mechanism will be assigned two settlement conference dates, the first of which will be at the earliest practicable date under the circumstances presented by the case, and the second within approximately two

weeks prior to the assigned trial date.

Cases assigned to arbitration or other form of ADR may be subjected to a settlement conference prior to the arbitration or ADR process, but will be assigned to a pre-trial settlement conference only if the arbitration/ADR procedure fails to resolve the case.

All cases which fail to resolve by the trial date will be subject to an additional settlement conference on the trial date.

*All* settlement conferences shall be subject to the requirements specified in Local Rule 2.4.

(m) Sanctions

Sanctions pursuant to CRC 227 shall be imposed for any violation of the civil case management system rules. The minimum sanction imposed shall be \$150.00 payable to the court; sanctions payable to the court may be larger where appropriate and will be in addition to appropriate attorney fees and calendar changes, including any appropriate change in calendar status of the action.

Sanctions mandated hereby may be waived by the judge conducting the conference only upon an application showing good cause why sanctions should not be imposed.

(Adopted, effective July 1, 1996)(Amended, effective January 1,2000) (Amended, effective January 1, 2003)  
(Amended effective July 1, 2003) (Amended, effective January 1, 2005)(Amended, effective January 1, 2006)

Rule 2.3.1 Orders to Show Cause re: Dismissals

(a) A hearing on an order to show cause why the case should not be dismissed for failure to prosecute the matter shall be set at the two year anniversary of the filing of the complaint and/or cross-complaint.

(b) An order to show cause hearing shall be set 45 days after court's receipt of notice of settlement.

(c) An order to show cause hearing regarding dismissals may be set by the court to achieve the interests of justice and the timely disposition of the case.

(d) An order to show cause hearing re: failure to complete judicial arbitration within the court-ordered time frame may be heard during the case management calendar. Sanctions may be imposed and a trial date may be assigned.

(Adopted, effective January 1,2000) (Amended, effective January 1, 2003)(Amended, effective January 1, 2006)

Rule 2.4 Settlement Conference

Reference: California Rule of Court, rule 222.

(a) At all settlement conferences, notwithstanding any other Rule:

(1) The attorney who will try the case or an informed associate with full authority to negotiate a settlement of the case shall personally attend.

(2) Any persons whose consent is required to authorize settlement shall personally attend; those parties that are corporations shall have in attendance an officer or other employee with

authority to bind the corporation. Powers of attorney, oral or written, granting counsel settlement authority are unacceptable as a substitute for personal attendance at this conference. Defendant and cross-defendant shall personally attend if there is no insurance coverage, if there is an unsatisfied deductible, or if the insurance carrier is demanding that the insured contribute to settlement.

(3) With respect to any insured party, a representative of the insurance carrier with authority to settle which is meaningful considering the exposure to loss presented shall personally attend. If the claims representative in personal attendance has any limitation on his or her settlement authority, a representative of the carrier who has no such limitations shall be available to the court by telephone and shall remain available until released by the judge conducting the conference, regardless of the time of day at the location of that representative.

(4) Upon arrival at the department to which the conference has been assigned, counsel shall check in with the clerk and shall verify the attendance of those persons whose presence is required.

(5) Notwithstanding the provisions of CRC 222(c), no later than five(5) court days before the date set for the settlement conference each party shall lodge with the office of the court administrator and serve on all other parties a written statement setting forth the following:

(A) A statement of facts.

(B) The contentions of each party to the action regarding liability and damages.

(C) An itemized list of special damages.

(D) In any case in which personal injury is claimed:

(i) A description of the nature and extent of any injury claimed, including residuals.

(ii) A description of the basis for and method of calculation of any claimed wage loss.

(E) The most recent demand and offer or a description of any other proposed settlement between or among the parties.

(6) All parties shall be prepared to make a bona fide offer of settlement.

(b) The personal attendance of any person who is required by these rules to be present may be excused only by the presiding judge upon application made prior to the day on which the conference is scheduled. Any such person whose attendance is excused must remain available by telephone until he or she has been excused by the judge conducting the conference regardless of the time of day at the location of that person.

(c) No conference may be continued without the consent of the presiding judge or, if known, the judge to whom the case has been assigned for conference.

(d) At all such conferences, the judge of the department to which the conference has been assigned shall first attempt to settle the case. If settlement discussions are inconclusive, the judge may adjourn the conference to a later date for further settlement discussions.

(e) Sanctions pursuant to CRC 227 shall be imposed for any violation of this rule. The minimum sanction imposed shall be \$150.00 payable to the court; sanctions payable to the court may be larger where appropriate and will be in addition to appropriate attorney fees and calendar changes.

Sanctions mandated hereby may be waived by the judge conducting the conference only upon an application showing good cause why sanctions should not be imposed.

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2003)(Amended, effective July 1, 2005)

### **PART 3. CALENDAR MANAGEMENT**

#### **Rule 2.5 Trial Date Settlement Conference**

A further settlement conference shall be held on the date the case is called for trial in accordance with the procedures outlined in and with the attendance of those persons designated in Local Rule 2.4.

(Adopted, effective July 1, 1996)

#### **Rule 2.6 Refund of Jury Fees: Duty to Notify Court**

(Adopted, effective July 1, 1996) (**REPEALED** and Renumbered as Rule 2.7.6)

### **CHAPTER 3. [RESERVED]**

### **CHAPTER 4. JURY RULES**

#### **Rule 2.7 Length of Jury Service**

In compliance with CRC 861, a person has fulfilled his or her jury service obligation when he or she has:

- (a) Served on one trial until discharged.
- (b) Been assigned on one day for jury selection until excused by the jury commissioner.
- (c) Attended court but was not assigned to a trial department for selection of a jury before the end of that day.
- (d) Been assigned to a trial department for selection of a jury and has been excused by the trial judge.
- (e) Served one day on call.
- (f) Served no more than 5 court days on telephone standby.

(Adopted, effective January 1, 2000)

#### **Rule 2.7.1 Proposed Jury Instructions**

- (a) Reference California Rules of Court, Rules 229 and 855.

(b) The Trial Department shall determine in its discretion the timing of submission of proposed jury instructions.

(Amended, effective January 1, 2002) (Amended, effective January 1, 2006)

Rule 2.7.2 Duty Of Counsel with Respect to Jury Instructions

Before delivery of proposed jury instructions to the trial judge and opposing counsel, counsel shall fill in all blanks, make all strikeouts, insertions and modifications therein which are appropriate to the case. Submission of a form, which requires additions or modifications to constitute a complete and intelligible instruction, shall not be deemed a request for such instruction.

In addition to a hard copy of the proposed jury instructions, counsel shall provide the modified instructions on a computer diskette, and a clean copy of the instructions to be given to the jury.

(Adopted, effective January 1, 2000) (Amended, effective January 1, 2006)

Rule 2.7.3 Form of Proposed Jury Instructions (CCP §§ 607a, 609,)

All proposed jury instructions shall conform to the requirements of California Rules of Court, Rule 229. Any jury instructions requested after the conclusion of taking evidence shall be in writing. The court, in its discretion, may permit instructions to be sent into the jury room in "Booklet Form". In "Booklet Format" the text of the instruction is printed continuously on the page and may result in several instructions to the page. Such instructions may be accompanied by a table of contents.

(Adopted, effective January 1, 2000) (Amended, effective January 1, 2006)

Rule 2.7.4 Changing Jury Instructions

If, after the jury instruction conference and at any time before giving the instructions and verdict and findings forms to the jurors, the trial judge determines to make any substantive change therein, all parties should be so advised on the record outside the hearing of jurors.

(Adopted, effective January 1, 2000)

Rule 2.7.5 Jury Instruction Conference

Before final argument and after submission to the trial judge of all proposed jury instructions, verdict and findings forms, a conference outside the presence of jurors will be held. Ordinarily, a reporter or recorder is not required at the commencement of such conference.

In the event the trial judge intends to give any instructions or use any form of verdict or findings on the court's own motion, such instructions, verdicts or findings should be delivered to counsel.

The trial judge will then discuss with counsel:

- (1) Whether any requested proposed instructions, verdicts or findings are patently inappropriate and will be voluntarily withdrawn;
- (2) Whether there is any patent omission of instructions, verdicts or findings which are appropriate and that may be given without objection;
- (3) Whether there is any other modification, namely those to which the parties will stipulate.

Counsel shall meet prior to this conference to discuss each other's jury instructions and classify them into (1), (2) and (3) above.

The foregoing unreported conference will generally result in clarification of the matters, and creation of three categories of instructions, verdicts or findings that may be withdrawn, given or modified.

Thereafter, the conference should be reported and the trial judge should confirm for the record the matters agreed upon. The trial judge should also specify those instructions, verdicts and findings forms the court proposes to give, refuse or modify, whether at the request of a party or on the court's own motion. The court will hear any objections to the foregoing and rule thereon.

The trial judge should sign each requested instruction and indicate the disposition thereof, all of which shall be thereafter filed by the clerk. If a requested instruction is withdrawn, counsel shall so indicate by writing "withdrawn" and signing or initialing such instruction.

(Adopted, effective January 1, 2000)

#### Rule 2.7.6 Refund of Jury Fees: Duty to Notify Court

Jury fees shall be refunded pursuant to CCP Section 631.3 only if the party depositing the fees has given the master calendar coordinator written notice, at least two court days before the trial date, that the case settled, dropped or that the party's motion for continuance has been granted.

(Adopted, effective July 1, 2004 [former Rule 2.6])



## CHAPTER 5. GENERAL RULES

### Rule 2.8 Family Law Rules

The local rules of San Mateo Superior Court relating to Family Law are contained in Division V of these rules, infra.

(Adopted, effective July 1, 1996)

### Rule 2.9 Required Action

Action shall be taken on all calendared cases and a future date for action shall always be set. No case shall go “off calendar” without a future action being set.

(Adopted, effective July 1, 1996.)

### Rule 2.10 Interpreters and Translators

a) Notice. When a party desires an interpreter, it shall be the responsibility of that party to give notice to the Court and all other parties of record. That party shall make arrangements for the presence and the payment of the interpreter.

b) Qualifications. Unless the interpreter is an official court interpreter, the interpreter’s name and qualifications shall be provided to the court and opposing counsel five (5) court days prior to the date of the interpreter’s appearance . If the interpreter is an official court interpreter, no prior disclosure is required.

c) Relations or friends. Without the consent of all parties, a relation or a friend may not be used as an interpreter or translator in a contested proceeding.

(Adopted, effective January 1, 2000)

### **Rules 2.11 thru 2.19 (Reserved)**

## CHAPTER 6. CIVIL TRIAL RULES

### Rule 2.20 Trial Motions, Briefs, Statements, and Witness Lists

Upon assignment to a trial department for trial by a jury, each party shall file with that department the following:

- (1) Any in limine motions and response thereto;
- (2) Any trial briefs;
- (3) A concise non-argumentative statement of the case to be read to the jury; and
- (4) A list of possible witness who may testify in the trial to be read to the jury panel by the court.

(Adopted, effective January 1, 2002)

**Rule 2.21 In Limine Motions**

Any in limine motions shall be served upon opposing counsel not less than five (5) days prior to trial. Any response shall be served upon the proponent of the motion not later than the first appearance in the Department of the Presiding Judge for trial assignment.

(Adopted, effective January 1, 2002)

**Rule 2.22 Production of Exhibits**

Any party intending to offer any exhibit at the time of trial shall be prepared, by the time of assignment to a trial department, with an original and sufficient copies of each such exhibit for all other parties and the court. The court may make, in its discretion, any orders it deems appropriate regarding the exchange and presentations of exhibits.

(Adopted, effective January 1, 2002)

**RULE NUMBERS 2.23 TO 2.29 ARE RESERVED**

**CHAPTER 7. COMPLEX CASES**

**Rule 2.30 Determination of Complex Case Designation.**

**A. Decision of Complex Case to be Made by Presiding Judge**

The Presiding Judge shall decide whether an action is a complex case within the meaning of California Rules of Court, Rules 1800, subdivision (a), and whether it should be assigned to a single judge for all purposes. All status conferences or other hearings regarding whether an action should be designated as complex and receive a singly assigned judge shall be set in the Presiding Judge's department.

**B. Provisional Designation.**

An action is provisionally a complex case if it involves one or more of the following types of claims: (1) antitrust or trade regulation claims; (2) construction defect claims involving many parties or structures; (3) securities claims or investment losses involving many parties; (4) environmental or toxic tort claims involving many parties; (5) claims involving massive torts; (6) claims involving class actions; or (7) insurance coverage claims arising out of any of the claims listed in subdivisions (1) through (6).

The Court shall treat a provisionally complex action as a complex case until the Presiding Judge has the opportunity to decide whether the action meets the definition in California Rules of Court, Rule 1800, subdivision (a).

**C. Application to Designate or Counter-Designate an Action as a Complex Case.**

Any party who files either a Civil Case Cover Sheet (pursuant to California Rules of Court, Rule 1810) or a counter or joinder Civil Case Cover Sheet (pursuant to California Rules of Court, Rule 1811, subdivision (b) or (c)), designating an action as a complex case in Items 1, 2 and/or 5, must also file an accompanying Certificate Re: Complex Case Designation in the form prescribed by the Court. The

certificate must include supporting information showing a reasonable basis for the complex case designation being sought. Such supporting information may include, without limitation, a brief description of the following factors as they pertain to the particular action:

- (1) Management of a large number of separately represented parties;
- (2) Complexity of anticipated factual and/or legal issues;
- (3) Numerous pretrial motions that will be time-consuming to resolve;
- (4) Management of a large number of witnesses or a substantial amount of documentary evidence;
- (5) Coordination with related actions pending in one or more courts in other counties, states or countries or in a federal court;
- (6) Whether or not certification of a putative class action will in fact be pursued; and
- (7) Substantial post-judgment judicial supervision.

A copy of the Certificate Re: Complex Case Designation must be served on all opposing parties. Any certificate filed by a plaintiff shall be served along with the initial service of copies of the Civil Case Cover Sheet (pursuant to California Rules of Court, Rule 1810), summons, and complaint in the action. Any certificate filed by a defendant shall be served together with the service of copies of the counter or joinder Civil Case Cover Sheet (pursuant to California Rules of Court, Rule 1811, subdivision (b) or (c)) and the initial first appearance pleading(s).

#### **D. Noncomplex Counter-Designation.**

If a Civil Case Cover Sheet designating an action as a complex case and the accompanying Certificate Re: Complex Case Designation has been filed and served and the Court has not previously declared the action to be a complex case, a defendant may file and serve no later than its first appearance a counter Civil Case Cover Sheet designating the action as not a complex case. Any defendant who files such a noncomplex counter-designation must also file and serve an accompanying Certificate Re: Complex Case Designation in the form prescribed by this Court and setting forth supporting information showing a reasonable basis for the noncomplex counter-designation being sought.

Once the Court has declared the action to be a complex case, any party seeking the Presiding Judge's decision that the action is not a complex case must file a noticed motion pursuant to Section H below.

#### **E. Decision by Presiding Judge on Complex Case Designation; Early Status Conference.**

If a Civil Case Cover Sheet designating an action as a complex case and the accompanying Certificate Re: Complex Case Designation have been filed and served, the Presiding Judge shall decide as soon as reasonably practicable, with or without a hearing, whether the action is a complex case and should be assigned to a single judge for all purposes.

Upon the filing of a Civil Case Cover Sheet designating an action as a complex case and the accompanying Certificate Re: Complex Case Designation, the Clerk of the Court shall set a status conference at which the Presiding Judge shall decide whether or not the action is a complex case. This status conference shall be held no later than (a) 60 days after the filing of a Civil Case Cover Sheet by a plaintiff (pursuant to California Rules of Court, Rule 1810) or (b) 30 days after the filing of a counter Civil Case Cover Sheet by a defendant (pursuant to California Rules of Court, Rule 1811, subdivision (a) or (b)), whichever date is earlier.

Alternatively, in his or her sole discretion, the Presiding Judge may make the decision on complex case designation and single assignment, without a status conference, based upon the filed Civil Case Cover Sheet and accompanying Certificate Re: Complex Case Designation alone.

**F. Notice.**

The party who seeks a complex case designation or a noncomplex counter-designation must give reasonable notice of the status conference to the opposing party or parties in the action even if they have not yet made a first appearance in the action. Such notice of the status conference shall be given in the same manner as is required for ex parte applications pursuant to California Rule of Court, Rule 379.

**G. Representations to the Court.**

By presenting to the Court a Certificate Re: Complex Case Designation, an attorney or unrepresented party is certifying to the best of that person's knowledge, information, and belief, formed after reasonable inquiry under the circumstances:

- (1) That the complex case designation or noncomplex counter-designation is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) That the claims, defenses, or other legal contentions referenced therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) That the statement of supporting information relevant to the complex case designation or noncomplex counter-designation have evidentiary support or are believed, in good faith, likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) That there is a reasonable basis for that party's complex case designation or noncomplex counter-designation.

If, after notice and a reasonable opportunity to be heard, the Court determines that this subpart has been violated, the Court may impose an appropriate sanction upon the attorneys, law firms, or self-represented parties that have violated this subpart.

**H. The Presiding Judge's Continuing Power.**

With or without a hearing, the Presiding Judge may decide, on his or her own motion or on a noticed motion by any party, that a civil action is a complex case or that an action previously declared to be a complex case is not a complex case.

**I. Pilot Program; Sunset Provision.**

This revised Local Rule 2.30 is deemed to constitute part of a pilot Complex Civil Litigation Program for the San Mateo County Superior Court. Accordingly, it shall become effective on January 1, 2006, and shall automatically expire on December 31, 2006, unless sooner expressly extended. In the event that it expires without extension, Local Rule 2.30 as it existed as of December 31, 2005, shall once again be operative.

**(Adopted, effective July 1, 2004)(Amended, effective July 1, 2005) (Amended, effective January 1, 2006)**

**DIVISION III  
CIVIL LAW AND MOTION - SUPERIOR COURT**

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**DIVISION III  
CIVIL LAW AND MOTION - SUPERIOR COURT**

**GENERAL PROVISIONS**

The following rules are intended as a supplement to the California Rules of Court. California Rules of Court, Rules 301-391 and 501-598 are incorporated by reference. As used in these rules, CRC means California Rules of Court and CCP means the Code of Civil Procedure.

Rule 3.1 Application

The following rules apply to cases of unlimited jurisdiction and to cases of limited jurisdiction except where the Economic Litigation Act provides otherwise.

(Adopted, effective, January 1, 2000)

Rule 3.2 Law and Motion Calendars

All Law and Motion matters are heard in the Law and Motion Department except for the following matters, which are heard by the Presiding Judge:

- (1) Motions affecting a trial date including preference setting and motions to continue trial.
- (2) Writs of mandate and prohibition
- (3) Orders to show cause re preliminary injunction
- (4) Motions to continue arbitration.

(Adopted, effective January 1, 2000)

Rule 3.3 Form of Papers

Reference CRC, rules 201, 311, 501, 501.5

(Adopted, effective January 1, 2000)

Rule 3.4 Points and Authorities

Reference CRC, rule 313.

(Adopted, effective January 1, 2000)

Rule 3.5 Declarations and Affidavits

Reference CRC, rule 315(a) and CCP '2015.5.

(Adopted, effective January 1, 2000)

Rule 3.6 Judicial Notice

Reference CRC, rule 323

(Adopted, effective January 1, 2000)

**HEARINGS**

3.7 Notice of Hearing and Filing of Papers

Reference CRC, rules 317, 319 and CCP " 20008, 1011 and 1014

(Adopted, effective January 1, 2000)

3.8 List of Parties

Reference CRC, rule 387

(Adopted, effective January 1, 2000)

3.9 Continuances and Taking Matters Off Calendar

a) Reference CRC, rule 321

b) Monetary Sanctions. Failure to advise the court at least three court days before the hearing of the fact that the hearing will not proceed as scheduled, for any reason other than settlement of the case or resolution of the issue within the three-day period, may be deemed by the court to be a violation of an order of the court, punishable by money sanctions payable to the County under Code of Civil Procedure section 177.5

c) Drops. The Clerk's Office cannot drop a matter from the Law & Motion calendar unless a document is received (by fax, mail, e-mail or courier) from the moving party to drop the hearing from calendar.

d) Continuances, or advances. The Clerk's Office cannot continue or advance a matter unless all parties have agreed in writing (by fax, mail, e-mail or courier) to the new date.

(Adopted, effective January 1, 2000).

3.10 Tentative Rulings

a) Reference California Rules of Court, rule 324.

b) Availability. A tentative ruling on a law and motion matter may be obtained by telephoning (650) 599-3481, after 3:00 p.m. or by accessing the court's website at:  
[www.co.sanmateo.ca.us/sanmateocourts/index.htm](http://www.co.sanmateo.ca.us/sanmateocourts/index.htm)  
on the first court day preceeding the hearing.

c) Notice of Intent to Appear. Reference California Rules of Court, rule 324(a)(1). Parties intending to appear on the matter shall notify the Law and Motion Department or the department hearing the case and state their intent to appear. Parties shall follow the instructions as directed on the telephone Tentative Ruling notification message or on the Court's website.

(Adopted, effective July 1, 2000).

### 3.11 Opposition on Ground of Unavailability of Evidence

Any opposition on the basis of C.C.P. Section 437c (h) shall give detailed and specific information as to (1) facts establishing a likelihood that controverting evidence may exist, (2) specific reasons why such evidence cannot be presented at the present time, (3) an estimate of the time necessary to obtain such evidence, and (4) steps or procedures which the opposing party intends to take to obtain such evidence.

(Adopted, effective July 1, 1996)

### 3.12 Evidence at Hearing

Reference CRC, rule 323.

(Adopted, effective January 1, 2000).

### 3.13 CourtCall Telephonic Appearances

a) Reference CRC, rule 298 and 598

(b) Procedure.

(1) Telephone appearances through the use of CourtCall are permitted in non-evidentiary law and motion hearings. A party wishing to make a telephone appearance must serve and file a Request for Telephone Appearance Form with CourtCall not later than 4:30 p.m. on the first court day prior to the appearance. Copies of the Request Form and accompanying information sheet are available in the Clerk's office. There is a fee for each CourtCall appearance. There is a fee to parties for each CourtCall appearance and fees are paid directly to CourtCall. Confirmation of the request will be faxed by CourtCall.

(2) On the day of the hearing, counsel must check-in five minutes prior to the hearing. Check-in is accomplished by dialing the courtrooms dedicated toll-free teleconference number and access code that will be provided by CourtCall in the confirmation. Any attorney calling after the check-in period shall be considered late for the hearing and shall be treated in the same manner as if the attorney had personally appeared late for the hearing.

(Adopted, effective January 1, 2000) (Amended, July 1, 2005)

## **PARTICULAR PROCEEDINGS**

### 3.14 Motions for Summary Judgment and Summary Adjudication

Reference CRC, rules 343, 345.

(Adopted, effective January 1, 2000).

### 3.15 Unlawful detainers

(a) Reference CCP 418.10, 1170.5(b) and (c), and CCP '1005.



(b) Timing. A motion to quash service of summons on the ground of lack of jurisdiction, pursuant to CCP ' 418.10(a), must be made not less than three days nor more than seven days after the filing of the notice. The hearing on the motion shall be automatically set on the first Law and Motion date, which is not less than three, nor more than seven days after the filing of the notice. When a demurrer, a motion pursuant to CCP '1170.5(b) and (c) or any other motion or pleading is filed other than an answer, the hearing thereon shall be automatically set on the first Law and Motion Calendar following the date of the filing, if that calendar is five or more days after filing. If not, the hearing shall be set for the second Law and Motion Calendar following the date of the filing. (See CCP ' 1005.) Motions for summary judgment or judgment on the pleadings shall be calendared on the first Law and Motion Calendar occurring five or more days after personal service of the notice of motion or ten or more days after service by mail. Should any party notice a demurrer, motion for summary judgment or other motion on a date beyond the time set forth in this Rule, any other party may apply for an ex parte order setting an earlier hearing date.

(Adopted, effective January 1, 2000).

### 3.16 Motions to Continue Arbitration

a) Reference CRC, rule 1607.

(b) Declaration in support. Any application to continue an arbitration hearing shall be supported by a declaration showing:

- (1) The date the arbitrator was assigned;
- (2) The date on which the arbitration hearing is currently set;
- (3) The reason for and period of any previous continuance;
- (4) Good cause under the standards recommended in Section Nine of the Standards of Judicial Administration for the continuance and;
- (5) Whether all parties and the arbitrator have stipulated to the proposed continuance.

(Adopted, effective January 1, 2000).

### Rule 3.17 Motions After Trial

All motions after trial until judgment is final shall be heard in the department where the case was tried at a time designated by the judge of that department.

(Adopted, effective July 1, 1996)

### Rule 3.18 Motions to Reconsider

Reference CCP '1008.

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2000)

### 3.19 Ex Parte Applications and Orders

a) Reference CRC, rule 379 and 2008.

b) Time and Place. Ex parte hearings are held from 2:00 to 3:30 P.M. Monday through Friday. In general, all ex parte applications shall be presented in the Law and Motion Department except for the following, which shall be presented to the Presiding Judge:

- (1) Motions affecting a trial date including preference setting and motions to continue trial
  - (2) Writs of Mandate and Prohibition
  - (3) Temporary Restraining Orders and Orders to Show Cause re Preliminary Injunction
  - (4) Motions to continue arbitration
- c) Notice. Notice of an ex parte application may be given by fax if the parties have an existing fax service agreement and the proof of service complies with the requirements of CRC 2008.
- (Adopted, effective January 1, 2000).

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**PROBATE DEPARTMENT**

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**DIVISION IV  
PROBATE DEPARTMENT**

*ALL REFERENCES TO CODE SECTIONS REFER TO THE PROBATE CODE  
UNLESS OTHERWISE INDICATED*

**CHAPTER 1. ORGANIZATION AND ADMINISTRATION**

Rule 4.1 General Provisions

A. Tentative Rulings: Tentative rulings on probate matters may be obtained by phoning (650) 599-3481 after 3:30 p.m. one court day prior to the hearing.

Matters set on the non-appearance calendar are not automatically pre-approved. If an appearance will be necessary for a matter that had been set on the non-appearance calendar, the tentative ruling tape will instruct the attorney to appear. If the attorney will not be able to appear on the previously scheduled non-appearance hearing date, the attorney may contact the research attorney and the matter will be continued to the first available date when the attorney can appear.

B. Continuances in Conservatorship and Guardianship Matters: The attorney of record, or petitioner in pro per, 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 another continuance.

C. Continuances in Probate Matters Other Than Conservatorship and Guardianships. The attorney of record, or petitioner in pro per, will be allowed to continue all other probate matters twice. 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.

D. Appropriate Dispute Resolution, ADR, Policy Statement.

Contested probate matters, including will and trust contests, are uniquely well suited for various types of ADR processes including, but not limited to, mediation, neutral evaluation and arbitration. The Court finds that ADR can contribute to the prompt, economical and satisfying resolution of probate disputes. Accordingly, unless otherwise ordered, any contested probate matter set for an evidentiary hearing or trial shall be referred to ADR as soon as the Probate Department is aware the contested matter will not be resolved by declaration on the regular Probate Department Calendar. The Court may refer parties to ADR at the initial hearing in the case or at any other point in the proceedings deemed appropriate. Cases also may be referred directly to ADR by agreement of the parties.

(1) ADR Referral Procedures.

Upon referral to ADR, the judge will order parties and their counsel to meet with or contact court ADR staff to discuss their ADR options and the court's ADR program.

The Court expects parties to complete ADR within 60-90 days after the initial referral to ADR, unless otherwise ordered or good cause is shown to dispense with this requirement.

(2) Stipulation and Order to ADR.

Parties shall, within 21 days of the date of the referral to ADR, file a completed Stipulation and [Proposed] Order to ADR with the court. The Stipulation shall include the name of the neutral, the date of the ADR session and the names of those who will attend. A copy of the Court's standard probate Stipulation form is available at the probate counter in the Clerk's Office, on the court's website or by contacting the ADR Department.

E. Sanctions: **Failure to comply with local rules may result in sanctions under the Superior Court of California, County of San Mateo Local Court Rule 0.2.**

(Adopted, effective July 1, 1996; Amended, effective January 1, 2003; effective July 1, 2004)

Rule 4.2 Hearing

A Hearing Schedule. As of January 1, 2004, Probate matters will be heard on Monday, Tuesday, Wednesday and Friday in the designated Probate Department at 9:00 a.m. Please check with the Court Clerk's Office, Probate Division or the Court's website at [www.sanmateocourt.org](http://www.sanmateocourt.org) for future schedule changes. There is no regular probate calendar on Thursdays. LPS conservatorship matters are heard by the court on Wednesday in the designated Probate department at 11:00 a.m.

B Probate Calendar. The regular probate calendar sets only a limited number of cases on each day (approximate 15 to 20). Counsel may request/set the date of the hearing on the moving papers. If the requested date is unavailable, the clerk shall calendar the hearing date to the next earliest available hearing date. The clerk's office shall notify the attorney of record of any such resetting.

C. Advancing Hearing Dates/ Orders Shortening Time. If a probate matter cannot be heard on the date requested due solely to the fact that the court's calendar is full, counsel/self-represented parties may make ex parte application to the court to advance the hearing upon a demonstration of good cause. Probate matters may be heard on less than the statutory required notice only upon the issue of an Order Shortening Time (OST) by the court. OST's may be obtained ex parte upon notice and a demonstration of good cause.

D. Telephonic Appearances

(1) Telephonic appearances on the probate calendar are governed by California Rules of Court, Rule 298.

(2) Judicial Approval. Telephonic appearances through the use of an independent vendor, currently CourtCall, are permitted at certain probate hearings. Telephonic appearances are not permitted for initial conservatorship and guardianship appointments (Probate Code, §1514, §1825), petitions for Temporary Restraining Orders (e.g., elder abuse cases) or any other matters within the court's discretion. See Rule 4.6

(3) Procedure. A party wishing to make a telephone appearance that has been permitted by the court must serve and file a Request for Telephone Appearance Form with CourtCall not later than 4:30 p.m. on the first court day prior to the appearance. Copies of the Request For CourtCall Appearance form and accompanying information sheet are available in the Clerk's office. There is a fee to parties for each CourtCall appearance and fees are paid directly to CourtCall. CourtCall will fax confirmation of the request to parties.

On the day of the hearing, counsel and parties appearing by CourtCall must check-in five minutes prior to the hearing. Check-in is accomplished by dialing the courtroom's dedicated toll-free teleconference number and access code that will be provided by CourtCall in the confirmation. Any attorney or party calling after the check-in period shall be considered late for the hearing and shall be treated in the same manner as if the person had personally appeared late for the hearing.

(4) Referral to ADR. At the hearing, parties may be referred to an appropriate dispute resolution ("ADR") process (e.g., mediation, arbitration or neutral evaluation). If parties are referred to ADR, they must redial the dedicated toll-free teleconference number immediately



following their appearance and use a second CourtCall access code to telephonically appear at the ADR referral meeting with court ADR staff. If a case has been referred to ADR, a party's court appearance is not complete until they have also telephonically appeared at the mandatory ADR referral. See also ADR Rule 4.01

(Adopted, effective July 1, 1996; Amended, effective January 1, 2003; Amended, effective July 1, 2004, Amended, effective July 1, 2006)

#### Rule 4.3 Contested Matters

(Adopted, effective July 1, 1996; **REPEALED**, effective July 1, 2004)

#### Rule 4.4 Length of Hearing

The estimated length of the hearing shall determine on which calendar the matter is to be set.

A. All matters estimated by counsel/ self-represented party to last no longer than fifteen (15)-minutes in duration shall be set on the daily probate calendar.

B. All matters estimated by counsel to require a hearing of longer than fifteen (15) minutes shall be set on the long cause calendar. Long cause matters will be specially set in the designated probate department depending upon the court's calendar and availability. Counsel/self-represented parties shall notify the clerk of the court in the Probate department to receive a special set hearing date and time. If the court's calendar and availability do not permit the hearing of the long cause matter, counsel/self-represented parties will be directed to notify the Master Calendar Coordinator (650) 363-4895 to obtain a date on the master calendar.

(1) When a matter is put on the long cause calendar, all papers in support or opposition of the matter must be filed and served five (5) court days in advance of the hearing date in the office of the Clerk of the Court, Probate Division.

(2) All long cause matters shall comply with the Law and Motion rules.

(Adopted, effective July 1, 1996; Amended, effective January 1, 2000, effective July 1, 2004)

#### Rule 4.5 Non-Appearance

Those matters which may be determined upon a verified petition and without testimony shall be submitted for appropriate action by the Court without appearance by counsel/self-represented parties or witnesses provided that all required documents are submitted timely, as follows:

A. All declarations, affidavits, consents, waivers, proofs of service, proofs of publications, proposed orders and other necessary papers shall be delivered to the Superior Court Clerk's Office, Probate Division, no later than five (5) court days prior to the hearing. Supporting papers filed after the moving papers must show the scheduled hearing date on the face sheet.

B. The verified petition or an accompanying affidavit signed by the petitioner or by the personal representative or by counsel of record for either of said persons shall set forth the information necessary to establish the amount of bond, if one is required.

C. Failure to submit all necessary papers 5 court days prior to the hearing will result in a continuance of the matter at the court's discretion and convenience.

D. All matters will be non-appearance except as stated in Rule 4.6 or where required by the court.

(Adopted, effective July 1, 1996; Amended, effective July 1, 2004)

#### Rule 4.6 Appearance

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 [www.sanmateocourt.org](http://www.sanmateocourt.org).

B. Telephone Appearance. Except in petitions to appoint a conservator or guardian, or confirm a sale of property, telephone appearances may be allowed in matters where counsel has made arrangements through CourtCall. Reference is made to Local Rule 4.2.

C. Filing of Appearance Initiating Documents. All supporting papers for the party initiating an appearance on the probate calendar shall be filed no later than five (5) court days prior to the hearing. Replies shall be filed no later than two (2) court days prior to the hearing. Filing of papers shall occur in the office of the Clerk of the Court, Probate Division at the location where the matter is to be heard.

D. Proposed Order. Except in the case of confirmations of sales and contested matters, a proposed order must be submitted to the office of the Clerk of the Court, Probate Division, at least five (5) court days in advance of the scheduled hearing date, with the scheduled hearing date noted on the face sheet. Failure to submit a timely proposed order five (5) days in advance of the hearing may result in a continuance of the hearing.

E. Personal appearance by counsel will be required in the following cases:

- (1) Contested matters.
- (2) Proof of holographic wills, only when specially required by the hearing judge.
- (3) Hearings on petitions for court confirmation of sales of property.
- (4) Appointment of guardian or conservator.
- (5) Any non-routine matter that by law requires the personal appearance of any person.

(Adopted, effective July 1, 1996)(Amended, effective January 1, 2000; effective July 1, 2004)

#### Rule 4.7 Ex Parte Matters

A. Ex parte petitions shall only be brought when specifically authorized by the Probate Code, in exigent circumstances or in emergencies.

B. Notice of the ex parte petition shall be given to all parties entitled by provision of the Probate Code to receive notice of the matter which is the subject of the ex parte petition by the time as required by California Rules of Court, Rule 379(b).

C. All ex parte applications must allege whether special notice has been requested. If special notice has been requested, the application must identify each person who has requested such notice and must allege that special notice has been given to that person or has been waived by that person. A proof of service of special notice or a written waiver of special notice must be presented with each application.

All Probate ex parte applications must comply with California Rules of Court, Rule 379(a),(b),(d),(e), (f),(g) and(h).

D. Each petition for an ex parte order must be verified and must contain sufficient evidentiary facts to justify issuing an order.

Probate ex partes shall be heard each afternoon between the hours of 2:00p.m. and 3:30p.m. in the department assigned to hear regular probate matters. No prior appointment need be made for any ex parte hearing.

(Adopted, effective July 1, 1996)(Amended, effective January 1, 2000; effective July 1, 2004)

## **CHAPTER 2. PLEADINGS**

### **Rule 4.8 Caption**

All probate pleadings shall conform to the caption requirements of Code of Civil Procedure §422.30.

In addition, all probate pleadings must clearly and completely identify the nature of the relief sought or granted. The caption of the pleading shall include the date, time and location of any scheduled hearing. All pleadings shall have identified the attorney of record or state that the party is appearing in pro per. A facsimile number, if available, shall be included below the attorney's/self-represented party's telephone number.

Reference: CCP § 422.30, California Rules of Court, Rules 311 and 7.102.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

### **Rule 4.9 Petition**

The use of petitions for instructions is limited to those matters for which no other procedure is provided by statute. All petitions for instructions shall include a memorandum of points and authorities filed in support of the petition, with appropriate citations. The petition shall also set forth the specific instructions which the petitioner believes the court should order.

All other petitions seeking relief which is not provided for by statute, shall include a memorandum of points and authorities filed in support of such relief, with appropriate citations. The petition shall also set forth the specific nature of the relief sought.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

### **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. Notification to Court of Addresses [Conservatorship] (PR-1)
2. Notification to Court of Addresses [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. Guardianship Affidavit, Questionnaire, and Declaration (PR-18)
7. 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)

Rule 4.11 Accounts Deleted effective July 1, 1996; refer to Rule 4.49

Rule 4.12 Verification

Verifications are required when filing the following probate documents:

Petitions, Reports and Accountings, Objections, or responses to Petitions/ Reports/ Accountings.

Reference: Probate Code, §§ 1020-1023; and California Rules of Court, Rules 7.103, 7.104.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

**CHAPTER 3. SPOUSAL PROPERTY PETITION**

Rule 4.13 Statement of Title

(Adopted, effective July 1, 1996; **REPEALED**, effective July 1, 2004)

Rule 4.14 Allegations in Support of Showing of Community Property

A. If record title to property, either real or personal, is not in community property form, and the petitioner seeks confirmation of the property as community property, the petitioner must allege the facts necessary to give rise to the legal conclusion that the property in question is community property including, but not limited to:

1. Date and place of marriage.
2. The decedent's net worth at time of marriage.
3. Whether or not the decedent received any significant gifts or inheritance after marriage; and,
4. That the property to be set aside is not traceable to such initial net worth or later gift or inheritance.
5. Date of transmutation, if needed.

B. If the decedent and surviving spouse were married outside California or lived outside California during the marriage, the same allegations required above must be made respecting the decedent's net worth at the time of entry or each re-entry into California.

C. For all transmutations of title to real or personal property made after January 1, 1985, there must be an express written declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.

D. If the community or quasi-community property claim is based on any document, a copy of the document showing signatures must be attached to the petition. However, if the document is lengthy and

only portions of it are relevant to the claim, only the relevant portions need be attached. If it is believed that disclosure of the document would be detrimental, the document or the relevant portions may be paraphrased in the petition accompanied by a statement that a copy of the document itself will be made available to the Court.

*Reference:* Family Code §§ 850-853; Probate Code §§ 100-101 and §§13500-13660; and California Rules of Court, Rule 7.301.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

Rule 4.14.1 Spousal Property Petition Filed with Petition for Probate

Refer to the California Rules of Court, Rule 7.301 for requirements.

*Reference:* Family Code §§ 850-853; Probate Code §§ 100-101 and §§13500-13660

(Adopted, effective July 1, 2004)

Rule 4.15 Fees

Pursuant to Probate Code Section 13600, fees for services connected with filing a spousal property petition are not subject to court approval, except as provided in that section.

*Reference:* Family Code §850-§853; Probate Code §100-§101 and §13500-§13660; and California Rules of Court, Rule 7.301.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

Rule 4.16 Election of Surviving Spouse to Administer Property

If the personal representative elects to administer the community, quasi-community, or separate property passing to or belonging to a surviving spouse pursuant to Probate Code, 13502, the election must also be supported by a written statement by the surviving spouse indicating a consideration of the alternative procedures available to the surviving spouse. The written statement must also contain an acknowledgment by the surviving spouse that the inclusion of the property in the administration could result in appraisal fees, commissions and attorney fees, that are higher than if an alternative procedure was used.

*Reference:* Family Code 850-853; Probate Code 100-101 and 13500-13660; and California Rule of Court, Rule 7.301.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

**CHAPTER 4. APPOINTMENT OF EXECUTORS AND ADMINISTRATORS:  
PROOF OF WILLS**

Rule 4.17 Appointment of Special Administrator

Counsel must personally present the petition to the Court. Such petitions would ordinarily require appearance and notice as required in California Rule of Court, Rule 379. Except in the instance of a contest, special letters will issue for only a specified period of time. Although preference is given to the

person entitled to letters, if it appears that a bona fide contest exists, the Court will consider the advisability of appointing a neutral person or corporate fiduciary.

Reference: Probate Code 8000-8547 and 10400-10503; and California Rule of Court, Rules, 379, 7.50-7.55.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

#### Rule 4.18 Petition for Probate of Will and Letters of Administration

Copies of all instruments offered for probate must be attached to the petition.

(Adopted, effective July 1, 1996) (Sections (a), and (c) have been renumbered new Rules 4.18.1, 4.18.2, and 4.18.3)

##### Rule 4.18.1 Holographic Wills

When a holographic instrument is offered for probate, by filing it with the Court and attaching it to the Petition for Probate and other supporting papers (e.g., proof of Holographic Instrument), a typewritten copy must be accompany the holographic instrument.

*Reference:* Probate Code 8000-8547 and 10400-10503; and California Rules of Court, Rules 7.50-7.55.

(Adopted, effective July 1, 2004, formerly Rule 4.18(a))

##### Rule 4.18.2 Foreign Wills

Where an instrument written in a foreign language is offered, it must similarly be accompanied by an English translation, the accuracy of which is verified by the translator.

*Reference:* Probate Code 8000-8547 and 10400-10503; and California Rules of Court, Rules 7.50-7.55.

(Adopted, effective July 1, 2004, formerly Rule 4.18 (a))

##### Rule 4.18.3 Attachment 9 to Petition for Probate

In addition to those required by law, the following persons shall be listed on Attachment 9 to the Petition for Probate:

1. Even though a decedent died testate, the petition, as in the case of intestacy, must contain the names and relationships of all the heirs of the decedent. An heir is any person who would be entitled to distribution of a part of the decedent's estate (including those who would be heirs by virtue of Section 6402.5 if the decedent had a predeceased spouse) if the decedent had died intestate.
2. All contingent heirs and legatees must be listed including persons provided for in the will but whose bequests have been revoked by a subsequent codicil.
3. If a named legatee predeceased the decedent or did not survive for the designated survival period, that fact must be stated together with the approximate date of death (counsel

is advised to review the notice requirements when a beneficiary has died). Reference: California Rules of Court, Rule 4.19.

4. If an heir or legatee died after the decedent, that person shall be listed with the notation that he or she is deceased. If a personal representative has been appointed, the deceased heir or legatee shall be listed in care of the name and address of his or her personal representative. If no personal representative has been appointed, that fact shall be alleged (counsel is advised to review the notice requirements when a beneficiary has died). Reference: California Rules of Court, Rule 4.19.

5. The nominated trustee(s) of a trust created by the will shall be listed.

6. All executors and alternate executors shall be listed.

*Reference:* Probate Code 8000-8547 and 10400-10503; and California Rules of Court, Rules 7.50-7.55.

(Adopted, effective July 1, 2004, formerly Rule 4.18 (c))

#### Rule 4.19 Notice Requirements

- A. Direct notice required. Noticing requirements are detailed and complex. Refer to the California Rules of Court, Rule 7.51(a).
- B. Notice to attorney. Refer to California Rule of Court, Rule 7.51(b)
- C. Notice to guardian or conservator: When a guardian or conservator has been appointed for a person entitled to notice, the notice must be sent to the guardian or conservator and, unless the court has dispensed with such notice, to the ward or the conservatee. Refer to California Rules of Court, Rule 7.51(c).
- D. Notice to minor. Refer to California Rule of Court, Rule 7.51(d)
- E. Notice required in a decedent's estate when a beneficiary has died. Refer to California Rules of Court, Rule 7.51(e).
- F. Additional Notice Requirements: In addition to the above, notice must also be provided to the following:
  - (1) To any alternative executor and to a non-petitioning co-executor;
  - (2) To the Attorney General where there is a charitable trust involved as set forth in California Probate Code, section 8111."
- G. Petition Removed from Calendar. If the original petition is taken off calendar, a new notice must be published and served.
- H. Defective Notice.

(1) Publication correct but mailing defective. The hearing normally will be continued to allow a new mailing at least 15 days before the continued hearing date.

(2) Mailing correct but publication defective. The matter must be taken off calendar and a new notice must be given by publication and mailing.

Reference: Probate Code 8000-8547 and 10400-10503; and California Rule of Court 7.50-7.55.  
(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

#### Rule 4.19.1 Service of Notice

A. Service. The service must be completed by a person other than petitioner. The server must complete a Proof of Service.

B. Proof of Service. A written Proof of Service (an original and two copies) must be filed with the Court Clerk's Office, Probate division in Room A, prior to the court hearing as prescribed by the California Rules of Court. If service is required on more than one person, a separate Proof of Service may be submitted for each service.

C. Declaration of Diligent Search. Refer to California Rules of Court, Rule 7.52(a).

D. Mailed notice to county seat. Refer to California Rules of Court, Rule 7.52(b).

E. The court may prescribe or dispense with notice. Refer to California Rules of Court, Rule 7.52(c)

F. No Proof of Service. If service is not completed or no written Proof of Service is on file with the Court, the Court may continue the hearing on the Petition.

(Adopted, effective July 1, 2004, formerly Rule 4.19(b))

#### Rule 4.19.2 Publication.

Refer to California Rules of Court, Rule 7.54.

(Adopted, effective July 1, 2004, formerly Rule 4.19(c))

#### Rule 4.20 Proof of Wills

In uncontested matters, both witnessed and holographic wills may be proved by declaration without the need of testimony in open court.

Reference: Probate Code §§8000-8547 and §10400, specifically sections 8220, 8250 to 8254; California Rule of Court, Rules 7.50-7.55.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

#### Rule 4.21 Lost or Destroyed Wills



Declarations of witnesses will be required to prove a lost or destroyed will under the applicable provisions of Sections 8220 - 8226. If the will is proved, the provisions shall be attached to the Order for Probate per Probate Code Section 8223.

Reference: Probate Code §8000-§8547 and §10400-§10503; and California Rule of Court Rules 7.50-7.55.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

Rule 4.22 Renunciations and Declinations to Act

A written renunciation shall be filed by or on behalf of a nominated executor who does not petition as such. Similarly, a written declination shall be filed by or on behalf of an individual who is entitled to priority for issuance of letters of administration but does not desire to act as such. If the necessary renunciation or declaration is not filed, the petition shall indicate the reason.

Reference: Probate Code §8000-§8547 and §10400-§10503; and California Rule of Court Rules 7.50-7.55.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

**CHAPTER 5. BOND**

The guidelines in this chapter apply to guardians, conservators and trustees, as well as to personal representatives, except as otherwise indicated in Chapter 12.

Rule 4.23 Evidence as to Amount of Bond

(Adopted, effective July 1, 1996) (**REPEALED**, effective July 1, 2004)

Rule 4.24 When Bond Is Not Required

A. Personal Representative as Sole Heir/beneficiary.. When the verified petition for probate so requests, unless the will requires bond, no bond will be required of the personal representative where the petitioner is the sole heir or sole beneficiary under the will. However, the Court, in its discretion, may require a bond.

B. All Heirs/Beneficiaries Waive Bond.. When the verified petition for probate so requests, unless the will requires bond, no bond will be required when all beneficiaries of the estate waive bond. However, the Court, in its discretion, may require a bond.

Reference: Probate Code 8480-8488 and 9700-9705; and California Rule of Court, Rules 7.201-7.206.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

Rule 4.24.1 Statement of waiver in petition

Reference: California Rules of Court, Rules 7.201

(Adopted, effective July 1, 2004)

Rule 4.24.2 Two Or More Personal Representatives

Reference: California Rules of Court, Rule 7.202 and Probate Code 8481(a)(2).

(Adopted, effective July 1, 2004)

Rule 4.24.3 Separate Bonds For Individuals

Reference: California Rules of Court, Rule 7.203.

(Adopted, effective July 1, 2004)

Rule 4.24.4 Independent Power To Sell Real Property

Reference: California Rules of Court, Rule 7.205.

(Adopted, effective July 1, 2004)

Rule 4.25 Non-Resident Executors Or Administrators

A nonresident nominated to serve as personal representative without bond shall be required to post bond in such amount as the Court determines, absent a waiver of bond by all parties entitled to distribution.

Reference: Probate Code 8480-8488 and 9700-9705; and California Rule of Court, Rules 7.201-7.206.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

Rule 4.26 Reducing Bond

Bonds may be reduced at any time after appointment by an ex parte petition and order reducing bond, together with a receipt of a depository showing that assets in the amount of the requested reduction have been so deposited. Such a petition must set forth the assets remaining in the estate after excluding those held by the depository, and it must appear that the reduced bond adequately covers the amount to be protected.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

Rule 4.26.1 Withdrawing Funds from Blocked Account

An order authorizing release from a blocked account may be made ex parte. The petition shall set forth the approximate value of the assets on hand, the approximate value of all assets under impound and the amount of the existing bond the purpose for which the withdrawal is being made. Petitioner should recite any limitations on the use of funds, including all existing court orders. Where assets will be coming into

or passing through the hands of the fiduciary so as to require an increase of bond, the fiduciary must set forth the information necessary to enable the Court to determine the amount of the increase. The order may provide for funds to be paid directly to a taxing authority or beneficiary or other person entitled thereto.

Reference: Probate Code 8480-8488 and 9700-9705; and California Rules of Court, Rules 7.201-7.206.

(Adopted, effective July 1, 2004, formerly Rule 4.26(b))

#### Rule 4.27 Bond Modification

Reference: California Rules of Court, Rule 7.204.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

#### Rule 4.27.1 Bond upon sale of real property

Reference: California Rules of Court, Rule 7.206.

(Adopted, effective July 1, 2004)

### **CHAPTER 6. INVENTORY AND APPRAISEMENT**

#### Rule 4.28 Probate Referee Appointment

A. A Probate Referee will be appointed by the court in all cases when the order for probate is signed. To aid the Court in appointing a probate referee, the information requested in paragraph 4.c of the petition for probate must be completed.

B. Requests that a particular referee be appointed or not be appointed will generally be denied.

Reference: Probate Code §§2610-2615 and §§8800-8980; and California Rules of Court, Rule 7.501

(Adopted, effective July 1, 1996)(Amended, effective July 1, 2004)

#### Rule 4.29 Preparing Inventory and Appraisal

The California Probate Referee's Association has published a pamphlet, Probate Referees' Procedures Guide, describing their suggested form for listing various inventory assets as well as their opinion as to whether particular assets should be listed on Attachment 1 or 2. Although not an official publication, this pamphlet is a good reference. Copies are available from any of the probate referees in San Mateo County.

Reference: Probate Code §§2610-2615 and §§8800-8980; and California Rules of Court, Rule 7.501

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

Rule 4.30 Sufficiency of Bond

If there is a bond currently in force, the inventory and appraisal must disclose on its face, at the place on the form above the attorney's signature, whether the amount thereof is sufficient or insufficient. (See Local Rule 4.27 as to the procedure for modifying the bond.)

Reference: Probate Code §§2610-2615 and §§8800-8980; and California Rules of Court, Rule 7.501

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

Rule 4.31 Waiver of Appraisal by Referee

The appraisal by a probate referee may be waived under Section 8903 for "good cause." The decision whether good cause exists will be made by the Court on the basis of the facts set forth in the application. A petition to waive the appraisal by a probate referee must be on a noticed motion. The appointed probate referee shall also be given notice of this motion.

Reference: Probate Code section 8903

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

**CHAPTER 7. CLAIMS**

Rule 4.32 Nature and Form of Claims

A. Claim versus expense of administration: The Court will not approve "creditors' claims" which represent obligations of the estate arising after the death of the decedent (except reasonable funeral expense). Such expenses are properly expenses of administration, which shall be included for approval in the account.

B. Form of claims

1. Creditors' claims shall be submitted on Judicial Council forms but creditors' claims will be liberally construed in favor of their sufficiency if the content and format are in substantial compliance with the Probate Code. Satisfactory vouchers or proof of the claim should be attached.
2. Any claim presented for filing more than four months after letters are first issued shall be accompanied by either (1) a copy of the Notice of Administration to Creditors showing that the claim is timely, or (2) a Court Order allowing a late filing of the claim pursuant to Section 9103.

Reference: Probate Code §§ 9000-9392; and California Rules of Court, Rules 7.401-7.403.

(Adopted, effective July 1, 1996) (Amended, Effective July 1, 2004)

Rule 4.33 Filing and Listing Claims

Reference: Probate Code section 7.403

(Adopted, effective July 1, 1996) (Amended, Effective July 1, 2004)

Rule 4.34 Approval by the Court

A. Personal Representative without Independent Powers

Reference: California Rules of Court, Rule 7.401

B. Personal Representative with Independent Powers

Reference: California Rules of Court, Rule 7.402.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

Rule 4.35 Rejection of Claims by Personal Representative

(Adopted, effective July 1, 1996) (**REPEALED**, effective July 1, 2004)

Rule 4.36 Funeral and Interment Claims

When interest has been paid in connection with the delayed payment of a claim for the reasonable cost of funeral expenses, a specific allegation must be made in the report accompanying the account in which credit for such payment has been taken, setting forth reasons for the delay in payment. The Court will not allow credit for payment of interest where the delay in payment of the claim is not justified by the facts set forth.

Reference: Probate Code §§ 9000-9392; and California Rules of Court, Rules 7.401-7.403.

(Adopted, effective July 1, 1996) (AMENDED, EFFECTIVE JULY 1, 2004)

Rule 4.37 Claims of Personal Representatives and Reimbursements to Personal Representatives and their Attorneys.

A. Claims. A creditor's claim of the personal representative shall be noted as such. Such a claim must be processed as provided in Section 9252 notwithstanding authority to act under the I.A.E.A. Where there is more than one personal representative, a creditor's claim submitted by one of the personal representatives must be approved by the other(s) before submittal to the Court for approval

B. Reimbursements. Payments to a personal representative as reimbursement for payment by that personal representative of funeral expenses, expenses of last illness, or other debts of the decedent shall be reported to the Court in the same manner as an administrative expense.

Reference: Probate Code §§ 9000-9392; and California Rules of Court, Rules 7.401-7.403.

(Adopted, effective July 1, 1996) (AMENDED, EFFECTIVE JULY 1, 2004)

Rule 4.38 Compromise of Claims

Probate Code section 9830 sets forth the mechanics for formal compromise of claims. The same result may be accomplished more simply by having the personal representative approve the claim in the reduced

amount reached by settlement. If the claim had been rejected before the settlement, the rejection may be withdrawn.

Reference: Probate Code §§ 9000-9392; and California Rules of Court, Rules 7.401-7.403.

(Adopted, effective July 1, 1996) (AMENDED, EFFECTIVE JULY 1, 2004)

## **CHAPTER 8. SALES**

### **I. GENERAL INFORMATION**

#### Rule 4.39 Judicial Approval

For estates being administered pursuant to the I.A.E.A., judicial approval of sales or exchanges of real or personal property is no longer required (Sections 10500 - 10503). For estates not being administered pursuant to the I.A.E.A., confirmations of sales are still required. If the personal representative of an estate being administered pursuant to I.A.E.A. elects to follow Court supervised procedures, then the sale of real property shall be preceded by statutory notice of sale pursuant to Sections 10300, et seq.

(Adopted, effective July 1, 1996, Amended, effective January 1, 2000)

#### Rule 4.40 Exclusive Listings for Sale of Property

Section 10150 is authority for a personal representative acting under I.A.E.A. to enter into an exclusive agreement to sell real property without prior court approval. At the hearing on confirmation of sale, the Court will determine the commission (without regard to the terms of the exclusive agreement) and the allocation of it between the brokers involved in the sales.

(Adopted, effective July 1, 1996)

## **II. SALES OF PERSONAL PROPERTY**

#### Rule 4.41 Tangible Personal Property (Probate Code Sections 10250 - 10264)

A. Necessity for appraisal: For estates subject to the I.A.E.A., sales of personal property may be made without Court approval. In all other cases the sale of tangible personal property will ordinarily not be approved unless the property has been appraised. For this purpose, a partial inventory and appraisal may be filed or a letter appraisal may be obtained from the appointed probate referee.

B. Commissions: Commissions on sales of tangible personal property will be allowed only to individuals holding a license authorizing them to deal in the type of property involved. A commission will be allowed on the original bid only when the commission is requested in the return of sale. When there is an overbid in court, a commission may be allowed to the successful broker, and, if the original bid was subject to a commission, apportionment between the brokers will be made according to the same rules as prescribed for real estate sales. The amount of the commission is within the Court's discretion and will not ordinarily exceed a total of 5 percent of the sale price.

(Adopted, effective July 1, 1996)

#### Rule 4.42 Securities

Where proceeding under Section 10200, the petition for authority to sell must set forth a minimum sales price as to all securities except those listed on an established exchange. The minimum price must be a recent market quotation from the over-the-counter market, or if there is no recent market quotation available or the securities are "closely held," the petition must set forth the basis for fixing the minimum sales price.

(Adopted, effective July 1, 1996)

Rule 4.43 Condominiums, Community or Cooperative Apartments

A condominium is an interest in real property and must be sold as such, unless it is held as a limited partnership. A community or cooperative apartment is personal property and must be sold as such. However, the overbid on such assets will be computed on the same basis as in sales of real property, and brokers' commissions will be allowed on the same basis as in sales of real property.

The sale of a cooperative apartment will not be confirmed subject to the purchaser later obtaining the acceptance of a Board of Directors or other governing body; therefore, the prospective purchaser should obtain acceptance before seeking court confirmation.

(Adopted, effective July 1, 1996)

**III. RETURN OF SALES OF REAL PROPERTY**

Rule 4.44 Publication of Notice of Intention to Sell Real Property

A. Procedure: Notice shall be published (pursuant to section 6063 (a) of the Government Code unless the Court grants an order shortening time) in all decedents' estates, except those in which there is a power of sale in the will, or those estates administered with full authority under the I.A.E.A. If the personal representative of the estate being administered under I.A.E.A. elects to follow Court supervised procedures, then the sale shall be preceded by statutory notice of sale pursuant to Section 10300 et seq. In all guardianships, conservatorships and court-supervised trusts except those in which the power of sale has been previously granted by the Court the sale shall be preceded by statutory notice of sale. Notice of sale shall be published in a newspaper published in the county in which the real property lies.

If an executor or administrator having power of sale publishes a notice of sale of the real property and proceeds with the sale thereunder, and later a technical defect appears, the defect cannot be cured by exercising the executor's or administrator's power of sale. The executor or administrator must publish a new notice.

B. Contents of Notice: In addition to a legal description of the property, the notice should contain the street address or other common designation of the property, when available. If an exclusive listing has been given, the notice should so state. If the property is to be sold subject to an encumbrance, the notice should so state.

If property is to be sold for cash only, the notice must so state. If the estate would prefer all cash but will accept part cash and part credit, the notice should include the following language: "All cash, or part cash and part credit, the terms and conditions of credit as are acceptable to the fiduciary and the Court.

Effect of Notice: Any offer accepted and returned to court for confirmation cannot be at variance with the terms of sale contained in the notice.

(Adopted, effective July 1, 1996, Amended, effective January 1, 2000)

Rule 4.45 Return of Private Sale

- A. Appraisal and Reappraisal: In order for a private sale to be confirmed, there must be on file an appraisal of the property or a reappraisal for purposes of sale if the decedent's death or guardian's or conservator's appointment occurred more than one year before the date of the private sale. The appraisal or reappraisal should be on file prior to the hearing date on the return or may be presented at the hearing.
- B. Market Exposure of Property: Whenever it is brought to the attention of the Court that the fiduciary has denied bona fide prospective buyers or their brokers a reasonable opportunity to inspect the property, the returned sale will not be confirmed, and the sale will be continued to allow inspection.
- C. Second Deeds of Trust: The Court will approve the taking of a promissory note secured by a junior deed of trust upon a showing that it serves the best interests of the estate.
- D. Hearing on Return of Sale and Overbid: Counsel must be prepared to state the minimum necessary overbid, computed at the rate of 10 percent of the first \$10,000, and 5 percent on the balance of the sale price. Counsel should inform the original purchaser or his agent of the time and place of hearing and advise that they be in court for the hearing.
- E. Application of Statutory Formula re Overbid: The Court must consider not only whether the bid is arithmetically the highest, but also whether it is best. Counsel or the parties involved should be prepared with factual information that will aid the Court in making this determination.
- F. Earnest Money Deposit by Bidder: No bid for the purchase of real property will be acceptable unless accompanied by a minimum deposit of 10% of the amount bid in cash or its equivalent. When an overbid is made in court, the over bidder must submit 10% of his overbid in cash or its equivalent at the time of the hearing on the return of sale.
- G. Overbid Form: The Courtroom Clerk will give counsel a form to be completed on the overbid. This form is to be returned to the Clerk before the end of that morning's probate hearings.
- H. Bond: The petition for confirmation of sale of real estate should set forth the amount of the bond in force at the time of sale and the amount of property in the estate which should be covered by bond. If no additional bond is required, or if bond is waived, that fact should be alleged.
- I. Absence of Attorney for Estate at Confirmation Hearing: If someone is present who wishes to overbid and the estate's attorney is absent from the hearing, the hearing will be continued for one week, except where the fiduciary is present and requests that the sale proceed without the attorney.

(Adopted, effective July 1, 1996)

Rule 4.46 Broker's Commissions

- A. Improved Property: The Court will ordinarily allow a broker's commission not to exceed 6 percent of the first \$200,000, 5 percent of the next \$300,000, and 4 percent of the balance of the sale price. The parties may agree to a lesser percentage.
- B. Unimproved Property: The Court will ordinarily allow a broker's commission not to exceed 10 percent of the first \$100,000, 8 percent of the next \$200,000, and 5 percent of the balance of the sale



price. In the Court's discretion, a flat 10 percent may be allowed. In each instance, the Court will determine what is "unimproved" real property.

C. Order Must Show Commission Allocation: The order confirming sale must show the total commissions allowed and any allocation agreed on between brokers. (For examples of allocation of commissions, see Appendix A.)

D. Commission Rates at Property Situs Will Apply: Where the property is not located in San Mateo County, the Court will allow commissions based on the San Mateo County Probate Court schedules unless it is shown that a larger commission would be allowed based on the schedule in effect in the Probate Court of the County in which the property is located.

E. Broker Bidding for Own Account not Entitled to a Commission: A broker bidding for his own account is not entitled to receive or share in a commission. Estate of Toy 1977, 72 Cal. App. 3d 392.

(Adopted, effective July 1, 1996)

#### Rule 4.47 Broker's Commissions in Overbid Situations

A. Original Bidder and/or over bidder represented by Broker: Commissions are governed by Probate Code Sections 10161 through 10166. See also the Law Revision Comments following those sections.

B. Original Bidder as over bidder: Once a net bid has been overbid in court, the original bidder may elect to be represented by a broker in further bidding.

(Adopted, effective July 1, 1996)

### **CHAPTER 9. ACCOUNTS**

#### Rule 4.48 In General

All accounts filed in probate proceedings, which include guardianship, conservatorship, and trust accounts, must be typewritten and must conform to the California Rules of Court (CRC) adopted by the Judicial Council, including without limitation California Rules Of Court, Rules 7.550, 7.901 and 7.902 and the California Probate Code, including sections 1060-1064, 2620-2633, 10900-11051, and 16060-16064.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2004)

#### Rule 4.49 Summary of Account Form

(Adopted, effective July 1, 1996) (**REPEALED**, effective July 1, 2004)

#### Rule 4.50 Contents of Account

(Adopted, effective July 1, 1996, Amended, effective January 1, 2000) (**REPEALED**, effective July 1, 2004)

Rule 4.51 Reporting Income and Principal

(Adopted, effective July 1, 1996) (**REPEALED**, effective July 1, 2004)

Rule 4.52 Allegations re Sufficiency of Bond

(Adopted, effective July 1, 1996) (**REPEALED**, effective July 1, 2004)

Rule 4.53 Trustee's First Account

(Adopted, effective July 1, 1996) (**REPEALED**, effective July 1, 2004)

Rule 4.54 Waiver of Accounting on Final Distribution

(Adopted, effective July 1, 1996) (**REPEALED**, effective July 1, 2004)

**CHAPTER 10. DISTRIBUTION OF PROBATE ESTATE**

Rule 4.55 Description of Assets

The petition for distribution, whether or not an account is waived, must list assets on hand and list and describe the property to be distributed, either in the body of the petition, by a schedule in the accounting, or in a separate exhibit incorporated in the petition by reference. Description by reference to the inventory is insufficient. Real property shall be described by legal description in the body of the decree of distribution.

(Adopted, effective July 1, 1996)

Rule 4.56 Asset Distribution

The petition for distribution must state specifically how the estate is to be distributed. A general allegation that distribution is "in accordance with the terms of the will" or "in accordance with the laws of intestate succession" is insufficient.

The petition must show the computation on which the proposed distributions are based.

Whether or not an accounting has been waived, the decree of distribution must set forth specifically the manner in which the estate is to be distributed by showing the distributee's name and a description of the property or cash, including bank account location, number and amount, to be distributed. Mere reference to the allegations of the petition is insufficient and not acceptable to the Court.

(Adopted, effective July 1, 1996)

Rule 4.57 Allegation re Character of Assets

Whether the decedent died testate or intestate, the petition for distribution must contain an allegation as to the separate or community character of the property in all cases where the character of the property may affect distribution.

(Adopted, effective July 1, 1996)

Rule 4.58 Agreements for Distribution of Assets

If distribution is to be other than according to the terms of the will or the laws of intestate succession, there must be on file a written agreement signed by all parties affected by the distribution.

(Adopted, effective July 1, 1996)

Rule 4.59 Assignment of Assets

If distribution is to be made to an assignee of an heir, devisee or legatee, the assignment and the terms thereof must be on file. (See Section 11604.)

(Adopted, effective July 1, 1996)

Rule 4.60 Allegations re Heirs of Predeceased Spouse When Decedent Dies Intestate

If an intestate decedent leaves neither issue nor surviving spouse and the decedent had a predeceased spouse, the petition must either set forth the names, addresses and line of blood relationships of the heirs who take by virtue of Sections 6402 and 6402.5 or affirmatively allege that there is no heir who takes by virtue of either section.

(Adopted, effective July 1, 1996)

Rule 4.61 Distribution to Persons Under Conservatorship or Guardianship

The decree should provide for distribution of the property to the minor or the conservatee rather than to the guardian or conservator, but must provide that actual payment or delivery be made to the guardian or conservator.

(Adopted, effective July 1, 1996)

Rule 4.62 Distribution to Minors

Where delivery of the assets is to be made to the minor's parent pursuant to Section 3401, the declaration by complying with the provisions of that section must be on file before the decree is signed.

Where a depository is to be used, the receipt and agreement of the depository must be filed as required under Section 2328.

If distribution is made to a custodian under Section 3900 et seq., a declaration complying with the appropriate section thereunder must be on file.

(Adopted, effective July 1, 1996)

Rule 4.63 Distribution to Representative of Deceased Heir or Beneficiary

When an heir or beneficiary dies during the administration of an estate, the decree shall provide for distribution to the personal representative of his estate (Sections 11801 and 11802) or, where applicable to the person(s) entitled thereto under Sections 13100-13105.

(Adopted, effective July 1, 1996)

Rule 4.64 Distribution to Intestate Heirs

The relationship of heirs who take by intestacy shall be sufficiently described to permit the Court to determine whether the laws of intestate succession have been properly applied. If an heir takes by right of representation, the petition must indicate parentage and the approximate date of the parent's death.

(Adopted, effective July 1, 1996)

Rule 4.65 Interest on General Pecuniary Legacies

The Court will strictly enforce the policy set forth in Sections 12000 - 12007 and Estate of Hubbell (1932) 216 Cal. 574, and will order payment of interest at the statutory rate on all general pecuniary legacies not paid within one year from the date of decedent's death unless payment of interest is waived in the will.

(Adopted, effective July 1, 1996)

Rule 4.66 Requirements re: Final Distribution

A. Allegations re Creditor's Claims: The petition for final distribution (whether or not on waiver of accounting and whether or not the personal representative is acting under the I.A.E.A.) must list all creditors' claims presented and indicate the disposition of each claim. If any claim has been rejected, the date of service of notice of rejection must be stated, as well as its disposition, whether by suit or otherwise. This information must be set forth in the petition for final distribution even though it may have been presented to the Court in whole or in part in prior accountings or petitions for distribution.

B. Allegations relating to Independent Acts: The petition for final distribution must list and describe all independent acts taken without prior court approval and must contain an allegation that the 15-day advice of proposed action was waived or duly served when required and that no objections were received. Sections 10587 - 10591. The originals of the advice of proposed action with attached declarations of mailing must be available but need not be filed with the Court. If certain acts have been properly reported in a prior petition for distribution, they need not be repeated.

C. Retention of a Reserve: The decree of final distribution must specifically set forth the use that may be made of retained funds (e.g., income taxes, closing costs, etc.).

D. No petition for final distribution will be accepted for filing or considered by the Court unless an inventory and appraisal marked final or complete has already been filed.

E. No petition for distribution will be granted whereby any portion of an estate is distributed to a nonresident, without a certificate from the Franchise Tax Board where required by law because of the value of the estate or the assets distributable to such nonresident. See Revenue and Taxation Code §19513 and applicable regulations for dollar amounts.

(Adopted, effective July 1, 1996, Amended, effective January 1, 2000)

Rule 4.67 Tax Procedures re Final Distribution

The petition for final distribution must address the question of the source of the payment of the federal estate tax and California estate tax, if any. If the will has a clause directing the payment of the taxes out of the residue of the estate, this should be so alleged. If, on the other hand, there is no tax clause or there is a tax clause which does not direct the source of payment, the amounts required to be prorated or charged must be stated.

(Adopted, effective July 1, 1996)

Rule 4.68 Preliminary Distribution Under Section 11621

In addition to the requirements contained elsewhere in this chapter, the petition must state the approximate net value of the property remaining in the estate after the proposed distribution and an estimate of the total amount of unpaid taxes, unpaid claims and other liabilities. The Court prefers an inventory and appraisal which includes the property to be distributed be on file.

(Adopted, effective July 1, 1996, Amended, effective January 1, 2000)

**CHAPTER 11. MISCELLANEOUS PETITIONS AND ORDERS**

Rule 4.69 Family Allowance (Sections 6540-6545)

A. Necessary Allegations of Petition: All petitions for family allowance must state facts to show that the allowance prayed for is necessary and reasonable, including:

- (1) The nature and separate or community character of the probate estate and whether or not it is solvent;
- (2) Whether others are entitled to family allowance;
- (3) The approximate needs of the applicant, with reference to his or her standard of living and
- (4) The applicant's income from other sources.

B. Duration of Family Allowance. All orders will limit family allowance to a definite period of time. If the order is on an ex parte petition, family allowance will normally not be granted for a period exceeding six months.

C. Under Section 6540(a): Before an inventory is filed, an order for a family allowance under Section 6540(a) may be made or modified ex parte or on noticed hearing; after an inventory is filed, such an order may be made or modified only on noticed hearing, as provided by Section 6541(b).

D. Under Section 6540(b): An order for a family allowance under Section 6540(b) may be made or modified only on noticed hearing, as provided by Section 6541(c).

(Adopted, effective July 1, 1996)

Rule 4.70 Borrowing Money (Sections 9800 - 9807)

A. Inventory Must Show Security: If the loan is to be secured, an inventory describing the security must be on file prior to the hearing.

B. Bond Requirements: The petition under Section 9800 must state whether the personal representative is serving with or without bond. If with bond, the Court must be advised -- either in the petition or by supplemental declarations filed before the hearing, or by testimony at the hearing -- as to the necessity for an increase in the bond.

(Adopted, effective July 1, 1996)

Rule 4.71 Operating a Business (Section 9760(c) and (d))

A separate order prescribing the notice to be given under Section 9760(c) and (d) must be presented to the Court before the petition is filed. The Court may prescribe any reasonable notice, but does not have the power to dispense with notice. Ordinarily, the Court will prescribe that at least 15 days' notice must be given to the principal creditors and beneficiaries who might be affected.

(Adopted, effective July 1, 1996)

Rule 4.72 Determining Title to Real or Personal Property (Section 9860)

All notices of hearing given under Section 9860 must contain a description of the property sufficient to give adequate notice to any party who might be interested in the property, including with respect to real property, the street address, or if none, an indication of its location.

(Adopted, effective July 1, 1996)

Rule 4.73 Substitution or Withdrawal of Attorney

If an attorney wishes to withdraw from a probate proceeding as the attorney of record, he may do so by filing a noticed motion, a substitution of attorneys, or a notice of withdrawal consented to by the personal representative and containing the address of the personal representative or the substituted attorney.

(Adopted, effective July 1, 1996)

Rule 4.74 Obtaining Final Discharge

To assist the Court in determining whether final discharge should be ordered, counsel shall submit to the Court, along with the declaration and order for discharge, a copy of the judgment of final distribution and of all receipts of the distributees. The "order" portion shall be completely filled in except for the date and name of the judge.

(Adopted, effective July 1, 1996)

Rule 4.75 Proceedings to Establish Fact of Death (Sections 200-204)

A. Filing Under Name of Decedent: A petition to establish the fact of death must be filed in the name of the deceased person whose interest is to be terminated.

B. Separate Petition Preferred: Although Section 202(b) authorizes a petition to establish the fact of death to be included in a verified petition for probate of will or for letters of administration (but does not authorize such a petition to be included in any other petition, such as a petition for final distribution), for convenience of administration, attorneys are encouraged to file the petition as a separate petition.

C. Description of Property: If the property affected is realty, a copy of the document showing the decedent's interest must be attached to the petition and incorporated therein, or the verified petition must

set forth the entire instrument vesting title, including the recordation data. If the property affected is personalty, the location and description of the property and the decedent's interest therein must be set forth with particularity.

D. Attorneys' Fees: There is no provision in the Probate Code for allowance of attorneys' fees in proceedings to establish the fact of death. The attorney should make fee arrangements directly with the client.

If a surviving joint tenant failed during his lifetime to establish the fact of death of a previously deceased joint tenant, an extraordinary fee may be awarded in the probate proceeding involving the surviving joint tenant for those services performed after the death of the surviving joint tenant.

(Adopted, effective July 1, 1996)

## **CHAPTER 12. GUARDIANSHIPS AND CONSERVATORSHIPS**

### **Rule 4.76 Temporary Conservatorships**

A. In exigent circumstances, petitions may be presented ex parte between 2:00 -3:30 p.m. (M,T, W, Th,F). On those days that the Probate Presiding Judge is not available, the petitioner shall present his/her petition to the court's Presiding Judge or the judge designated to hear ex parte matters. A separate petition for the appointment of a regular conservator must first be on file and a hearing date assigned before a petition for temporary conservator will be considered. Forms necessary for temporary appointment of conservator are as follows:

- (1) Petition for Appointment of Temporary Conservator (GC-110);
- (2) Declaration regarding notice of ex parte hearing;
- (3) Ex Parte Order Appointing Temporary Conservator (GC-140);
- (4) Proof of service regarding 5-day personal service of ex parte petition to proposed conservatee (if matter contested); and
- (5) Letters of Temporary Conservatorship (GC-150) and Temporary Bond Certificate (for estates).

B. Prior Review and Filing

- (1) Both temporary and permanent conservatorship petitions and subsequent filings must be filed at the Probate Clerk's office before presentation to the Court. All filings regarding conservatorships must be accompanied by an original and two copies.
- (2) All petitions for temporary conservatorships must be submitted to the Probate Clerk's Office for review by the Court Investigator's Office prior to it being presented to the judicial officer for review. It is recommended that an appointment for review of the documents by the Court Investigator be made before submission to the clerk by calling 363-4351. After the Court Investigator's review of the papers, a recommendation will be made to the Court that will accompany the petition to be presented to the judicial officer for review and ruling.

C. Grounds: The emergency nature of the facts which are alleged as good cause for the appointment must also be alleged. Petitions must be signed by the petitioner(s). (California Rules of Court, Rule 7.103.)

D. Bond: Unless waived pursuant to 8481(a), full bond in accordance with Sections 8480 - 8482 will normally be imposed upon a non-corporate temporary conservator of the estate; if a lesser amount is

requested, good cause must be shown in the petition. The Court may in certain cases require a bond of a temporary conservator of the person.

E. Notice: Notice of the ex parte hearing must be given to the proposed conservatee (Probate Code, Section 2250) and the persons listed in Probate Code, Sections 1821 and 1822. Notice and the declaration regarding notice must comply with CRC 379, and must state whether any person entitled to notice objects to the hearing. Reasons for shortening or dispensing with statutory notice must be alleged.

F. Length of Appointment: A temporary conservator will not be appointed for a period exceeding 30 days or the date of the hearing assigned for the regular petition, whichever is later.. It may be extended for good cause shown by written order of the Court.

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

#### Rule 4.77 Guardianships

(Adopted, effective July 1, 1996, Amended, effective January 1, 2000; **REPEALED**, effective July 1, 2004 [See new Rules 4.77.1 to 4.77.17])

##### Rule 4.77.1 Petition for General Guardianship.

A petition may be filed for a guardianship of the person, guardianship of the estate, or both. This petition must be filed in all cases, even if the guardianship is needed for a short period of time. A packet of blank guardianship forms, including a list of all documents required to be filed with the Superior Court in San Mateo County and information regarding the procedures for proper service of notification (PR-20) is available from the Superior Court Clerk's Office, Room A, 400 County Center, Redwood City, and on the Internet at [www.sanmateocourt.org](http://www.sanmateocourt.org). Each of the forms must be completed in its entirety, copied, and returned to the Clerk's office for filing **before the Probate Clerk will assign a case number and set a hearing date.** A case number and hearing date will be assigned by the Counter Clerk as part of the filing process.

1. The following documents (an original and two (2) copies) must be submitted with the initial filing:

- a. Notice of Hearing (GC-020)
- b. Petition for Guardianship (GC-210)
- c. Confidential Guardian Screening Form (GC-212)
- d. Guardianship Affidavit, Questionnaire, and Declaration (San Mateo County Local Form PR 18)
- e. Declaration Under UCCJEA (FL-105/GC-120)
- f. Notification to Court of Addresses for Guardianships (San Mateo County Local Form, PR-2)
- g. Consent of Guardian, Nomination and Waiver (GC-211) - this is a multi-purpose form, and must be submitted for the "Consent" of the guardian. The nomination and/or waiver provisions are optional. This form may be submitted in counterpart.
- h. Duties of Guardian (GC-248)

2. All documents will become part of the public record, with the exception of the Guardianship Affidavit, Questionnaire, and Declaration (PR-18) and the Confidential Guardian Screening Form (JC-GC 212) (confidential except by court order – see California Rules of Court, Rule 7.1001).



3. All filings must consist of an original and two(2) copies. Signatures must be in blue ink. The clerk will retain the original and one (1) copy of all documents. (The clerk will deliver the copy to the Court Investigators). The second copy will be stamped "endorsed filed" and will be returned to the filing party for his/her records,
4. The Guardianship Affidavit, Questionnaire, and Declaration (Local Form) should include the following information to assist the Court Investigators and the Court:
  - a. specific reasons why parents are not suitable
  - b. complete legal name, any other names used for the minor
  - c. development of the minor, whom minor has resided with since birth, and any special emotional, psychological, or physical needs; and ability of guardian to meet these needs.
  - d. daycare arrangements, if any; name, address and telephone number of person or facility providing care
  - e. schooling/education plan and any special needs
  - f. housing arrangements, own room or sharing
  - g. financial support and source
  - h. name and telephone number of physician
  - i. other relevant information (facts which should be revealed to the court but which the petitioner wishes to have remain confidential should be addressed to the Court Investigator and labeled, "For Confidential Use Only." )
5. It is recommended that every petitioner purchase a copy of the film, *Becoming a Guardian*, produced by the Judicial Council and the Superior Court, County of Solano. The video, DVD, or CD-ROM version of the film is available from the Probate Clerk's Office at a minimal cost. A copy of the video is available for viewing at the Clerk's Office in the Self-Help Center at the Hall of Justice.

(Adopted, effective July 1, 2004 [formerly Rule 4.77 (a), (c), and (d)]) (Amended, effective July 1, 2006)

#### Rule 4.77.2 Hearing Dates

- A. A hearing date will be assigned at the Court Clerk's Office, Room A when the documents are filed. Guardianship matters are heard Monday, Tuesday, Thursday and Friday at 9:00 a.m.
- B. Possible hearing dates may be inserted into the documents in advance after telephone inquiry from the Clerk [650-363-4711]; but dates inserted in advance do not reserve a place on the Court Calendar, and may be subject to change at the time of actual filing.
- C. Continuances. See Local Rule 4.1 above.
- D. Order shortening time. All applications for Order shortening time shall be submitted in the Court Clerk's Office, Probate Department rather than the Law and Motion Department.

(Adopted, effective July 1, 2004)

#### Rule 4.77.3 Service of Documents

- A. It is the responsibility of the petitioner to arrange for service of the notice of the hearing of the petition as set forth in Probate Code §1511, including a copy of the petition if required, unless a written waiver of notice is filed.

B. The service must be completed by a person other than the petitioner. The server must complete a written Proof of Service.

C. A written Proof of Service (an original and two copies) must be filed with the Court Clerk's Office, Room A, prior to the court hearing. If service is required on more than one person, a separate Proof of Service may be submitted for each service.

D. A copy of the notice, petition, and Guardian Screening form shall be mailed to youth and Family Services 400 Harbor Blvd., Belmont, CA at least fifteen (15) days prior to the hearing.

E. For petitions filed by non-relatives, a copy of the notice of hearing and petition must be mailed to the Director of Social Services in Sacramento, California at least fifteen (15) days prior to the hearing.

(Adopted, effective July 1, 2004 )

#### Rule 4.77.4 Proof of Service of the Notice of Hearing

A written proof of service must be filed with the Probate Clerk, Room A, at least five court days in advance of the hearing date unless otherwise waived.

(Adopted, effective July 1, 2004 )

#### Rule 4.77.5 Personal Appearance

All petitions for general guardian will require an appearance by the petitioner(s). See Local Rule 4.6, above. The petitioner, the attorney (if any) and the proposed ward if age 12 or older, shall be present. 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.

(Adopted, effective July 1, 2004 )

#### Rule 4.77.6 Multiple Wards

A. The Court will not appoint a guardian for several wards on a single petition and under the same file number unless the minors are full siblings. Separate proceedings must be commenced for non-siblings or half siblings. For sibling cases filed at the same time, only one filing fee will be required.

B. A separate Inventory and Appraisal shall be filed for the interests of each ward in cases where multiple wards are listed under one case number.

C. Separate accountings shall be filed for each ward subject to a guardianship of the estate.

(Adopted, effective July 1, 2004 [formerly 4.77(b) ])

#### Rule 4.77.7 Investigation of Guardianship and Filing of Reports.

A. It is the policy of the Superior Court in San Mateo County to conduct an investigation in all guardianship cases. Unless waived by the Court, an investigative report must be given to the Court prior to the appointment of a general guardian of the person and/or the estate, pursuant to Probate Code §1513(a).

B. In all cases where the proposed guardian is a relative, the Chief Court Investigator shall assign an Investigator who will conduct the investigation and file a written report at least five (5) court days prior to the hearing date.

C. In all cases where the proposed guardian is a non-relative, the Department of Youth and Family Services will conduct the investigation and file a written report at least five (5) court days prior to the hearing date. "Relative" is defined at Probate Code section 1513(g).

4. If the petition is filed at the recommendation of the Department of Youth and Family Services, the petition shall refer to that Department's recommendation, and the Department shall furnish to the Court a copy of their Investigation Report, medical or educational evaluations, or other relevant documents concerning the minor upon which they based their recommendation. In this event, a Court Investigator would not need to be appointed for a further investigation and report.

(Adopted, effective July 1, 2004 )

Rule 4.77.8 Factors to Be Addressed in Guardianship Investigative Reports.

In addition to the factors set forth in Probate Code §1513(a), the Investigation shall include:

A. An in-person interview with the minor(s), the parent(s), and proposed guardian(s). If a parent is not available for a personal interview, the report shall explain the circumstances and any contacts with the parent.

B. Telephone or written communication (as possible) with collateral contacts, such as school teachers, daycare providers, neighbors, relatives, and other interested parties.

C. A visit to the home of the proposed guardian.

D. If a parent objects to the guardianship, a visit to the home of the parent.

E. A criminal records check on the parent(s), the proposed guardian, and any other person over fifteen (15) years who inhabits the guardian's home.

(Adopted, effective July 1, 2004 )

Rule 4.77.9 Alternative Guardian.

A. If neither the parent(s) nor the proposed guardian is found to be an appropriate caretaker for the minor, the matter shall be referred to Youth and Family Services to determine if there is another appropriate adult who will agree to act as guardian. That adult will be instructed to file a separate guardianship petition for consideration by the Court.

B. If no appropriate and willing adult is located to act as guardian, then the Department of Youth and Family Services shall initiate a petition in the Juvenile Court pursuant to Welfare & Institutions Code §300.

(Adopted, effective July 1, 2004 )

Rule 4.77.10 Order Appointing Guardian

A. It is the responsibility of the petitioner to prepare all proposed orders. An original and two copies of the proposed order appointing guardian should be delivered to the Court Clerk's Office in Room A at least five court days before the hearing.

B. The Court will fix a non-appearance hearing date for filing of the Inventory & Appraisal and/or Receipt of Funds in Blocked Accounts for all guardianships of the estate.

C. A fee will be assessed for Court Investigation unless deferred or waived by the court. The amount of the fee shall specified in the order appointing guardian.

(Adopted, effective July 1, 2004 )

Rule 4.77.11 Guardian of the Estate

The guardian of the estate shall be required to comply with the Local Rules applicable to conservators of the estate. See Local Rules of Court, Rules 4.81.13 through 4.81.18 below.

(Adopted, effective July 1, 2004 )

Rule 4.77.12 Current Addresses/Relocation

All attorneys and guardians are required to keep the Court informed of their current addresses and phone numbers as well as the current address and phone number of the ward.

A child subject to guardianship shall not be relocated outside the State of California without a court order. See Probate Code Section 2352.

(Adopted, effective July 1, 2004 )

Rule 4.77.13 Review of Guardianship.

Guardianships will be reviewed annually. At the time of the granting of the petition for general guardianship, a twelve-month review date will be set. The guardian will be instructed by the Court to execute and return a "Confidential Guardianship Status Report" form (Judicial Council form GC-251) to the Court Investigator's Office by the designated review date. The Court may calendar further review dates, if needed. The party must execute and return to the Court their "1513.2 Statement" by the designated review date.

(Adopted, effective July 1, 2004 )

Rule 4.77.14 Temporary Guardianship - Emergency Situations Only

A. If temporary guardianship is necessary, the court may consider the application with a short notice period (5 days) or no notice (ex parte). In exigent circumstances, petitions may be presented ex parte between 2:00 – 3:30 p.m. (M,TU, W, TH,F) On those days that the Probate Presiding Judge is not

available, the petitioner shall present his/her petition to the court's Presiding Judge or the judge designated to hear ex parte matters. It is the policy of the Court not to change the residence of the proposed ward absent exigent circumstances and a recommendation by the Court Investigation unit.

B. All the forms for a general guardianship must be submitted before a petition for temporary guardianship will be granted. The additional forms necessary for a temporary guardianship (original and two copies) are:

1. Petition For Appointment Of Temporary Guardian . (GC-110)
2. Order Appointing Temporary Guardian or Conservator (GC-140)
3. Letters of Temporary Guardianship (GC-150)
4. Duties of Guardian (GC-248)
5. Declaration Regarding Notice (San Mateo County Local Form.)

C. The petitioner and the attorney, if any, should be present when a temporary guardianship is requested. A proposed ward age twelve (12) or older, should be present.

D. The Petition for General Guardianship and supporting documents must be filed and the fee paid before a Petition for Temporary Guardianship is filed with the Court for consideration

E. Filing and Prior Review of Documents

1. All documents shall be filed with the Court Clerk's Office, Room A, at the Probate counter at 400 County Center, 1<sup>st</sup> floor, Redwood City.
2. All petitions for temporary guardianship must be submitted to the Probate Clerk's office for review by the Court Investigator's office prior to it being presented to the judicial officer for review. It is recommended that an appointment for review of the documents by the Court Investigator be made before submission to the clerk for filing by calling (650) 363-4351. After the Court Investigator's review of the papers, a recommendation will be made to the Court, which will accompany the petition to be presented to the judicial officer for review and ruling.

F. If the party seeking to be appointed guardian knows of an objection to the petition for temporary, he or she must advise the Court.

G. If the Court grants the petition appointing temporary guardian, the order will be filed and the Clerk will issue the Letters of Temporary Guardianship. The order will specify an expiration date for the Letters which will usually coincide with the date set for hearing of the general guardianship.

H. After Letters are issued by the Clerk, certified copies may be purchased for a small fee.

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

#### Rule 4.77.15 Accounts And Reports

A guardian of the estate shall file a Confidential Guardianship Status Report" form (Judicial Council form GC-251) to accompany any account and report OR for request for release of blocked funds. For general rules on accounts see Chapter 9 of these Rules.

(Adopted, effective July 1, 2004 )

Rule 4.77.16 Fees for Guardian and for Attorney for Guardian.

A. Refer to CRC, Rule 7.751

B. Fees for attorneys for guardian of the person, when there is no guardianship of the estate, shall be a matter of contract between the attorney and the guardian and not subject to court supervision. Attorney's fees for guardian of the person and/or estate which are to be paid from the estate of the ward are subject to court approval and shall be computed and paid as set forth herein at California Rules of Court, Rule 7.751.

C. If all the estate funds will be placed in blocked accounts, the Petition for Guardianship may include a contemporaneous request for attorney's fees incurred to establish the guardianship. In these circumstances, the order of appointment should specify the name and address of the bank where the funds shall be deposited and shall authorize the bank to disburse fees of a specified amount before the account balance is blocked.

(Adopted, effective July 1, 2004 )

Rule 4.77.17 Discharge

A. Discharge of the guardian of the person is not required. Upon the ward attaining the age of 18, the guardianship of the person expires by operation of law.

B. Discharge of the guardian of the estate will first require the submission of a final account.

C. After approval of the account, a separate declaration for final discharge must be submitted, together with the Receipt executed by the former ward and a photocopy of the order settling the final account and ordering delivery of assets to the former ward. The declaration must state the date on which the ward reached majority.

(Adopted, effective July 1, 2004 )

Rule 4.78 Use of Minor's Assets for Support

A. In Guardianship Cases: If a minor has a living parent or receives or is entitled to support from another source, prior court approval must be obtained before using guardianship assets for the minor's support, maintenance or education. (Section 2422.) The petition must set forth the parents' financial inability or other circumstances which in the minor's interest would justify use of the guardianship assets. Such petition may be included in a petition for the appointment of a guardian. An order granting such petition **shall** be for a limited period of time, usually not to exceed 6 months, or for a specific and limited purpose.

B. Funds in Blocked Account in Non-Guardianship Cases: A request for withdrawal of amounts necessary for the minor's support may normally be made ex parte if accompanied by a sufficient showing of the need. However, where the minor has a living parent, the petition must contain the allegations referred to in Subsection (a) above; in such cases the Court may require the obtaining of an order prescribing notice and a calendared hearing.

(Adopted, effective July 1, 1996)

Rule 4.79 Disposition of Minor's Funds (Sections 3410-3413)

A. Contents of Petition: A petition under these sections must set forth jurisdictional facts, state the amount to be paid and by whom, the amount of fees and reimbursement of costs requested, the relief requested, and a statement of the reasons that the requested relief will best serve the interests of the minor.

B. Notice: The petition may be presented ex parte if the only relief sought (other than reimbursement for filing fee and award of reasonable attorneys' fees) is to deposit funds in a blocked account and the amount involved does not exceed \$20,000. Otherwise the petition must be noticed.

C. The Order: Where the minor's funds are to be deposited in a blocked account, the order must provide that the person holding funds shall disburse the ordered amount of fees and costs, if any, directly to the person(s) entitled thereto and disburse the balance to the selected depository, whose name and address must be specified. The order must also provide that the receipt by the depository of the funds and a copy of the order must be filed forthwith upon the deposit of the funds. The receipt must acknowledge that the funds may be withdrawn only on court order.

D. Orders for Withdrawal of Impounded Funds: Where withdrawal is sought because the minor has reached majority, and the order establishing the blocked account is not self-executing, a certified copy of the minor's birth certificate or other convincing evidence of the minor's age must be presented with the petition for withdrawal. The order must provide for the payment of the funds only to the former minor.

(Adopted, effective July 1, 1996)

#### Rule 4.80 Compromise of Claims

(See generally Sections 2500-2507; 3500-3612; Code Civ. Proc. Section 372; Cal. Rules of Court Section 241)

##### A. Court to Which Addressed

(1) Where the claim is the subject of a pending action, approval must be by the court to which the matter was assigned for trial or settlement, if any; otherwise, approval must be by the Probate Court in accordance with subparagraph (2) below.

(2) Where the claim is not the subject of a pending action and approval is sought in this county, it **shall** be addressed to the Probate Court, and if there is a guardianship or conservatorship proceeding pending, the approval must be had in that proceeding;

(3) In cases where the trial or settlement court has approved the basic settlement and compromise, the matter of the disposition of the net recovery may be referred to the Probate Court under Section 3600 et seq.

B. Contents of Petition to be presented to the Probate Court: In addition to the requirements of Section 2506 and Cal. Rules of Court Section 241, the petition for compromise of a claim for a minor should show the date of birth of the minor, the minor's place of residence, and the names and addresses of the minor's parents. Current medical reports, giving a diagnosis and prognosis of the minor's or conservatee's condition should be attached to the petition or submitted to the Court at the time of the hearing.

C. Notice re Probate Court matters: Where the claim is that of a minor and there is no guardianship of the estate and the only relief sought (other than reimbursement for reasonable expenses, costs and attorneys' fees) is to deposit the net recovery in a blocked account and the net recovery does not exceed

\$20,000, the petition may be presented ex parte. In such cases the minor as well as the petitioner must be present.

D. Order: If the net proceeds received on behalf of a minor are to be made the subject of an impound, the requirements contained in Local Rule 4.79(c) are applicable. If the order deals with the compromise of claims of more than one minor, the interest of each minor must be separately stated, and the order must provide that there should be no commingling or combining of such interests.

E. Attorneys' Fees: Except for good cause shown, attorneys' fees in excess of 25% of the net settlement proceeds will not be allowed.

(Adopted, effective July 1, 1996)

Rule 4.81 Conservatorships

(Adopted, effective July 1, 1996, Amended, effective January 1, 1999; effective January 1, 2000; **REPEALED**, effective July 1, 2004)(See new Rules 4.81.1 to 4.81.21)

Rule 4.81.1 Petition for Appointment of a Conservator.

A. A petition for establishment of a conservatorship requires the following forms:

- (1) Petition for Appointment of Probate Conservator (GC-310);
- (2) Confidential Supplemental Information (GC-312);
- (3) Notice of Hearing (GC-020);
- (4) Order Appointing Court Investigator (GC-330);
- (5) Capacity Declaration-Conservatorship (GC-335 );
- (6) Dementia Attachment to Capacity Declaration (GC-335A)
- (7) Citation (GC-320);
- (8) Confidential Conservator Screening (GC-314);
- (9) Duties of Conservator and Acknowledgment of Receipt of Handbook (GC-348);
- (10) Notification to Court of Addresses (local form); and
- (11) Appointment of Probate Referee (Estate) local form.

B. All filings regarding initial conservatorship petitions [initial petitions and supporting documentation, amended petitions or other amended supporting documents] or Petition for Independent Powers **must** consist of an original and three copies of each document stated herein. Signatures should be made with blue ink. The Clerk will retain the original and two copies of all documents filed. (The Clerk will deliver the copies to Court Investigators.) The third copy will be returned to the party for his or her records, stamped "endorsed-filed". The information contained in the Confidential Supplemental Information and Confidential Conservator Screening are not part of the public record.

C. Subsequent filings regarding conservatorships [accountings, confidential status reports, other petitions or documents] **must** consist of an original and two copies. Signatures should be made with blue ink. The clerk will retain the original and one copy of all documents filed. (The clerk will deliver the copy to the Office of the Court Investigator.) The second copy will be returned to the party for his or her records, stamped "endorsed-filed".

D. Petitions requesting Dementia Authority Powers, filings must consist of an original and three copies of all required documents. (The clerk will deliver two copies to the Office of the Court's Investigator). Reference: Probate Code section 1821; California Rules Of Court, Rule 7.1050; and Local Rule §.4.81.10.

(Adopted, effective July 1, 2004 [former Rule 4.81(a)]) (Amended 1/1/05)(Amended, July 1, 2005)

Rule 4.81.2 Notice.



A. On Petition for Appointment of Conservator: There is no statutory basis for shortening the time of notice or for dispensing with notice on a petition for the appointment of a conservator. If the petition alleges that there is no relative of the proposed conservatee within the second degree, notice shall be given to all adult relatives within the third degree who reside in California. Reference, Probate Code section 1821 and California Rules of Court, Rules 7.51-7.53.

B. For petition of appointment of a temporary conservatorship, or for ex parte matters, a declaration regarding notice is required. Reference; California Rules of Court, Rule 379.

C. When an attorney has been appointed to represent a conservatee, regardless of the purpose of the appointment, notice of all hearings including requests for ex parte relief shall be given to the appointed attorney. If any other petition is pending when the attorney is appointed, and a future hearing date has already been assigned, the petitioner shall promptly forward a copy of the notice and petition to the appointed counsel. If the appointed attorney is discharged, then no further documents need be served on the attorney.

(Adopted, effective July 1, 2004 [formerly Rule 4.81 (d)])

#### Rule 4.81.3 Conservators and Trustees Qualifications

Qualifications for conservators: Both Private Non-professional and Private Professional Conservators provide a valuable service to the community and to the conservatees. All conservators must complete education classes as part of qualifying to serve as a conservator in San Mateo County.

#### A. Private Non-professional Conservators and Trustee

##### 1. Conservator of the Person

a) A private non-professional conservator of the person within six (6) months of appointment must complete a three (3) hour course covering the duties and responsibilities of a conservator of the person. The conservator must file a certificate of completion with the Court to satisfy the requirement or appear to explain why the requirement has not been met.

b) The Court may in its discretion waive such requirement.

##### 2. Conservator of the Estate

a) A private non-professional conservator of the estate within six (6) months of appointment must complete a three hour course covering the duties and responsibilities of a conservator of the estate. The conservator must file a certificate of completion with the Court to satisfy the requirement or appear to explain why the requirement has not been met.

b) The Court may in its discretion waive such requirement.

##### 3. Trustee

a) A private non-professional trustee within six (6) months of appointment must complete a three hour course covering the duties and responsibilities of a trustee of a trust. The trustee must file a certificate of completion with the Court to satisfy the requirement or appear to explain why the requirement has not been met.

b) The Court may in its discretion waive such requirement.

#### B. Court Appointed Private Professional Conservators

1. In order to be a Court Appointed Private Professional Conservator (formerly known as a Friend of the Court) by the Superior Court in San Mateo County, as of 01 July 2005, the Private Professional Conservator must meet the qualification criteria through one of the following means:

a) Provide the Probate Court a Certificate in Professional Fiduciary Management for Conservators. This certificate program is available at California State University, Fullerton, and is offered in various Bay area locations.

b) Provide the Probate Court with a Declaration and Affidavit showing experience equivalent to the Certificate in Professional Fiduciary Management for Conservators. Equivalent experience consists of five (5) years registration in the San Mateo Superior Court or another Bay Area Superior Court as a Private Professional Conservator AND appointment as a conservator of the person in five (5) cases and appointment as conservator of the estate in five (5) cases within those five (5) years.

c) Provide the Probate Court a Certificate in Professional Fiduciary Management for Conservators or its equivalent issued by another accredited college or university as approved by the Court.

2. In order to serve as a Court Appointed Private Professional Conservator in the capacity of a Trustee be appointed by the Superior Court in San Mateo County, as of 01 July 2005, the Private Professional Conservator must meet the qualification criteria through one of the following means:

a) Provide the Probate Court a Certificate in Professional Fiduciary Management for Trustees. This certificate program is available at California State University, Fullerton, and is offered in various Bay area locations.

b) Provide the Probate Court with a Declaration and Affidavit showing experience equivalent to the Certificate in Professional Fiduciary Management for Trustees. Equivalent experience consists of five (5) years registration in the San Mateo Superior Court or another Bay Area Superior Court as a Private Professional Conservator AND appointment as a trustee in five (5) cases within those five (5) years.

c) Provide the Probate Court a Certificate in Professional Fiduciary Management for Trustees or its equivalent issued by another accredited college or university.

C. Continuing Education

As of 01 July 2005, all Private Professional Conservators registered with the Superior Court in San Mateo County must complete four (4) hours of Continuing Education each year in accordance with guidelines that will be published by the San Mateo County Superior Court Probate Department.

(Adopted, effective July 1, 2004 )

Rule 4.81.4 Special Requirements on Appointment or Termination of Conservator.

A. There shall be a court investigation of all petitions, *to establish* conservatorships to add a co-conservator or appoint a successor conservator.

B. A court investigation of a petition to terminate conservatorships is not required unless so ordered by the court. A limited investigation may be ordered by the court pursuant to Probate code section 1826(p).

- C. When an initial petition for conservatorship is filed, and at any future time when conservatorship documents are filed, the Clerk will retain a copy, and will deliver the copy to the Court Investigator. (Parties should submit an original and two copies of any document in order to receive back an “endorsed-filed” copy.)

(Adopted, effective July 1, 2004 [former Rule 4.81 (c)])(Amended, effective July 1, 2006)

Rule 4.81.5 General Plan.

Upon appointment, Conservators shall be required to file a Confidential General Plan with the Court within 90 days of appointment. The plan shall address in detail the issues identified by the court at the appointment hearing. It shall include matters that have been resolved as well as those that are outstanding and what steps currently are being taken to reach a resolution. A local form “Confidential General Plan” may be submitted or, the conservator may submit a more detailed pleading as appropriate under the circumstances.

The Public Guardian is exempted from this Rule and shall report annually to the Court on its policy and practice.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(g)])

Rule 4.81.6 Letters of Conservatorship of The Estate.

The conservator is advised to record letters of conservatorship of the estate in any county where real property owned by the conservatee is located. Reference: Probate Code Section 1875.

(Adopted, effective July 1, 2004)

Rule 4.81.7 Changes of Address

The conservator must promptly file a revised notice with the Court of any change of address or telephone number of the conservator, the conservatee, or the attorney for the conservator using the court’s local form “Notification to Court of Change of Addresses.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(f)])

Rule 4.81.8 Private Professional Conservators.

A private professional conservator as defined in Probate Code section 2341 shall file a declaration using the local form entitled “Certificate of Registration as a Private Professional Conservator” to provide the information required by statute. The Superior Court maintains a list of private professional conservators who may be appointed on a rotational basis to fill a vacancy or where no other appropriate fiduciary is available. The list is available at the Court Clerk’s Office, Probate Division.

(Adopted, effective July 1, 2004 )

Rule 4.81.9 Bond

A waiver of bond by a conservatee shall be in writing. In addition, the conservatee should be prepared to reaffirm his or her waiver in open court and to describe the circumstances surrounding the execution of the written waiver. Reference: Probate Code section 2321.

(Adopted, effective July 1, 2004 [former Rule 4.81(e)])

Rule 4.81.10. Request for Dementia Powers

A. Required Forms

If orders are being sought relating to dementia as set forth in Probate section 2356.5, namely, restricted placement and/or dementia medications (i.e. psychotropic medications given solely for dementia), the following forms must be filed confidentially with the petition:

- 1) “Attachment Requesting Special Orders Regarding Dementia”(GC-313);
- 2) “Capacity Declaration-Conservatorship” (GC-335); and
- 3) Dementia Attachment to Capacity Declaration – Conservatorship (GC-335A)

The Capacity Declaration must reflect an examination date of the proposed conservatee within *120 days from the date of filing*, unless good cause is shown. Good cause may be established through a declaration. The Petition Worksheet (item 3 above) shall be marked confidential by the Court at the time of filing and shall be kept in the Court’s confidential file.

The Court’s local form “Probate Conservatorship for Dementia -Petition Worksheet” is available from the Court and may be filed confidentially along with the Petition and the other forms listed above, but shall not take place of any of the required forms. This local court form may be filed if the Petitioner or attorney in the case determines that it may be helpful to submit the form.

B. Requests for Dementia Powers at Subsequent Hearing:

1) If Exclusive Medical Authority Has Not Previously Been Ordered.

If exclusive medical authority has not previously been ordered, the conservator must first establish that the conservatee lacks the capacity to give consent for medical treatment before the Court will grant dementia powers. The conservator should use GC-380 and provide the same documents as set forth above.

2) If Court Has Already Granted Exclusive Medical Authority.

If the Court has already made an order granting exclusive authority to give consent to medical treatment, the conservator shall petition to modify that order to add the dementia powers. The conservator should use GC-380 and inter-lineate that the petition is for modification of an existing order. The Attachment Requesting Special Orders Regarding Dementia (GC-313), an updated Capacity Declaration, and the Probate Conservatorship for Dementia-Petition Worksheet (local form) shall accompany the petition. (See confidentiality requirements, above.)

C. Stale Dated Capacity Declaration:

In all cases, the Capacity Declaration must reflect an examination date of the proposed conservatee within 120 days of the filing date of the petition, unless good cause is shown. Good cause may be established through a declaration.

D. Psychotropic Medications to Treat Conditions Other Than Dementia - No Capacity to Give Consent:

If a conservatee is prescribed psychotropic medications for the treatment of another medical condition (i.e. other than dementia), and if the conservatee lacks the capacity to give consent for medical treatment, the conservator shall file a doctor's declaration explaining that the medications are not for the treatment of dementia.

E. Dual Diagnosis:

In all cases where there the treatment is for a dual purpose, the conservator must comply with Probate Code Section 2356.5.

(Adopted, effective July 1, 2004 [former Rule 4.81(b)]

Rule 4.81.11. Visits to the Conservatee.

A conservator of the person shall visit the conservatee on a periodic basis, but no less often than once a month. The Public Guardian is exempted from this Rule and shall report annually to the Court on its policy and practice.

(Adopted, effective July 1, 2004 )

Rule 4.81.12 Medical Consent Authority

All conservators of the person have the power to consent to medical treatment of the conservatee so long as the conservatee does not object. In emergencies, the conservator may give consent for medical treatment. Reference: Probate Code section 2354.

(Adopted, effective July 1, 2004 [former Rule 4.81(e)])

Rule 4.81.13 Exclusive Authority to Give Medical Consent.

A. If the conservatee has been adjudicated to lack the capacity to give informed consent for medical treatment pursuant to Probate Code §2355, the conservator may be granted the exclusive authority to give such consent and may give such consent over the objection of the conservatee. Exclusive authority to give consent for medical treatment can be requested at the time of the initial petition for conservatorship (GC-310) or at a later time by a separate petition (GC-380). Clear and convincing evidence must be shown that the conservatee lacks the capacity to give informed consent to any medical treatment. General mental confusion, disorientation, etc. will not alone support an order for exclusive medical authority. Such authority will be granted if the court finds that the conservatee lacks the capacity to give consent, and only if the following conditions are satisfied:

1. Court Investigator Report: It clearly appears from the court file that a Court Investigator has advised the conservatee of the effect of granting such authority and of the conservatee's rights in regard to such request.
2. Physician's Decision: A physician's declaration is filed stating a medical opinion that the proposed conservatee lacks the capacity to give informed consent to any medical treatment and that the proposed conservator should be granted the exclusive authority to give such consent and to consent over the objection of the proposed conservatee. Such declaration must state the factual basis for the opinion and the nature and extent of the physician's examination and investigation.

B.      Conservatee Regains Capacity: If a conservatee regains sufficient capacity to give informed consent to any form of medical treatment, the conservator shall promptly petition, pursuant to Probate Code Section 1891, to revoke any previous order granting the conservator exclusive authority to consent to medical treatment on behalf of the conservatee.

(Adopted, effective July 1, 2004)

Rule 4.81.14. Inventory and Appraisalment.

Reference: Probate Code, section 2610.

(Adopted, effective July 1, 2004 )

Rule 4.81.15 Independent Powers

A.      The court may, on the petition of the conservator either at the time of appointment or later, grant additional powers to the conservator as authorized by the Probate Code sections 2590 and 2591. All requests for independent powers must allege sufficient facts to establish good cause, and must be tailored to the specific circumstances of each case.

B.      Sale of Real Property. The Court will grant a power to sell real property under Probate Code section 2591 only where the power is made subject to court confirmation of any sale made by the conservator or by a specific order of court upon a showing of good cause.

C.      Sale of Conservatee's Residence. If a conservatee's residence is being sold without the power to sell pursuant to Probate Code section 2591, the petition must comply with the requirements of Probate Code section 2540(b).

(Adopted, effective July 1, 2004 [formerly Local Rules 4.81 (j) and (k)])

Rule 4.81.16. Waivers of Account.

Waivers of Account will be accepted in the Court's discretion only in the following instances:

A.      The conservatee's estate falls within the requirements of Probate Code section 2628. A written request along with an affidavit, stating that the estate does qualify for the waiver, must be submitted for every accounting period in which a waiver is sought. A Local Court form is available for this purpose.

B.      When the proceeding is terminated by court order, and the conservatee thereafter waives an account.

C.      When the proceeding is terminated by death of the conservatee and (a) there is no will and a written waiver is obtained from all of the conservatee's heirs, or (b) there is a will and a written waiver is obtained from the executor or administrator and the beneficiaries under the will after the order admitting the will has become final. Waivers will be accepted only from heirs or beneficiaries who are competent adults.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(h)(2)])(Amended, effective July 1,2006)

Rule 4.81.17 Accounts and Reports.

A. See Probate Code sections 2620, and 1061-1063. Specifically, conservators of the estate must file a Confidential Asset Verification as delineated in Probate Code section 2620(d). Schedules for Income and Disbursements shall be stated in chronological and also categorical format.

B. The Public Guardian is exempt from stating their Schedule for Income and Disbursements in chronological format by account and in a categorical format as required in paragraph "A" above.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(h)(1)] )

Rule 4.81.18 Confidential Status Report.

A. Unless waived by the Court, every conservator shall file a Confidential Status Report at the time of the court review, or upon the filing of an accounting. A local form "Confidential Status Report (PR-19)" may be submitted or, the conservator may submit a more detailed pleading as appropriate under the circumstances. The report shall include conservatee's:

1. Name/address/telephone/type of residence;
2. Diagnosis;
3. Living arrangements & functional level (describe what assistance is provided); length of stay at residence; describe the facility, what services it offers and the medical monitoring; intent to continue placement or make a change; any hospitalizations;
4. State current value, average monthly income, average monthly expenses, explaining any unusual receipts, expenses or "internal accounting adjustments" not otherwise delineated in the account, and the amount of the bond required to cover all assets, less real property, and estimated income for one year.
5. Current issues - conservator's personal observations and compliance with court orders;
6. Description of all sales, purchases, changes in form of assets, explanation of unusual items, statement of all compensation paid from assets subject to the account, family affiliation, cash invested; and
7. Dates of visits to conservatee.

B. The Public Guardian is exempt from the use of the "Confidential Status Report" form that is required in paragraph "A" above.

(Adopted, effective July 1, 2004 [formerly Local Rules 4.81(h) and (i)]) (Amended, effective July 1, 2006)

Rule 4.81.19 Disclosure of Fees for Private Professional Conservators

At the time a private professional conservator is nominated to serve as conservator, the petitioner must attach the professional conservator's hourly rate to the petition for appointment of conservator. If the court appoints a private professional conservator who was not nominated in the petition, the private professional conservator's compensation shall be set by a Court Standing Order.

(Adopted, effective July 1, 2004 )

Rule 4.81.20 Death of Conservatee

Upon the death of a conservatee :

- (a) The conservator shall file a Notice of Death of Conservatee with a certified copy of the death certificate attached within 60 days.
- (b) For conservator of the person only, no further request for discharge is required. Probate Code section 1860.
- (c) For conservator of the estate, a final account shall be filed and approved before the conservator will be discharged, unless otherwise waived by the court.
- (d) Notice of the hearing on the settlement of the final account be given to the personal representative of the probate estate, if one has been appointed, is named in the conservatee's will, or if none, to any legatee and to the heirs of the conservatee so far as is known to the conservator.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(l)])

Rule 4.81.21 Time for Allowing Compensation

The time for allowing compensation is governed by Probate Code Sections 2640-2642. Petitions for periodic payment must comply with Probate Code section 2643 and California Rule of Court, Rule 7.755.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2003)(Amended, effective July 1, 2004 [formerly Rule 4.86]).

Rule 4.81.22 Obtaining Final Discharge.

Discharge of the conservator will not be made in the order settling final account. A separate declaration for final discharge must be submitted, together with the receipts executed by all persons receiving conservatee's property thereunder and a copy of the order settling the final account and ordering delivery of the assets.

(Adopted, effective July 1, 2004 [formerly Rule 4.81(m)])

Rule 4.82 Substituted Judgment

Prior Court approval is required for any action specified in Section 2580, et seq. such as the making of a gift or gifts or the establishment of a trust or trusts.

A. Petition: A clear factual showing as required by Section 2583 shall be included in each petition submitted.

B. Notice: Notice shall be given under Section 2581 except in those cases in which there has been a prior Court order dispensing with notice to some person or persons.



C. Appointment of Independent Counsel: Prior to the hearing on any petition for substituted judgment pursuant to Section 2500 et seq., unless waived by the court, independent counsel for the conservatee shall be appointed by the court through the Court Investigator's Office. Independent Counsel shall report to the Court regarding the efficacy and propriety of the proposed action.

D. Bond and Accountings: A trust created pursuant to this rule shall include the following, unless exempted by order of the court for good cause show:

(1) During the period of the conservatorship, any trust created pursuant to this section shall state that the trustee and the trust shall be subject to court supervision. The continuing jurisdiction of the court shall be reflected in the order for substituted judgment.

(2) Accountings shall be subject to court approval and are required to be filed concurrently with conservatorship reviews and,

(3) A reasonable bond shall be required of the trustee, unless otherwise waived by the court.

:

(4) No fees shall be paid to the trustee or attorneys without prior court approval.

(5) Upon termination of the conservatorship, the trust may be released from court supervision upon order of the court.

E. Confidential Filings: . Petitioner may requests that estate planning documents be filed as confidential documents. The request may be made on an ex parte basis.

F. See Local Rules of Court, Rule 4.94

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2000; effective July 1, 2004)

### **CHAPTER 13. COMMISSIONS AND FEES**

#### **Rule 4.83 Statutory Compensation in Decedent's Estates**

A. Calculation must be shown: All petitions requesting payment of statutory compensation -- even if accompanied by a waiver of accounting -- must show the calculation of the compensation requested.

B. Basis for computing statutory commission and fees on Waiver of Accounting: As an alternative to basing statutory commissions and fees on the inventory values alone, where the petition for final distribution so requests, the Court will allow such commissions and fees to be based on the inventory values plus income, plus gains on sales, less losses on sales, provided these figures are set forth clearly and succinctly in the verified petition.

(Adopted, effective July 1, 1996)

#### **Rule 4.84 Compensation for Extraordinary Services in Decedents' Estates**

A. The following factors will guide the attorney and the court in determining whether and in what amount extraordinary attorneys' fees will be awarded:

(1) The nature of and unusual time required for the tasks performed.

(2) Results obtained.

- (3) Benefits accruing to the estate and to beneficiaries.
- (4) Nature of services performed by personal representatives.

B. Requests for extraordinary attorneys' fees must contain detailed and itemized descriptions of the work performed, the hours spent on the work performed, the average hourly rate requested, the total amount requested, special circumstances related to the request **and specifics as to what benefit was conferred upon the estate as a result of the extraordinary services rendered.**

C. Extraordinary fees may be awarded for extraordinary services, including but not limited to the following:

- (1) Sales, leases, exchanges, financing or foreclosure of real or personal property.
- (2) Contested or litigated claims against the estate.
- (3) Preparation of income, sales, withholding, gift or estate tax returns and handling of audits or litigation connected with tax liabilities.
- (4) Litigation connected with estate assets.
- (5) Carrying on the decedents' business.
- (6) Will contest.

(Adopted, effective July 1, 1996)

#### Rule 4.85 Compensation for Conservators and Their Attorneys

A Conservator or Attorney assigned on a case to perform any services associated with the administration of the estate shall be compensated for services rendered as set forth below and subject to the following criteria:

A. Fees for Conservators and Attorneys.

Conservators and their attorney's fees may be requested at the time of the accounting, and shall be calculated according to the work actually performed. Fee requests must be supported by a declaration of services performed, time expended, average hourly rate, results accomplished and benefit to the entity. California Rules Of Court, RULES 7.751, 7.752, 7.753, and 7.754.

B. Fees for Public Guardian and County Counsel.

- (1) Public Guardian Fees: Fees per accounting period for Public Guardian shall be based on the following:
  - (a) Percentile: 1.5% (.015) of fair market value of the estate on hand or \$1500, whichever is greater. Fees may be increased or decreased at the discretion of the court.
  - (b) For cases requiring extraordinary services, the Public Guardian Conservator may submit itemized billings with the accounts, in declaration form, for fees in excess of the percentile amounts.

(2) County Counsel Fees: Fees per accounting period for County Counsel shall be based on the following:

(a) Percentile: 1.5% (.015) of fair market value of the estate on hand or \$1500, whichever is greater. Fees may be increased or decreased at the discretion of the court.

(b) For cases requiring extraordinary legal services, County Counsel may submit itemized billings with the accounts, in declaration form, for fees in excess of the percentile amounts.

C. The fees set out in paragraphs 1,2, 3, 4 (a) and (b) above are guidelines only and may be increased or decreased at the discretion of the Court.

D. Additional Fees:

(1) Public Guardian Case Initiation Fee of \$250.00 payable upon permanent assignment of case to a Public Guardian.

(2) A \$1,000.00 fee, per property sold, is assessed by the Public Guardian for facilitating in the sale of real property.

(3) A fee equal to \$75.00 per hour or 25% of the value of the financial instrument involved, whichever is less, will be assessed for each financial instrument sold or registered.

(4) A fee of \$75.00 per hour will be assessed for assisting in the initial placement of a Dementia Conservatee client.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2003; effective July 1, 2004)

#### Rule 4.86 Time for Allowing Compensation

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2003)(**RENUMBERED**, effective July 1, 2004, see new Rule 4.81.21)

#### Rule 4.87 Procedure

(Adopted, effective July 1, 1996)(**REPEALED**, effective July 1, 2004)

#### Rule 4.88 Court Investigation Assessments.

A. Unless deferred or waived by the Court, all guardianships and conservatorships shall be assessed a fee pursuant to Probate Code §§1513.1 and 1851.5 as stated in the Court's Fee Schedule that is available in the Court Clerk's Office public counter or on the Court's website at [www.sanmateocourt.org](http://www.sanmateocourt.org).

B. Conservatorships and guardianships will be assessed a fee of \$500.00 for all conservatorship investigations performed by the Aging and Adult Services (AAS), whether or not the case is ultimately assigned to the Public Guardian, unless the fee is deferred or waived by the Court.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2003; effective July 1, 2004)

**CHAPTER 14 TRANSACTIONS INVOLVING INCOMPETENT SPOUSE**

**Rule 4.89 Prior Court Approval Is Required For Any Action Specified In Probate Code Section 3100, Et Seq.**

- A.      Petition: A clear factual showing of the information set forth in Sections 3121, 3122 and 3123 shall be included in each petition submitted.
- B.      Notice: Notice shall be given as required by Sections 3130 and 3131.
- C.      Appointment of Independent Counsel: Prior to the hearing on any petition for Court approval of a transaction involving an incompetent spouse, pursuant to Probate Code section 3100 et seq. independent counsel for the conservatee shall be appointed by the Court pursuant to Local Court Rule, Rule 4.100. Appointment of independent counsel shall be initiated by the petitioner(s) and shall be arranged through the Court Investigations Office of the Probate Division . Independent Counsel shall report to the court regarding the efficacy and propriety of the proposed transaction.
- D.      Bond: Upon the granting of a petition approving a transaction involving an incompetent spouse, reasonable bond shall be required of the petitioner pursuant to Section 3150.

(Adopted, effective January 1, 2000) (AMENDED, EFFECTIVE JULY 1, 2004)

**APPENDIX A TO CHAPTER 13**

**Rules for Determining Commissions on Sale of Real Property**

**CHART OF BROKERS' COMMISSIONS**

(Real Property Sales - Probate Code Section 10162-10165)

**ABBREVIATIONS**

- B#1 = the broker with an exclusive listing agreement with personal representative  
B#2 = the broker who represents the original bidder whose bid is returned to Court  
  
B#3 = the broker who represents the successful over bidder in Court  
  
OB = the original bidder whose bid is returned to Court  
  
SOB = the successful over bidder in Court (no editorial comment intended by the abbreviation)

**NO EXCLUSIVE LISTING AGREEMENT**

(i.e., there is no B#1)

- A. OB is represented by B#2  
OB gets the property  
therefore,  
Entire commission goes to B#2, based on the confirmed amount (Section 10162.3)
- B. OB has no broker  
SOB is represented by B#3  
SOB gets the property  
therefore,  
B#3 gets the entire commission, based on the confirmed amount (but subject to the Section 10162 limitation that the commission cannot exceed 50% of the difference between the original bid and the successful bid) [Section 10163]
- C. OB is represented by B#2  
SOB has no broker  
SOB gets the property  
therefore,  
B#2 gets the entire commission, based on the original bid, [Section 10164(a) & (b)]

**THERE IS AN EXCLUSIVE LISTING AGREEMENT (WITH B#1)**

- D. OB is represented by B#2  
SOB has no broker  
SOB gets the property  
therefore,  
B#1 and B#2 split the entire commission based on the original bid as follows:
- a. Pursuant to agreement, if there is one; or
  - b. 50-50, if there is no agreement. Section 10164(c)

E. OB is represented by B#1 (i.e., B#1 is B#2)

SOB is represented by B#3

SOB gets the property  
therefore,

B#3 gets: 50% of commission based on original bid,

plus 100% of commission on difference between original and successful bids

B#1 gets: 50% of commission based on original bid Section 10165(c)(1)

F. OB is represented by B#2 (B#1 is not B#2)

SOB is represented by B#3 SOB gets the property  
therefore,

B#3 gets: 50% of commission based on original bid,

plus 100% of commission on difference between original and successful bids

B#1 and B#2 split 50% of commission based on original bid as follows:

a. Pursuant to agreement, if there is one; or

b. 50-50, if there is no agreement (Section 10165)

## CHAPTER 15 TRUSTS

### Rule 4.90 Trustee's Accounts

A. General. Accounts for intervivos trusts must be filed as a new proceeding even if the trust receives distribution from a decedent's estate following probate of a pour-over will.

B. Contents and Format. Refer to Local Rule 4.48 above.

(Adopted, effective July 1, 2004 )

### Rule 4.91. Notice to Beneficiaries

Notices shall be provided as set forth in Probate Code sections 15802 and 15804 and California Rules of Court, Rules 7.50 through 7.55 and 7.902).

(Adopted, effective July 1, 2004 )

### Rule 4.92 Compensation of Trustees and Attorneys for Trustees

A. Criteria. In determining or approving compensation of a trustee and the attorney for the trustee, the court may consider the following additional factors in addition to the factors specified in California Rules Of Court, , Rule 7.756:

1. Whether the trustee has delegated work to others (such as investment advisors, property managers, attorneys, etc.)
2. If the trustee is a corporate trustee, the published rates for its usual services; and if the trustee is a private professional fiduciary, the usual hourly rates charged by such fiduciary.
3. Whether the trust assets being administered are passive or require active management.
4. Whether the duties of the trustee in administering the trust are similar to those of a personal representative of a probate estate.

B. The time for allowing compensation is governed by Probate Code Sections 15680-15688. Petitions for periodic payment must comply with Probate Code section 2643 and California Rules Of Court, RULE 7.756.

(Adopted, effective July 1, 2004 )

### Rule 4.93 Trusts Established Before Distribution of Probate Estate.

A. If a trustee named in a decedent's will is designated as beneficiary of a life insurance policy, or of employment or other benefits, the trustee may be appointed before the decree of distribution is made, upon the filing of a petition. If no trustee named in the will is able or willing to serve, a trustee not named in the will may be appointed. Notice shall be given to the beneficiaries and the personal representative, if not the petitioner, at least 30 days prior to the hearing.

B. The order appointing the trustee must contain all the terms of the trust and the trustee must have all the powers and duties in respect to the trust estate set forth in the order. All other terms of the trust not

required can be incorporated by attaching a copy of the trust to the order. Reference California Rules Of Court, , Rule 7.650.

(Adopted, effective July 1, 2004 )

Rule 4.94. Trusts Created Pursuant to Court Order.

A. Any trust that is created by court order (including trusts created under the “substituted judgment” provisions of Probate Code section 2580 et. seq. and trusts created under the provisions of Probate Code section 3100 et. seq. relating to particular transactions for disabled spouses, and Section 3600 et seq. relating to the compromise of claims of minors and incompetent adults), shall, unless otherwise ordered by the court upon good cause shown, contain provisions providing for protection of the trust assets against misuse and for continuing supervision by the Court.

B. A special needs trust created by order of the court for the benefit of an incompetent person will ordinarily be required to contain the following provisions:

1. Provisions for appointment of a successor trustee on approval of the court.
2. Requirement that all trustees except corporate trustees post a bond in the amount required by Probate Code Section 2320.
3. Requirement of an accounting to the beneficiary, and to the Probate Court if required by the Court, consistent with Probate Code Sections 1060 et. seq.
4. A payback provision, if applicable, must be inserted as required by 42 USC 1396(d)(4)(a) for repaying of benefits paid by Medi-Cal or any other Medicaid agency.
5. Notice requirements on termination of the trust or death of beneficiary, and for any additions to the trust.
6. Dispositive provisions for distribution to residual beneficiaries after any payback required by 42 USC 1396 (d) (4)(2) has been made.

A court order creating a special needs trust under Section 3602 or 3611 shall include a provision that all statutory liens in favor of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services and any county or city and county in this state shall first be satisfied prior to transferring funds to the special needs trust.

C. A trust created for a conservatee under Probate Code Section 2580 will ordinarily be required to include the following provisions:

1. Provisions for appointment of a successor trustee on approval of the court.
2. Requirement that all trustees except corporate trustees post a bond in the amount required by Probate Code Section 2320.
3. Requirement that the trustee shall file reports and accounts to be reviewed in conjunction with the review of the conservatorship.
4. Prior court approval shall be required for his or her acts, where such approval would be required if the Trustee were administering the estate as a conservator.



Refer to Local Rules of Court, Rule 4.82 above.

(Adopted, effective July 1, 2004 )

Rule 4.95 Fees for Public Guardian and County Counsel.

- A. Public Guardian Fees: Fees per accounting period for Public Guardian shall be based on the following:
1. Percentile: 1.5% (.015) of fair market value of the estate on hand or \$1500, whichever is greater.
  2. For cases requiring extraordinary services, the Public Guardian Conservator may submit itemized billings with the accounts, in declaration form, for fees in excess of the percentile amounts.
- B. County Counsel Fees: Fees per accounting period for County Counsel shall be based on the following:
1. Percentile: 1.5% (.015) of fair market value of the estate on hand or \$1500, whichever is greater.
  2. For cases requiring extraordinary legal services, County Counsel may submit itemized billings with the accounts, in declaration form, for fees in excess of the percentile amounts.
- C. The fees set out in paragraphs A and B above are guidelines only and may be increased or decreased at the discretion of the Court.
- D. Additional Fees:
1. Public Guardian Case Initiation Fee of \$250.00 payable upon permanent assignment of case to a Public Guardian.
  2. A \$1000.00 fee, per property sold, is assessed by the Public Guardian for facilitating in the sale of real property.
  3. A fee equal to \$75.00 per hour or 25% of the value of the financial instrument involved, whichever is less, will be assessed for each financial instrument sold or registered.
  4. A fee of \$75.00 per hour will be assessed for assisting in the initial placement of a Dementia Conservatee client.

(Adopted, effective July 1, 2004 )

**COURT RULES 4.96 TO 4.99 IS RESERVED**

Rule 4.100 Independent Counsel

- A. Appointment. Independent Counsel will be appointed by the Court in the matters specified in the Probate Code. In addition, it is the Court's policy to appoint Independent Counsel in the following matters:

1. Petitions under Probate Code Section 3101 (Proceeding to Authorize Transaction Involving Incompetent Spouse);
  2. Petitions under Probate Code Section 2580 et seq. (Substituted Judgment);
  3. When the probate investigations department has recommended the appointment of Independent Counsel, or the Court otherwise determines that appointment is necessary or would be helpful for resolution of the matter at issue.
- B. Scope of the representation shall be as set forth in the order appointing Independent Counsel or as subsequently modified by the Court.
- C. Payment of Fees. If Independent Counsel is appointed, the fees incurred must be paid as ordered by the Court, even if the matter for which the appointment was made is dismissed, withdrawn or terminated.
- D. Term of Service. Independent Counsel shall serve until discharged by order of the Court. Independent Counsel may request fees and discharge at the time of filing the Report of Independent Counsel (where representation will not be ongoing), in a separate petition after conclusion of the matter for which representation was required, or (in ongoing matters) from time to time as deemed reasonable by the Court, although in such cases the Court prefers to hear the petition for fees at the time of an accounting.
- E. Court Policies and Procedures. Additional matters concerning the panel of Independent Counsel, including panel membership, appointment to the panel, and the rotation of appointments, are set forth in a separate set of Court Policies and Procedures developed and maintained by the Court.
- F. Reports by the Independent Counsel to the Court must be filed with the Court at least five(5) court days prior to the hearing.

(Adopted, effective July 1, 2004 )

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FAMILY LAW DEPARTMENT AND FAMILY COURT SERVICES**

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**DIVISION V**  
**FAMILY LAW DEPARTMENT AND FAMILY COURT SERVICES**

**Rule 5.1        Applicability of Rules**

Family law proceedings are governed by the California Rules of Court as supplemented by these local rules of the San Mateo County Superior Court. These rules are intended to provide uniformity of practice and procedure among all departments involved in family law matters. These Rules shall at all times be supplementary and shall be construed and applied so they do not conflict with the California Rules of Court, and any rules adopted by the Judicial Council, and relevant case and statutory law.

Attorneys and self-represented litigants (also known as pro pers) shall comply with all applicable statutes in addition to these local family law rules and the California Rules of Court. Where these rules refer to Superior Court forms, the equivalent Judicial Council forms shall also be accepted.

Self-represented litigants shall be treated in the same manner as if represented by counsel and shall be held to the same standards. All references to counsel in these rules apply equally to self-represented litigants.

( Adopted, effective January 1, 2000)(Amended, effective January 1, 2004)

**Rule 5.2    Court Locations**

The Family Law Department is located at the Hall of Justice and Records, 400 County Center, Redwood City. The Northern District Court is located at 1050 Mission Road, South San Francisco. Absent consent from the supervising judge of the Family Law Department, the only matters to be set in the northern branch of the court are matters to be heard on the northern law and motion and domestic violence calendar.

(Adopted, effective January 1, 2000) (Amended, effective January 1, 2004)

**Rule 5.3    Matters Heard in Family Law Department**

Matters to be heard in the Family Law Department shall include:

- A. All orders to show cause, motions, and other family law matters preliminary to trial, all defaults under the Family Code; and all required settlement conferences and trials;
- B. All orders to show cause and motions relating to enforcement or modifications of family law orders or judgments;
- C. All orders to show cause and motions relating to child custody, support, visitation, or attorney's fees and costs under the Uniform Parentage Act (Family Code §7600 et. Seq.) And the Uniform Child Custody Jurisdiction Act (Family code §3400 et. seq.);
- D. All proceedings under the Revised Uniform Reciprocal Enforcement of Support Act (Family Code §4800 et. Seq.);
- E. All applications for restraining orders enjoining domestic violence under the Family Law Act, the Uniform Parentage Act, and the Domestic Violence Prevention Act (Family Code §6800 et. Seq.);

- F. All family law discovery matters;
- G. All applications for issuance of writs of execution and habeas corpus, or warrants in lieu thereof, in family law cases;
- H. All motions for change of venue in family law cases;
- I. All stipulations by the parties for appointment of a referee, private judge, or Special Master pursuant to CCP §638, or alternative dispute resolution, or any request by a party for the court to order a referee or Special Master pursuant to CCP §639.

(Adopted, effective January 1, 2000)

#### Rule 5.4 Case Flow Management

A. Case Assignment: Commencing January 1, 2004 the Family Law Department will operate under a Direct Calendar system. Cases shall be randomly assigned to a Family Law Department. For matters filed prior to the commencement date the Court in its sole discretion, will randomly assign a case to a department upon the filing of the first pleading requiring a hearing, conference, or trial.

1.Exceptions: Cases required to be heard by a Title IV-D commissioner pursuant to Family Code §4251 shall not be subject to random assignment.

2.Applications for restraining orders pursuant to Family Code §6200 et seq. shall be reviewed by various departments and assigned to a judicial officer hearing the Domestic Violence Prevention Act calendar unless there is a pending family law action. If an application for a restraining order arises in a pending case, the matter shall be reviewed by the previously assigned department and heard on the appropriate calendar for that department.

B. Assignment for all purposes: The assigned department shall handle all proceedings in the case, including but not limited to, orders to show cause, ex parte applications, 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.

C. Notice of Assignment: The clerk of the Court shall provide a Notice of Assignment to the petitioner in a new case filed after January 1, 2004, and to the moving party in a pending case filed prior to the commencement date upon filing of the first pleading requiring a hearing, conference, or trial. The petitioner/moving party must have the respondent/opposing party served with a copy of the Notice of Assignment. A proof of service shall be filed with the Court. The Clerk will place a copy of the Notice of Assignment in the Court file.

D. Challenges to the Assigned Department: Disqualification of a department is controlled by the “all purpose” provisions of Code of Civil Procedure §170.6 and as such a challenge is considered timely to the judicial officer to whom the case has been assigned if the challenge is exercised by the Petitioner or moving party within ten days of the filing of the Petition for cases filed after the commencement date, and within ten (10) days of the filing of the first pleading requiring a hearing, conference or trial for cases filed prior to the commencement date. The responding party has ten (10) days after service of the Notice of Assignment to assert a challenge under Code of Civil Procedure §170.6.

**E. Cases Assigned to Commissioners:**

1. In some proceedings assigned to a Family Law department the parties may be asked to stipulate that their matter be heard and decided by a commissioner of the Superior Court, acting as a temporary judge pursuant to Code of Civil Procedure §259(e) and Rule 244.
2. A party will be deemed to stipulate that all matters heard in the Family Law Department may be heard and disposed of by a Commissioner, including the power to punish for contempt, until final determination of the case, by failing to file an objection in writing within thirty (30) days after service on the party of the Notice of Assignment, or at the first hearing on a motion heard in the Family Law Department, if heard before the expiration of the thirty (30) days.
3. Except as otherwise provided for in Family Code section 4251, the refusal of a party to stipulate to a commissioner acting as a temporary judge may result in the referral of the matter to the supervising judge of the Family Law Department or the Presiding Judge for further assignment.

**F. Consolidated Cases**

If the court consolidates a case, the case of broader jurisdiction, or the lower family law case number, (if the cases are of equal jurisdiction) shall be designated as the lead case and originals of all papers thereafter filed shall be placed in the lead case file (California Rules of Court, Rule 367). Any hearing date in any case other than the lead case shall be vacated and reset, and all future hearing dates will be noticed under the lead case number.

(Adopted, effective January 1, 2000) (Amended, effective January 1, 2003) ( Amended, effective January 1, 2004)  
(Amended,, effective January 1, 2005)

**Rule 5.5 Ex Parte Orders**

(Adopted effective January 1, 2000) (Renumbered as Rule 5.6 and Amended, effective January 1, 2004)

**Rule 5.5 Alternative Dispute Resolution**

A. ADR Policy: California Rules of Court and the Family Law Act strongly encourage alternative dispute resolution (ADR) of family matters. The Family Law Department recognizes that formal litigation of legal claims and disputes is expensive and time consuming. The goals of this Court are: to reduce hostilities between the parties; facilitate the early resolution of issues; and provide parties with an opportunity to maximize their satisfaction with the resolution of their case. It is therefore the policy of this Court to promote and encourage the parties to settle their disputes by the use of appropriate dispute resolution options which include mediation, arbitration, collaborative law, court supervised settlement conferences and/or judicial case management.

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 Appendix 6). 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, 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.

(1) Exceptions: This rule shall not apply to domestic violence cases filed under Family Code 6200 et seq, nor to Title IV-D child support actions involving the Department of Child Support pursuant to Family Code §§17400 and 17406 and/or those actions filed by the local child support agency pursuant to Family Code §4900 et seq. This rule shall not apply to Motions to Withdraw or to matters pending before a private judge. The Notice shall not be served on an employee pension benefit plan.

C. Except for ex parte motions or an initial 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.

D. The Court's ADR program shall maintain a list of attorneys who possess the qualifications related to this Rule.

(Adopted, effective January 1, 2000) (Renumbered *(formerly Rule 5.4(c))*) and Amended, effective January 1, 2004) (Amended, effective July 1, 2004)

#### Rule 5.6 Ex Parte Orders

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).

B. **Ex Parte Applications.** The court requires strict compliance with the provisions of Code of Civil Procedure §1008, and the California Rules of Court, Rule 379. 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.*

1. **Represented Parties.** Applications for ex parte orders in family law matters 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.

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. The Family Law Facilitator will submit the documents for signature after review.

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.

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:

- 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 was given to the other party pursuant to California Rules of Court 379 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 order will not be issued without the following :

1. Reasonable notice was given to the adverse party so that the party might oppose the application. Reasonable notice is defined according to the California Rules of Court, Rule 379(b). The moving party shall deliver the moving papers to the opposing party, or the opposing party's attorney, at the earliest reasonable opportunity in advance of presenting the application to the court.
2. Delivery of the moving papers to the adverse party shall be made by the most expeditious means available, including, but not limited to personal delivery or facsimile transmission. Notice 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. 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.

**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.

**H. 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.

**I. Application for Ex Parte Temporary Custody Order.** A party requesting an ex parte custody order shall, 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 referral to any law enforcement agency or child protective services.

**J. Order Shortening Time for Hearing and/or Deposition.** When requesting an order shortening time for hearing and/or taking of a deposition, 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.

**K. 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.

**L. Exclusive Use of Vehicle.** An ex parte order granting exclusive use of a vehicle ordinarily will not be granted unless a 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.

**M. 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.

(Adopted, effective January 1, 2000) (Renumbered *formerly* 5.5) and Amended, effective January 1, 2004)

Rule 5.7        Declarations of Disclosure, Income and Expense Declarations and Tax Returns

(Adopted, effective January 1, 2000)(Renumbered as Rule 5.11 and Amended, effective January 1, 2004)

Rule 5.7    Order to Show Cause and Notice of Motion 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) 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 shall so state in the caption. Such responsive papers shall be filed with the court and served no later than the 10<sup>th</sup> calendar 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 shall so state in the caption. All reply papers shall be filed with the court and served no later than the 5<sup>th</sup> calendar day prior to the hearing. Any papers not timely filed may not be considered by the court, absent a showing of good cause.

3.    Extra Copies of Moving and Responsive Papers: Counsel are advised to bring an extra set 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.

4.    Family Court Services Information Sheet--Mediation and Evaluation form: 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--Mediation & Evaluation Form. (Appendix "3".) 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 motions: Service of post-judgment 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.

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 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 mediation date is available at least 5 court days prior to the hearing.

2. If no restraining orders are requested and mediation at Family Court Services is required, the hearing should be set at least 7 court days after the Family Court Services appointment.

C. Time Limits: Hearings on the law and motion calendar are limited to 20 minutes and are subject to further time limitations to accommodate the court's calendar. The time limit includes presentation of the case and reading of the file by the Court.

D. Transfer of a Matter Exceeding 20 minutes:

1. Transfer At Initial Hearing: If at the time of the first calendar appearance the court determines that the hearing in the matter will exceed 20 minutes in length, the matter may be continued by the Court to a Short Cause calendar in the assigned department.
2. Transfer Prior to Initial Hearing: If, after service of the Order to Show Cause or Notice of Motion, 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.

E. Continuances: A request for a continuance should be made at the earliest possible time prior to the hearing. A request by the moving party for continuance at the time of the hearing shall be looked upon with disfavor and in the absence of good cause, shall be denied. Once a matter has been set for hearing, no more than two continuances shall 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 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 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.

2. An appearance is required for stipulated continuances made after 12 Noon the court day prior to the hearing. Stipulated continuances may be obtained from the courtroom clerk in the assigned department before the calendar call. The court may also grant stipulated continuances at the calendar call. Parties may submit the local court form "Stipulation and Order Re: Continuance" to request a continuance.

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.

4. Continuances of Orders to Show Cause re: Contempt must be requested in open court (with the citee present), or obtained by written stipulation including a signed consent by the citee to the continuance. The stipulation shall be filed with the court at or before the time set for the original

hearing. If the citee does not appear, upon request, a bench warrant will normally be issued and held until the new date to retain jurisdiction.

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.*
2. Calendar Calls: The calendar for each session shall begin promptly at the appointed time and place designated on the notice of hearing. The supervising judge of the Family Law Department may change the times for calendar calls and notice thereof will be published in the legal newspapers in the county and/or posted outside the affected courtrooms.
3. Non appearance at calendar call: If there is no appearance within 15 minutes of the calendared time for the hearing, the matter may be ordered off calendar or may be heard as an uncontested matter in the court's discretion. Counsel who will be engaged elsewhere at the calendar call or have an unavoidable conflict in another department should advise opposing counsel at the earliest possible time prior to the hearing. Counsel should notify the department(s) they will be appearing before, and request the court's accommodation and/or calendar priority prior to the calendar call at the check-in with the courtroom clerk. The court strongly discourages counsel from scheduling appearances in more than one department per calendar call. If unavoidable, every reasonable effort should be made to reschedule one of the hearings.
4. If parties and/or counsel wish to conduct settlement negotiations on the day of the hearing, they shall notify the courtroom clerk prior to the calendar call at the time of the check-in. After so informing the clerk, neither the parties nor counsel need be present when the calendar is called, and the matter will remain on calendar. If a case is settled after the calendar is called but before the hearing, counsel should so inform the courtroom clerk and every effort will be made to place the stipulation on the record before the court hears the remaining contested matters provided there is sufficient time. Counsel should not state that a case is settled if any issues are remaining for court adjudication. It is the duty of counsel to periodically inform the court of the status of the settlement negotiations and to ascertain that sufficient time remains to hear the matter if settlement is not reached.
5. Matters are frequently continued to another date at the time of the hearing or conference. Counsel are advised to bring their calendars to court if they wish the court to take into consideration prior commitments. The court will not allow counsel to postpone setting a future court appearance because they lack immediate knowledge of their calendar.

6. At the time the calendar is called it is the duty of counsel to give the court accurate time estimates for the presentation of the entire matter. Failure to do so may result in the hearing being interrupted, continued, or ultimately concluded at the end of the calendar.
7. Manner of Presentation: Participants shall present Orders to Show Cause and motions in the following order:
  - a. Announce appearance; and,
  - b. Clearly state ALL contested issues; and,
  - c. Recite any stipulated matters for approval of opposing counsel, the parties and the court; and,
  - d. Briefly present argument on each contested issue including a specific recommended solution Participants shall not interrupt the opposing side's presentation, other than with valid evidentiary objections, and shall direct all remarks to the court.
8. Once the court has rendered its decision, participants shall not attempt to reargue the case. It is, however, acceptable to question the court in order to clarify a ruling or correct an obvious mistake of fact.

G. Presentation of Evidence at the Hearing:

1. Limitation on Evidence/Oral Testimony: Counsel shall be prepared to present their case based upon their moving and responsive papers, declarations, and at the court's discretion by offer of proof. Generally, testimony by a witness is not permitted on the Order to Show Cause or motion calendars.
2. Declarations Received in Evidence: Consistent with the rule enunciated in *Reifler v. Superior Court* (1974) 39 Cal. App.3d 479, and subject to legal objection and cross examination where appropriate, all declarations will be considered received in evidence at the hearing. In granting or denying applications for orders, it is the court's policy to determine contested issues based solely on the moving and responsive papers, admissible evidence contained in the declarations timely filed with the court, and arguments based thereon.
3. Offer of Proof: In lieu of testimony an offer of proof may be made during any hearing or trial at the court's discretion. An offer of proof is a succinct statement given by counsel that states what a particular witness would say if called to the stand. Offers of proof are subject to the same evidentiary objections as testimony and should be distinguished and presented separately from argument.
4. Witnesses: A party seeking to introduce oral evidence by a witness at the hearing must comply with the requirements of California Rules of Court, Rule 323. Even if such notice is given, receiving testimony shall be left solely to the discretion of the court.

H. Award of Attorney's Fees and Costs: If liquid community assets exist, an award of attorney's fees and costs will generally be made from this source. If no liquid community assets exist, the court will generally award attorney's fees and costs to those persons who are unable to bear their own fees and costs. Each party should be aware that an award of attorney's fees and/or costs under Family Code sections 2030 and 2032 is generally subject to a need and ability analysis. Absent unusual circumstances, it is highly unlikely the court will order any party to pay 100% of the other party's attorney's fees and costs. Each party should expect to bear a significant portion of his/her own attorney's fees and costs even after a need/ability analysis. An award against a party may, if requested, be made in the nature of non-taxable spousal support payable by wage assignment. The court will require the repayment of a retainer

where the party awarded the attorney's fees was compelled to borrow the retainer, and the community or the paying party has the ability to repay the loan.

When awarding attorney's fees in enforcement actions, including contempt, the court will be governed by Family Code §3557.

Any time fees or costs are at issue, pursuant to Family Code, section 2030 both parties shall submit a *fully completed* income and expense declaration. (Emphasis added).

I. TEMPORARY SPOUSAL SUPPORT FORMULA. Temporary spousal support is generally computed by taking 40% of the net income of the payor, minus 50% of the net income of the payee, adjusted for tax consequences. In the event there is child support, temporary spousal support is calculated on the net income not allocated to child support and/or child-related expenses.

( Adopted, effective January 1, 2000)(Amended and renumbered (*formerly Rule 5.6*), effective January 1, 2004) (Amended, effective January 1, 2005)

## 5.8 Short Cause Trials

( Adopted, effective January 1, 2000)(Repealed and incorporated into New Rule 5.8, effective January 1, 2004)

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

A. Purpose: The purposes of these rules are to: ensure that contested Family Law matters are thoroughly prepared and expeditiously processed; foster the informal exchange of information and cooperation between counsel and parties; avoid using the trial itself as a vehicle for what should be pre-trial discovery and settlement procedures; and encourage the consideration and use of appropriate dispute resolution options.

### B. Trials:

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. Status Conference:

1. Date set upon filing: Every case for dissolution of marriage, nullity, or legal separation filed after the effective date of this rule will be assigned a Status Conference with the assigned judicial department on a date and time to be provided by the court upon filing of a Response. The Conference will be set in the assigned department approximately 120 days from the filing of the Response unless both counsel or self represented parties request that the status conference be held earlier, a judgment has been entered, or a dismissal has been filed. The court will serve a copy of the Notice of Assignment and Status Conference on the parties when the Conference is set.

2. On request of either party or on the Court's own motion, the court may set any other matter for a Status Conference.

3. Required Statement: At least 15 days prior to the initial Status Conference the parties shall file with the court and serve on all other parties a completed Status Conference Statement (see Appendix 1) a copy of which is available at the clerk's office or through the court's website: [www.sanmateocourt.org](http://www.sanmateocourt.org). The parties may elect to file a jointly prepared Status Conference Statement.

4. Participation at Conference: Unless otherwise excused by the court, counsel for each party and each self-represented party appearing in the action shall attend the Status Conference, shall have filed the required statement and shall be familiar with the case and be fully prepared to discuss all matters raised by the pleadings including a timetable for resolution which may include those actions described below in subdivision 5. The court may, after reviewing the timely filed Status Conference Statement determine that appearances at the conference is not necessary. If such appearance is not required, the court will notify counsel and any self represented parties that no appearance is required.

5. Actions and orders: At the Status Conference, provided that the parties have stipulated and when legally required, the court shall take appropriate action and make orders consistent with the policy of prompt case resolution. Such actions may include but are not limited to the following:

- a. Set the case for trial and/or mandatory settlement conference;
- b. Schedule the case for a further status conference;
- c. Bifurcate issues for trial;
- d. Consolidate cases;
- e. Set or reset the hearing of law and motions matters;
- f. Set a date for the exchange of Declaration of Disclosure information;
- g. Limit, schedule, or expedite discovery matters;
- h. Set a date for the exchange of expert witness information;
- i. Refer the case for mediation, arbitration or another ADR method;
- j. Require filing of preliminary stipulations where the issues can be narrowed;
- k. Dismiss the action in whole or in part;
- l. Impose sanctions;
- m. Refer the parties to local family law resources or ancillary services;
- n. Order counsel or parties to engage in and report back on meet and confer discussions;
- o. Review case management options under Family Code section 2451 with counsel and self-represented parties;
- p. Appoint an expert, referee or special master and allocate expenses or set a hearing thereon;
- q. Refer to Family Court Services for mediation of custody and/or visitation;

- r. Appoint a Special Master pursuant to Code of Civil Procedure section 639 and California Rules of Court, Rules 244.1, 244.2;
  - s. Appoint counsel for a minor;
  - t. Order an evaluation pursuant to Family Code section 3111 or by a psychologist under Evidence Code section 730;
  - u. Any other orders the court deems appropriate for the expeditious resolution of the case.
6. Continuances: Each party may request one continuance from the assigned department at least 15 calendar days prior to the scheduled conference date. Additional continuances may be requested for good cause. Good cause may consist of, but is not limited to, a showing that significant progress has been made toward a resolution of the case through settlement, mediation, collaborative law, and/or reconciliation. Both counsel and parties must agree that the status conference should be continued.
7. Sanctions: The court may impose sanctions if a Status Conference Statement is not timely filed and served, a Status Conference Statement is not fully completed, a party or his/her attorney fails to appear, an attorney or self-represented party is not fully prepared to discuss the case or lacks the authority to discuss and resolve any issues that arise at the conference including but not limited to discovery matters and the setting of subsequent court dates.
8. The matter may not be set for trial until the judicial officer conducting the Status Conference deems the matter ready for a Mandatory Settlement Conference and/or trial.
9. Judges Pro Tem: Experienced family law attorneys may be assigned as judges pro tem to assist the parties and counsel in reaching a settlement. (It is not necessary for a party to stipulate to a judge pro tem at settlement conferences unless there is a request for stipulations to be placed on the record.) Parties are required to participate in meaningful settlement discussions and attempt to resolve as many trial issues as possible. The supervising judge and any judge or commissioner not otherwise engaged may be available for additional assistance, including making orders for sanctions requested by either party.

**D. Mandatory Settlement Conferences**

1. Calendaring: No long cause case will be tried until the parties participate in a Mandatory Settlement Conference ("MSC"). A Mandatory Settlement Conference is available on short cause matters by stipulation and court order. The date for the MSC will be set at the final status conference by the clerk of the assigned department. Additional Mandatory Settlement Conferences may be held on the joint request of the parties or on order of the Court.

Counsel shall call the clerk of the assigned department at least 5 court days in advance of the MSC to confirm that the MSC will go forward or to request a continuance. An MSC will only be continued for good cause. No continuances shall be granted on the day of the scheduled conference. Failure to comply will result in monetary sanctions.

2. Meet and Confer Requirement: Counsel shall meet and confer either in person or by telephone at least seven (7) court days before the day of the MSC to resolve as many issues as possible and to specify those matters to be litigated. Results of the conference shall be included in the Mandatory Settlement Conference Statement. Failure to comply with these requirements shall subject offending counsel to monetary sanctions.

3. Mandatory Settlement Conference Statement: Both parties shall prepare a Mandatory Settlement Conference Statement and, if support or fees are at issue, a current income and expense



declaration, and shall serve a copy of each on opposing counsel and the assigned judge in such a manner as to assure they are received no later than 12 noon 5 court days prior to the MSC. (If that falls on a Monday, which is a court holiday, then the preceding Friday is viewed as the appropriate date.) Both parties shall state with specificity their good faith proposal for the disposition of each contested issue. Counsel should adhere to the format set forth in Appendix A. A settlement brief may be attached. Copies of the following documents shall be brought to the MSC if an unresolved issue requires their production (these documents are not to be attached to the Mandatory Settlement Conference Statement):

- a. All real and personal property appraisals and pension plan evaluations. If no written demand to cross-examine the appraiser is made within ten (10) days after the Mandatory Settlement Conference, or five (5) court days prior to trial, whichever occurs first, the appraisal shall be deemed to have been stipulated as admissible in evidence without a foundation and without the appearance of the appraiser.
  - b. If a party proposes an immediate award of the full community interest of a pension plan, then that party must obtain an actuarial or other appropriate and relevant valuation of the plan. The valuation should be requested sufficiently in advance so that the written evaluation is available at the conference.
  - c. Bank, credit union, savings account balances and statements of balances of other liquid accounts, as of the date of separation and relevant dates thereafter.
  - d. Promissory notes, deeds, and other documents of title or major debt, bills from creditors, and negotiated bank checks.
  - e. An itemization of all furniture, furnishings, appliances, utensils, and all other personal property with the party's best estimate of value of each item, unless the parties previously have agreed to some division of these items, or unless an appraisal of these items is included.
  - f. A statement from the carrier of the cash value of a whole life insurance policy.
  - g. Copies of the relevant blue book pages for all vehicles whose value is at issue.
4. Attendance: Absent a court order allowing a party to appear telephonically, both parties and their counsel of record must personally attend the MSC and be prepared to conduct a meaningful settlement conference. Each attorney attending the MSC shall have a thorough knowledge of the evidence and shall be prepared to discuss the facts and law pertaining to all issues then pending and to be resolved at trial.
5. Sanctions: The trial judge may consider the reasonableness of each party's prior settlement position in awarding attorney's fees and costs pursuant to Family Code §271. Failure to appear or participate in the MSC or to comply with the exchange of information as required by these Rules will result in sanctions.
6. Setting for Trial: Cases shall be set for trial according to Local Rule 5.8 (E) and (F) at the conclusion of the conference where settlement was not reached on all issues.

E. Short Cause Trials

1. Short cause trials 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 3 hours time limit may be mistried 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. Continuances: One stipulated continuance of a short cause trial may be granted by phone with 24 hours' notice, or in open court. No more than one continuance shall be granted without court order and for good cause shown. If a case is not ready to proceed to hearing on the date established as a result of the continuance, the court shall, absent good cause shown, take the matter off calendar.

3. Occasionally, temporary judges will be available to hear short cause cases when the assigned judicial officer is absent. These temporary judges will be experienced family law attorneys who have been approved by the supervising judge of the Family Law Department and/or the presiding judge. If a case is assigned to a temporary judge, litigants will be asked by the clerk in the assigned trial department to sign a stipulation consenting to that temporary judge. If consent to a temporary judge is not obtained, the case shall be referred to the Supervising Family Law Judge for assignment that day to an available judicial officer or continued to a convenient date on another calendar.

4. Counsel shall meet and confer either in person or by telephone at least 7 calendar days before the day of the trial to resolve as many issues as possible and to specify those matters to be litigated. Failure to comply with these requirements shall subject offending counsel to monetary sanctions.

5. If custody or visitation is in issue at the time of the trial, the parties shall meet with family court services before trial. The meeting shall be scheduled sufficiently in advance of the trial to allow time for the counselor to prepare and file a recommendation, at least 5 calendar days before the scheduled trial date.

6. Mandatory Short Cause Statements: Counsel shall prepare a short cause trial statement and, if financial matters are at issue, an income and expense declaration. Completion and filing of a Mandatory Settlement Conference statement shall satisfy the requirements of this section. The originals of these documents and income and expense declaration shall be filed with the family law clerk's office and copies served on the opposing party not later than 5 calendar days before the Mandatory Settlement Conference or trial date whichever comes first. Except as noted herein, every short cause trial statement shall be in the form of Appendix 4. Failure to timely serve and file the trial statement shall subject the offending counsel to sanctions.

7. Memorandum of Points and Authorities: When a case involves complex or novel points of law or the California Rules of Court require it, the parties shall file legal points and authorities along with their short cause trial statement.

F. Long Cause Trials

1. A long cause trial is defined as any trial estimated to require more than 3 hours of court time.

2. Trial Setting: A trial date will not be set except by the assigned department after the Mandatory Settlement Conference has occurred and a determination made that no further settlement conferences will settle the case. The trial date will be set a reasonable time after the last settlement conference.

3. Continuances: Trials may only be continued by the supervising judge or assigned trial judge. Normally continuances are only granted in extraordinary circumstances (which do not include a change of counsel).

4.. Trial Preparation: The rules governing trial preparation are set forth in Appendix "5".

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 "5".

(Adopted, effective January 1, 2004) (Amended, effective January 1, 2005)  
(Amended, effective July 1, 2005)

#### Rule 5.9 Long Cause Trials

( Adopted, effective January 1, 2000)(Repealed and incorporated into New Rule 5.8, effective January 1, 2004)

#### Rule 5.9 Judgment by Default or Uncontested Hearing

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)

#### Rule 5.10 Family Support Division Matters

( Adopted, effective January 1, 2000)( Renumbered as Rule 5.12 and Amended, effective January 1, 2004)

#### Rule 5.10 Preparation of Orders After Hearing and Judgments

A. 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 order or judgment shall 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)

#### Rule 5.11 Family Court Services

(Adopted, effective January 1, 2000) (Renumbered as Rule 5.13, effective January 1, 2004)

Rule 5.11 Declarations of Disclosure and Financial Information to be Provided

A. Declarations of Disclosure: All preliminary declarations of disclosure (“DOD”) shall be prepared and served in compliance with Family Code §§ 2103 and 2104.

All final DOD’s shall be prepared and served in compliance with Family Code §2105, unless mutually waived in compliance with Family Code §2105(d).

Pursuant to Family Code § 2106, absent good cause, no judgment regarding the parties’ property rights shall be entered without each party executing and serving their respective DOD and filing their respective proof of service of the DOD. “Good cause” may be established by a declaration signed under penalty of perjury, stating sufficient supporting facts or at a court hearing.

B. Financial Information: The following rules apply to all Family Law proceedings where any financial matter is at issue, including any request for child support, spousal support, family support, or attorneys fees and/or costs. The parties must completely disclose all relevant financial information to each other and the court whenever a financial matter is at issue.

1. Completed Income and Expense Declaration: A case may not be heard unless current Income and Expense Declarations have been completed by each side, filed with the court, and served on the opposing party. An Income and Expense Declaration is current if it is executed within 60 days of the hearing. If a previously filed Income and Expense Declaration is claimed to be current, a copy must be attached to the moving or responding papers. However, in no event will an Income and Expense Declaration executed more than 6 months prior to the hearing be sufficient. All applicable blanks on the form must be completed (notations such as “not applicable,” “none,” “estimated,” or “unknown” should be used where appropriate. Supplemental, updated, or responsive Income and Expense Declarations shall be served at least five court days before the hearing. The court may impose sanctions as permitted by law, or dismiss the matter, if delay results from the failure of either party to comply with these requirements.

2. The Income and Expense Declarations shall be deemed to be received in evidence at the hearing, subject to amendment and cross-examination. Examinations on matters covered by the Income and Expense Declaration will be heard only under exceptional circumstances within the court’s discretion and normally will be limited to testimony regarding unusual items not adequately explained in the Declaration itself.

3. Required Supplemental Information:

- a. Wage earners must attach three most recent pay stubs for all jobs and their most recent W-2 and/or 1099 forms to all Income and Expense Declarations.
- b. If self employed, a party must provide a profit and loss statement, financial statement or other schedule reflecting all compensation received by that party for the year to date and for the prior year. All gross self-employment income and all business expenses must clearly be identified and itemized.
- c. Rental income received by a party (including from roommates) must be disclosed in a summary document reflecting all rental receipts, deposits, reimbursements, and expenses for the current year to date and for the prior year.
- d. If a party is unemployed, a declaration must describe previous employment, gross and net income derived there from, reasons for termination of employment and the current efforts undertaken by the party to seek work.
- e. If there are other income producing household members, a declaration must specify: their income(s), the household member(s) relationship to the party, their contribution(s)

- to household expenses, and any financial arrangement between the party and that household member(s).
  - f. If the other party's income is unknown, a declaration must include the following information if known: prior employment history including employer's name, position(s) held, duration of employment, earnings, and reason for termination of employment; educational background and degrees; licenses held; age; health; and any other supported children.
  - g. If a party is disabled, that party should submit documentation of and a declaration including the following information: nature of the disability and how long it is expected to continue; type of disability benefits received; monthly amount of benefits received; duration of benefits received; whether or not the disabled party has applied for benefits for a child.
  - h. If a party is receiving retirement benefits, that party must submit documentation of and a declaration that specifies the type of retirement benefit(s) received and the amount being received from each benefit.
  - i. If a party is incarcerated this fact must be disclosed on a declaration including the place of incarceration and the expected date of release, if known.
  - j. The section on attorney's fees and costs must be full completed including the hourly rate, even if attorney's fees have not been requested, along with the amount of fees and costs paid to date and fees and costs outstanding.
  - k. If a party has or will receive bonuses, a schedule of bonuses, setting forth the amount and date of the most recent bonus, the date on which the next bonus is expected to be received, and the amount of the next bonus (if known) must be provided.
  - l. If a party receives overtime, a declaration must include a statement of overtime and a description of the frequency of overtime if the receipt varies.
  - m. When requesting add-ons to child support, the moving party must specify the actual amount of each add-on expense that is being requested (if known) and documentary proof that the expense is being incurred.
  - n. A party receiving public assistance benefits shall disclose that fact, including the appropriate aid and/or Department of Child Support Services identification or file number, in the appropriate section of the Income and Expense Declaration.
4. Tax returns and forms: When child, spousal, or family support has been requested a party may require the opposing party to provide income tax return forms and schedules pursuant to Family Code §3552. The request should be made no later than 5 court days prior to the hearing and the documents produced no later than 2 court days prior to the hearing. The type of income and documents that may be requested are:
- a. Salaried or hourly employees: a copy of the party's W-2 form for the prior year.
  - b. Self-employment or independent contractor income: a copy of the Schedule C and all depreciation schedules of that party's IRS 1040 or 1040A forms from the most recent federal income tax return filed.
  - c. An owner or owner/employee of a corporation: copies of the Schedule 1120 and 1125 and all depreciation schedule of that party's IRS 1040 or 1040A forms from the most recent federal income tax return filed.
  - d. An individual with income derived from a partnership: the K-1 most recent statement(s) and IRS form 1065 for each partnership from the most recent federal income tax return filed.
  - e. The recipient of rental income: copies of the Schedule E form attached to that party's IRS 1040 or 1040A form and all depreciation schedules from the most recent federal income tax return filed.

- f. The recipient of dividend of interest income: copies of all 1099 forms for the prior year and a copy of Schedule B of that party's IRS 1040 or 1040A form from the most recent federal income tax return filed.
- C. Child Support Proceedings: all stipulations regarding child support shall include a support calculation such as DissoMaster or SupportTax printout.
  - 1. If the stipulated amount falls below guideline as set forth in the attached calculation the following language must be included, except where either of the parties or children is receiving public assistance:
    - a. The parties are fully informed of their rights concerning child support;
    - b. The order is being agreed to without coercion or duress;
    - c. The agreement is in the best interest of the child(ren);
    - d. The needs of the child(ren) will be adequately met by the stipulated amount; and
    - e. The right to support has not been assigned to any county pursuant to Welfare and Institutions Code §11477 and no public assistance application is pending.
  - 2. If the stipulated amount is above guideline, language must be included that the parties understand that a change of circumstances is required to modify the amount downward, unless the stipulated amount indicates a change of circumstance is not required.

( Adopted January 1, 2000) (Renumbered (formerly Rule 5.7, and Amended, effective January 1, 2004)

Rule 5.12 Appointment of Counsel for Child

(Adopted, effective January 1,2000) (Renumbered as Rule 5.14, amended, effective January 1, 2004)

Rule 5.12 Department of Child Support Services

- A. All matters involving the Department of Child Support Services shall be heard and set on the Child Support Services (DCSS) calendar. All domestic relations matters involving the Department of Child Support Services shall be heard at the Hall of Justice, 400 County Center, Redwood City unless the Department has provided a written waiver.
- B. The DCSS calendars are set at either 8:30 a.m. or 1:30 p.m. as parties are expected to meet and confer with the representative(s) of the Department of Child Support Services office prior to the calendar call.
- C. When the County of San Mateo is providing public assistance benefits to a custodial parent pursuant to Welfare and Institutions Code §11477, the San Mateo County Department of Child Support Services is an indispensable party to any action involving child support. The party seeking establishment, modification or enforcement of a child support order shall give the Child Support Agency written notice as required by case law. [See In re Marriage of Mena (1989) 212 Cal. App. Ed 12 and In re Marriage of Lugo (1985) 170 Cal. App. 3d 427.] Upon a showing that adequate notice was given to the Child Support Agency, the action may be heard despite the absence of a representative from the Child Support Agency's office.
- D. All orders involving the Department of Child Support Services shall include the following provisions:
  - 1. All payments shall be made by wage assignment payable to the Department of Child Support Services;

2. The Payor must provide the Department of Child Support Services with their date of birth, social security number, income information, employer's name, employer's address, and residential address.
  3. The Payor must notify the Department of Child Support Services in writing with 48 hours of any change of address, income or employment.
  4. The Payor shall provide health insurance for the child/children in the action, if available at no or reasonable cost through their employment.
  5. The Payor shall provide documentation showing proof of health insurance coverage to the Department of Child Support Services within 48 hours.
- E. The parties may use the Department of Child Support Services case number to litigate issues of child custody and visitation.

(Adopted, effective January 1, 2000) (Renumbered (formerly Rule 5.10) and amended, effective January 1, 2004)

Rule 5.13 Judgment by Default or Uncontested Hearing

(Adopted, effective January 1, 2000) (Renumbered as Rule 5.9 and Amended, effective January 1, 2004)

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 either with a counselor at Family Court Services (FCS) or a private mediator retained by the parties. Upon a showing of good cause, investigations pursuant to Family Code §3110 will be ordered. Investigation is a separate function from that of mediation and may not be ordered unless an attempt is first made to settle a case through mediation.

B. Mediation at 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 mediation and appointments.
2. Initiating Family Court Services mediation: If an OSC or motion requests a court order concerning custody or visitation and FCS mediation appears necessary, the moving party, or their attorney, must call FCS when the moving papers are filed to schedule a 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 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 or motion related to custody and visitation of minor children are required to complete a parent orientation workshop prior to mediation. Parties can meet this requirement by:
  - a) Viewing the presentation 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 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 Mediation: The Court will impose a fine of \$100 on a party who receives reasonable notice of the mediation at FCS and fails to appear without good cause or who cancels within 48 hours of the appointment.

5. Submitting Mediation Data Sheet and Declarations: At or before the mediation session, each party must submit a completed Family Court Services Mediation Information Sheet. Blank mediation data sheets may be obtained from Family Court Services. If day of court 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. The parties should indicate to the courtroom clerk that they plan to request a referral to Family Court Services.

Prior to the mediation conference, 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 that the documents are relevant to the mediation process.

6. Telephone Conferences: If a personal meeting with a counselor at FCS is not feasible, such as when one party resides outside of the nine Bay Area counties, a conference may be conducted by telephone. The parties or counsel for the parties shall advise the FCS office of the need for telephonic mediation and provide appropriate telephone numbers. The party residing at a distance shall be responsible for calling FCS at the time of the appointment (i.e., FCS does not call the parties).

7. Initial Meeting: Other than a statutorily authorized support person, only parents shall attend the initial mediation conference, unless requested by the court or FCS counselor. The parties' attorneys do not participate in FCS mediation. If the counselor wants to interview the child(ren), new spouses or other parties, the counselor will arrange for such interviews after the initial meeting. Parents should not bring children to mediation appointments unless specifically requested by the mediator or Court.

8. Subsequent Mediation Appointments: Unless a review mediation is requested by the Court or the mediator, parties may not set an appointment with Family Court Services within six months of their last mediation unless authorized by the Court. In general, it is the policy of Family Court Services to assign the parties the same mediator in order to provide for continuity of services and to prevent minor children from needing to be interviewed again.

9. Request for Change of Counselor (Pursuant to F.C. 3163):

A. A peremptory challenge of a counselor is not allowed.

B. A party may request a change of counselor as follows:

1. Requesting a Client Comment Form or sending a written request to the Manager of Family Court Services outlining the reasons for the request.

2. No change of counselor requests will be granted unless there is substantial showing that the counselor is biased or prejudiced against one of the parties or is unable to render a fair and impartial recommendation.

3. The Manager shall review the request and shall advise the parties of the decision in writing. The Manager's decision is final.
10. **Separate Mediation:** If there is a restraining order, the parties will be seen separately. A party who alleges under penalty of perjury that they have been a victim of domestic violence may request separate mediation even though there is no current restraining order. Protected parties or parties who allege domestic violence may have a support person in the mediation 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 mediation confidential. The support person is present for emotional support and cannot speak or offer comments to the mediator or advice to the parent. If the support person is disruptive to the mediation, the counselor will exclude the support person.
11. **Involvement of a Child in the Process:** In general, children are interviewed by the mediator 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. However, a child seen with one parent shall also be seen with the other parent unless there is a court order stating otherwise, or, in an unusual case, the evaluator determines that such observation is unnecessary or not in the best interests of the child. The mediator has the discretion to determine the number of interviews and amount of time spent with each parent-child combination and whether siblings should be interviewed separately or jointly.
12. **Recommendation by Mediator or Evaluator:** If the parties are unable to resolve issues of custody or visitation by mediation, the FCS counselor will submit a written recommendation and the reasons for the recommendation to the parties, their attorneys and the court. The court will consider the recommendation at the time of the hearing. A party has the right to cross-examine the counselor during the hearing. A subpoena is required to ensure attendance of the counselor.

If both parents did not participate in the evaluation, or there is a court order in this regard, the mediator or evaluator shall not make recommendations regarding custody and/or visitation. Any recommendations made without both parents' participation or court order shall be given little (or no) weight by the court and FCS.
13. **Extended Family Court Services Mediation, Investigation:** If the court orders FCS to perform an extended mediation evaluation, the parties shall bear the cost of such services at the prevailing hourly rate. The court will require one or both parties to pay an initial nonrefundable deposit set by the court. The parties shall provide a copy of this order to FCS when they report to intake. Failure to complete the intake process will delay completion of the investigation. An extended mediation evaluation is more limited in scope than a private custody evaluation (i.e., FCS does not conduct psychological testing or attachment assessments between parents and young children).
14. **Sealing reports and Filing Recommendations** Reports submitted by FCS or other mental health professionals shall always be sealed in the civil file.
15. **Confidentiality of Reports:** A mediator's Memo 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 Memo labeled "Recommendations" or "Agreements" the memo should never be attached to any pleadings made part of the Court file. Minors should not have access to the Memo to the Court.

Anyone receiving the mediator's report shall not give copies of, or parts of the Memo 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 court mediation proceedings shall be held in private and shall be confidential. All communications, verbal or written, from the parties to the mediator made in the proceeding are official information, and mediators must protect the confidentiality of the parties and the child and must not release information about the case to any individual except as authorized by the court or statute.

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

**C. Court Ordered Private Child Custody Evaluations:**

1. Court appointed evaluators shall abide by the requirements of Rule 1257.3 Uniform Standards of Practice for the Court Ordered Child custody evaluation in the California Rules of Court.
2. No peremptory challenge to a Court appointed evaluator is allowed.
3. Evaluators may petition to withdraw from a case by submitting a request in writing to the court and mailing copies to the counsel for the parties. The request shall include the reason for the request and a status report on any action taken by the evaluator appointed to the case.
4. Grievance Procedure: Complaints regarding the evaluator's performance shall be submitted to the Court for review. All submitted written complaints will receive a response from the Court.
5. 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. All child custody and visitation evaluations shall be ordered by the court and evaluators will be appointed under Evidence Code Section 730. The court may elect not to consider evaluations which have not been approved and ordered by the court.
7. A copy of the appointment of the evaluator under Evidence Code Section 730 will be made available to the court assigned evaluator. A court ordered evaluation may be limited in scope to the issues identified by the court.
8. Information from Children: The court relies on the judgment of its experts in making decision about when, how often, and under what circumstances children are interviewed. The expert shall be able to justify the strategy used in any particular case. Except in extraordinary circumstances, including the potential for danger to the child, children shall be informed that the information provided by the child will not be confidential.
9. Any evaluation based on interviews with only one parent shall not include a recommendation regarding custody.

10. Payment of the Evaluation: The court will order payment of the evaluation at the time of the appointment.

11. Any court ordered child custody evaluation shall be submitted to the court and counselor for the parties not less than ten (10) days before the hearing or trial.

12. A list of names of local child custody evaluators in can be obtained by contacting Family Court Services at 650 363-4561.

(Adopted, effective January 1, 2000)(Renumbered (formerly 5.11)and Amended, effective January 1, 2004) (Amended, effective January 1, 2005)

#### Rule 5.14 Preparation of Orders After Hearing and Judgments

(Adopted, effective January 1, 2000)(Renumbered as Rule 5.10 and Amended, effective January 1, 2004)

#### Rule 5.14 Appointment of Counsel for Child

A. 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. 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.

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

#### Rule 5.15 Family Law Facilitator's Duties

A. Pursuant to Family Code Section 10000 et seq., the San Mateo County Superior Court shall maintain an office of the Family Law Facilitator. Services provided by the Family Law Facilitator shall include, but are not limited to:

1. Providing educational materials to parents concerning the process of establishing parentage and establishing, modifying, and enforcing child support and spousal support in the courts;
2. Distributing necessary court forms and voluntary declarations of paternity;
3. Providing assistance in completing forms;
4. Preparing support schedules based upon statutory guidelines; and
5. Providing referrals to the local child support agency, family court services, and other community agencies and resources that provide services for parents and children.

B. Provided that they have adequate staffing, time, funding and available resources, the Family Law Facilitator may:

1. Meet with parties to assist in resolution of issues of child support, spousal support, and maintenance of health insurance, subject to Family Code §10012
2. Draft stipulations on any issues agreed to by the parties.
3. Prior to or at the hearing, and at the request of the court, review the paperwork, examine documents, prepare support schedules, and advise the judge whether the matter is ready to proceed;
4. Assist the clerk in maintaining records;
5. Prepare formal orders after hearing where both parties are self-represented.

C. Self-represented parties (pro pers) in family law cases are encouraged to meet with the Family Law Facilitator located at the Hall of Justice and Records, 400 County Center, Redwood City, California prior to filing any documents or pleadings with the Court. If the matter to be addressed is child and/or spousal support, parties shall bring with them the following documents to their meeting with the Family Law Facilitator:

1. Three (3) recent wage stubs
2. The last IRS Form 1040, 1040A or 1040EZ
3. Filed, completed Income and Expense Declarations, and
4. Receipts for childcare and medical expenses.

If a party is self-employed, that party shall bring:

1. His/her most recent tax return,
2. Quarterly profit and loss statements,
3. Financial statements for the past 12 months; and
4. Proof of reasonable and necessary expenses of the business for the past 12 months.

D. Pursuant to Family Code Section 10013, the Family Law Facilitator shall not represent any party. No attorney-client relationship is created between a party and the family law facilitator as a result of any information or services provided to the party by the family law facilitator. The absence of an attorney-client relationship means that communications between the party and the family law facilitator are not privileged and that the family law facilitator may provide services to the other party.

(Adopted, effective January 1, 2000)(Amended, effective January 1, 2004)

APPENDIX "1"

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number and Address):  TELEPHONE NO: _____ FAX NO: (OPTIONAL) _____ E-MAIL ADDRESS (OPTIONAL) _____ ATTORNEY FOR: _____	
SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN MATEO COUNTY 400 COUNTY CENTER REDWOOD CITY, CA 94063	
PETITIONER/PLAINTIFF: _____  RESPONDENT/DEFENDANT: _____	
STATUS CONFERENCE STATEMENT Date: _____ Time: _____ Dept.: _____	CASE NO: _____

1. Attorney for Petitioner is: \_\_\_\_\_

☐ Petitioner is self-represented

Attorney for Respondent is: \_\_\_\_\_

☐ Respondent is self-represented

2. This case involves the following disputed issues:

☐ Child Custody/Visitation

☐ Reimbursement

☐ Child Support

☐ Attorneys Fees

☐ Spousal Support

☐ Other: \_\_\_\_\_

☐ Arrears

☐ Additional Issue Information is Attached

☐ Date of Separation

☐ Characterization/Valuation/Division of Community Property

3. Discovery Remaining:

a. Have Preliminary Declaration of Disclosure been exchanged? ☐ Yes ☐ No

If no, need deadline? ☐ Yes ☐ No

b. Has a preliminary discovery plan been prepared and exchanged? ☐ Yes ☐ No

c. What discovery remains to be done? ☐ Interrogatories ☐ Depositions ☐ Document Production

d. State time estimates for the completion of discovery by both sides: \_\_\_\_\_

4. Have the parties and/or counsel met to discuss settlement? ☐ Yes ☐ No

5. Trial Readiness:

a. Are you requesting the case be set for MSC/trial? ☐ Yes ☐ No

Superior Court of California, County of San Mateo

b. This case is expected to take: \_\_\_\_\_ ☐ days / ☐ hours of trial to complete

The following pretrial motions are ☐ anticipated ☐ pending and shall be heard on or about:

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This case will be ready for trial on: \_\_\_\_\_

6. Do you Request:

☐ ADR (mediation, arbitration, etc.)

☐ Bifurcate issues of: \_\_\_\_\_

☐ Continue Status Conference until \_\_\_\_\_ (date) for the following reasons:

☐ Additional Discovery

☐ Joinder of: \_\_\_\_\_

☐ Discovery Referee (CCP 638)

☐ Custody Evaluation (FC 3111)

☐ Expert Appointed (EC 730)

☐ Psychological Evaluation (EC 730)

☐ Counsel Appointed for Minor (FC 3150)

☐ Collaborative Law

☐ Other: \_\_\_\_\_

7. Statement Prepared By: ☐ Petitioner ☐ Respondent

Submitted ☐ Jointly or ☐ Individually

This statement accurately reflects the present status of the case.

Respectfully submitted,

Dated: \_\_\_\_\_

☐ Attorney for ☐ self-represented  
☐ Petitioner ☐ Respondent

Dated: \_\_\_\_\_

☐ Attorney for ☐ self-represented  
☐ Petitioner ☐ Respondent

If no appearance is required you may notify me by telephone at: \_\_\_\_\_

**FORMER APPENDIX 2**

**(FORMER) JOINT CASE MANAGEMENT CONFERENCE QUESTIONNAIRE - FAMILY LAW**

**(REPEALED, EFFECTIVE JANUARY 1, 2004)**



## APPENDIX 2

### Mandatory Settlement Conference Statement format

I. Background: The Mandatory Settlement Conference Statement shall include the following:

A. A brief statement of facts: If the parties are married, include the date of marriage, date of separation, whether marital status has been terminated, the age and employment status of each party. If the parties have minor children, specify the name and age of each minor child and where they reside.

B. History of the Proceedings: Summarize prior court proceedings and any temporary orders or stipulations that are in effect;

C. Discovery: Provide the date that the Preliminary Declarations of Disclosure were exchanged; the date that the Final Declaration of Disclosure was provided or whether there was a stipulation to waive; and detail any discovery that remains outstanding.

II. Issues for Trial:

The Mandatory Settlement Conference Statement should include a discussion of the issue(s) remaining for trial. When applicable, a concise statement for each issue known to be in dispute containing all material facts and relevant law should be provided in the order listed below. If not applicable, counsel shall so designate or use "N/A."

(A) Separate Property: List of each item of separate property, and include the following information: i) the date it was acquired; ii) the basis upon which it is claimed as separate rather than community property; iii) the current market value; iv) the nature, extent and terms of payment of any encumbrance against the property; and, v) the manner in which title thereto is presently vested.

(B) Community Property: List of each item of community property, and include the following information: i) the date it was acquired; ii) the basis upon which it is claimed as community property; iii) the current market value; iv) the nature, extent and terms of payment of any encumbrance against the property; and, v) the manner in which title thereto is presently vested.

(C) Funds Held by Others: To the extent that either separate property or community property consists of funds held by others, such as insurance policies, pensions, profit sharing, or other trust or retirement funds the statement shall fully identify the policy or fund, and include the following information: i) policy, serial or account number; ii) the present values and basis for calculations; iii) all terms or conditions imposed upon withdrawal of such funds. If any loans exist against any of these funds, the details regarding those loans should be set forth.

(D) Tracing: If a segregation of community property and separate property interests in a single asset is to be an issue in the case, the statement shall set forth in detail, the dates, values and dollar amounts, the transactions relevant to the tracing issues as well as the basis for computation or proration.

(E) Current Obligations: Separately list all debts and obligations of the spouses that are liabilities of the community and, so far as known, debts and obligations that are alleged to be the separate liabilities of the respective spouses. Specify: i) the identity of the creditor; ii) the purpose for which the debt was incurred; iii) the date on which the debt was incurred; iv) the balance currently due; v) terms of payment; and, vi) the security, if any, held by creditor.

(F) Reimbursement: A summary of each party's claims for reimbursement or other charges (e.g. claims under In re Marriage of Epstein, In re Marriage of Watts, or In re Marriage of Jeffries) listing each claimed item by dates, payment amount, and payee.

(G) Current Income and Expenses: Specify and set forth current income and expenses by completing and filing or attaching a financial declaration in the form prescribed by Rule 1285.50 of the California Rules of Court. A previously filed income and expense declaration will not satisfy this rule, unless there has been no change from the most recently filed statement, in which case it shall be attached. Include any relevant attachments as set forth in Rule 5.11.

(H) Proposal for Property Division: Set forth a proposed equal division of community property of the parties. In columnar or accounting form, listing the following: i) fair market value of each asset; ii) Secured obligation(s) against each asset, if any; iii) Net value of each asset; iv) Proposed distribution to husband; v) Proposed distribution to wife; vi) Balance due on each unsecured obligation, vii) Proposed distribution of each unsecured obligation; and viii) Proposed method of equalizing the division of community property.

(I) Conditions about Custody, Visitation and Support: Specify each party's contention as to child custody and visitation and as to the amount and duration of child and spousal support.

(J) Attorney's Fees: If there is a request for attorney's fees, include: i) the compensation agreement with the client; ii) a summary of all fees and costs incurred to date, including the number of hours spent by the attorney, paralegal, and other personnel; iii) the amount already paid; iv) the source of funds for payments; v) counsel's estimate of additional fees and costs to be incurred through trial; and vi) the amount sought to be paid by the adverse party.

**APPENDIX 3**  
**INFORMATION SHEET-MEDIATION AND EVALUATION SERVICE**

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO</b> <b>400 Government Center</b> <b>Redwood City, CA 94063</b>	FOR COURT USE ONLY
In re the Marriage of PETITIONER(S)	
RESPONDENT(S)	
<b>INFORMATION SHEET</b> <b>MEDIATION AND EVALUATION SERVICE</b>	CASE NUMBER

**FAILURE TO COMPLETE THIS FORM WILL DELAY YOUR APPOINTMENT**  
**BRING COMPLETED FORM WITH YOU TO FAMILY COURT SERVICES**

**Your name:** \_\_\_\_\_

Other names you have used: \_\_\_\_\_  
birth date: \_\_\_\_\_ birth place: \_\_\_\_\_ age: \_\_\_\_\_  
Home address: \_\_\_\_\_

Telephone # home: \_\_\_\_\_ Work or message: \_\_\_\_\_  
Mailing address: \_\_\_\_\_

Driver's license #: \_\_\_\_\_

Social security number: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
Your attorney: \_\_\_\_\_ Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Address: \_\_\_\_\_

**CHILDREN INVOLVED IN THIS MATTER:**

1. Name: _____	DOB: _____	age: _____
2. Name: _____	DOB: _____	age: _____
3. Name: _____	DOB: _____	age: _____
4. Name: _____	DOB: _____	age: _____

**ALL OTHERS RESIDING IN YOUR CURRENT RESIDENCE:**

Their relationship to you (including any additional children)

\_\_\_\_\_  
Your employment information:

Employer: \_\_\_\_\_ date employed: \_\_\_\_\_  
Address: \_\_\_\_\_ days/hours of work: \_\_\_\_\_  
Job title: \_\_\_\_\_

Monthly income before taxes: \_\_\_\_\_

**STATUS OF THE RELATIONSHIP:**

Date began living together: \_\_\_\_\_  
Date of last separation: \_\_\_\_\_  
Date of marriage: \_\_\_\_\_  
If divorced...date divorce was final: \_\_\_\_\_

**OTHER MARRIAGES:**

1. Name: \_\_\_\_\_ date: \_\_\_\_\_  
2. Name: \_\_\_\_\_ date: \_\_\_\_\_

Children from those marriages: \_\_\_\_\_

**RESIDENCE:**

How long in your present residence? \_\_\_\_\_ rent/buy? \_\_\_\_\_

Number of persons in home: \_\_\_\_\_ number of bedrooms: \_\_\_\_\_

Are you moving? \_\_\_\_\_

**HEALTH:**

Are you presently receiving any medical treatment? Yes \_\_\_\_\_ no \_\_\_\_\_

If yes, briefly describe: \_\_\_\_\_

**DOMESTIC VIOLENCE:**

Where there is a history of domestic violence or a domestic violence restraining order, the protected person may request separate mediation under family code 3181 and/or bring a support person under family code 6303.

\_\_\_\_\_ I request separate mediation under code section 3181

\_\_\_\_\_ I wish to bring a support person under code section 6303

If there is a history of violence against you or the children please describe: how long ago, were police called, were weapons involved, charges filed, restraining ORDERS ISSUED?

\_\_\_\_\_

**CURRENT SITUATION:**

Are there any problems of drug or alcohol abuse? \_\_\_\_\_

Are there any other problems of child sexual abuse or neglect? \_\_\_\_\_

What custody/visitation problems currently exist?

\_\_\_\_\_  
Please list some reasonable solutions to those problems:

\_\_\_\_\_

I certify that all information provided to Family Court Services is true and correct. I understand that falsification or omission of any information may affect the disposition of my case.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX 4**  
**MANDATORY SHORT CAUSE TRIAL STATEMENT**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number and address).  ATTORNEY FOR (Name):	TELEPHONE AND FAX NOS.	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO</b> <b>400 Government Center</b> <b>Redwood City, CA 94063</b>		
In re the Marriage of PETITIONER(S)		
RESPONDENT(S)		
<b>HUSBAND'S WIFE'S MANDATORY SHORT CAUSE TRIAL STATEMENT</b>		CASE NUMBER

**I. MEET AND CONFER STATEMENT:**

- A. Date of Conference:
- B. In Person/By Phone:
- C. Issues Settled Are: *(Be Specific)*
  - 1.
  - 2.
  - 3.
- D. Issues to be Litigated Are: *(Be Specific)*
  - 1.
  - 2.
  - 3.
- E. If Counsel Failed to Meet and Confer, Explain reasons in detail.

DATE:  
TIME:  
DEPT:

**II. STATISTICAL DATA:**

- A. Date of Marriage:
- B. Date of Separation
- C. Length of Marriage:
- D. Marital Status Terminated?                      If so, date:
- E. Husband's Age (       ) and Employment:
- F. Husband's Gross Monthly Income: \_\_\_\_\_ Net: \_\_\_\_\_
- G. Husband's Paydays: \_\_\_\_\_
- H. Cohabitee or New Spouse's Monthly Income: \_\_\_\_\_ Net: \_\_\_\_\_
- I. Wife's Age (       ) and Employment:
- J. Wife's Gross Monthly Income: \_\_\_\_\_ Net: \_\_\_\_\_
- K. Wife's Paydays: \_\_\_\_\_
- L. Minor Children:

Name	Date of Birth	Age	Sex	Residing with

**III. HISTORY OF PROCEEDINGS:** (Briefly Summarize all prior court proceedings)

**IV. HUSBAND'S/WIFE'S PROPOSALS RE ISSUES:** (In same order as issues are listed in Part I-D above)

1. Issue: (e.g., Spousal Support):
2. Issue: (e.g., Child Support):
3. Issue: (e.g., Attorney's Fees):

**V. ATTACHMENTS AND EXHIBITS:**

- a. Where issues include the division of assets and debts, counsel shall attach relevant schedules of the proposed division (See Attachment 1)

SIGNED: \_\_\_\_\_ DATED: \_\_\_\_\_  
Attorney for:

**APPENDIX 5**  
**LONG CAUSE TRIAL RULES CHECKLIST**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number and address).  ATTORNEY FOR (Name):	TELEPHONE AND FAX NOS.	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO</b> <b>400 Government Center</b> <b>Redwood City, CA 94063</b>		CASE NUMBER
In re the Marriage of PETITIONER(S)		
RESPONDENT(S)		
<b>LONG CAUSE TRIAL RULES CHECKLIST</b>		

**A. SEVEN COURT DAYS OR MORE BEFORE TRIAL**

1. Personally meet and confer with opposing counsel.
2. Exchange trial briefs
3. Where support or fees are at issue, exchange Income & Expense Declarations with required attachments.
4. Exchange list of exhibits and copies of exhibits.
5. Exchange list designating non-party witnesses (including name, address and telephone number) and the subject matter each will testify to.

**B. FOUR COURT DAYS BEFORE TRIAL**

1. Confer with opposing counsel telephonically to discuss objections to the exhibits and in limine motions.
2. If objections to exhibits unresolved, or motion in limine to be filed, schedule appointment for pre-trial conference.
3. File with the court and serve in limine motions
4. Arrange with clerk to pre-mark exhibits and file original exhibits.
5. File trial brief, Income & Expense Declaration and court's copy of the exhibits in trial department.

**C. THREE COURT DAYS BEFORE TRIAL**

1. File with clerk of trial department and opposing counsel a written list of objections to the exhibits.

**D. TWO COURT DAYS BEFORE TRIAL**

1. If there are unresolved objections to exhibits or if motions in limine were filed, confer personally with the court through the clerk.

**E. DAY OF TRIAL**

1. All objections to exhibits and motions in limine will be heard and a ruling will be issued.
2. Each counsel must pay the mandated statutory court reporter fee for each half day of trial.
3. At the conclusion of each day of trial, the court and counsel shall review the next days' witnesses, examination time and other calendaring issues.

## APPENDIX 5 - ATTACHMENT A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number and address).	TELEPHONE AND FAX NOS.	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO</b> <b>400 Government Center</b> <b>Redwood City, CA 94063</b>		
In re the Marriage of PETITIONER(S)		
RESPONDENT(S)		
<b>LIST OF PROPOSED EXHIBITS</b>		CASE NUMBER

Petitioner/Respondent submits the following proposed exhibits:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.
- 18.
- 19.
- 20.

\_\_\_\_\_  
Attorney for:

Dated: \_\_\_\_\_



**APPENDIX 5 - ATTACHMENT B**  
**LIST OF WITNESSES**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number and address).  ATTORNEY FOR (Name):	TELEPHONE AND FAX NOS.	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO</b> <b>400 Government Center</b> <b>Redwood City, CA 94063</b>		CASE NUMBER
In re the Marriage of PETITIONER(S)		
RESPONDENT(S)		
<b>LIST OF WITNESSES</b>		

Petitioner      Respondent intends to call the following witnesses at the time of trial to testify on the subjects stated:

<u>Name</u>	<u>Address and Telephone Number</u>	<u>Subjects</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____

\_\_\_\_\_  
 Attorney for:

Dated: \_\_\_\_\_

**APPENDIX 5 - ATTACHMENT C**  
**NOTICE OF MOTIONS IN LIMINE**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number and address).	TELEPHONE AND FAX NOS.	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO</b> <b>400 Government Center</b> <b>Redwood City, CA 94063</b>		
In re the Marriage of PETITIONER(S)		
RESPONDENT(S)		
<b>NOTICE OF MOTIONS IN LIMINE</b>		CASE NUMBER

Petitioner      Respondent requests the Court to enter the following in limine orders for the reasons stated:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

This motion is based upon the records, files and pleadings in this action, the memorandum of points and authorities submitted with this notice of motion, and any and all other matters which may be timely presented before the time of the hearing on this motion.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for:

**APPENDIX 5 - ATTACHMENT D**  
**OBJECTIONS TO EXHIBITS OF PETITIONER/RESPONDENT**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number and address).  ATTORNEY FOR (Name):	TELEPHONE AND FAX NOS.	FOR COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO</b> <b>400 Government Center</b> <b>Redwood City, CA 94063</b>		
In re the Marriage of PETITIONER(S)		
RESPONDENT(S)		
<b>OBJECTIONS TO EXHIBITS OF PETITIONER/RESPONDENT</b>		CASE NUMBER

Petitioner      Respondent objects to the following exhibits for the reasons stated:

EXHIBIT

OBJECTION

- |          |       |
|----------|-------|
| 1. _____ | _____ |
| 2. _____ | _____ |
| 3. _____ | _____ |
| 4. _____ | _____ |
| 5. _____ | _____ |

Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney for:

**APPENDIX 6**  
**NOTICE OF ADR OPTIONS**

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)</b>	<b>TELEPHONE NO.:</b>	<b>FOR COURT USE ONLY</b>
<b>ATTORNEY FOR (Name):</b> <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO</b>  <b>STREET ADDRESS:</b> <b>MAILING ADDRESS:</b> <b>CITY AND ZIP CODE:</b> <b>BRANCH NAME:</b>		
<b>PLAINTIFF/PETITIONER:</b>  <b>DEFENDANT/RESPONDENT:</b>		<b>CASE NUMBER:</b>

**The San Mateo County Superior Court recommends ADR options**

“Alternative” or “Appropriate Dispute Resolution” (ADR) is a general term for methods of resolving a dispute without going through the formal court process. ADR can save you time, money, and increase your overall satisfaction with the outcome of your case.

ADR can be used at any point in your case to resolve disputes regarding property division, child support, spousal support, paternity, child custody, parenting plans, and many other family law issues.

Did you know that the vast majority of cases filed in court (95-98%) do not go to trial? Most cases are settled or decided in some other way. But in many cases, the settlement comes only after considerable resources have been expended. This is why the San Mateo County Superior Court supports the use of dispute resolution alternatives at the earliest possible time. Local Rule 5.5(A) states:

California Rules of Court and the Family Law Act strongly encourage alternative dispute resolution (ADR) of family matters. The Family Law Department recognizes that formal litigation of legal claims and disputes is expensive and time consuming. The goals of this Court are: to reduce hostilities between the parties; facilitate the early resolution of issues; and provide parties with an opportunity to maximize their satisfaction with the resolution of their case. It is therefore the policy of this Court to promote and encourage the parties to settle their disputes by the use of appropriate dispute resolution options which include mediation, arbitration, collaborative law, court supervised settlement conferences and/or judicial case management.

The court strongly encourages the use of ADR but does not favor any particular form of ADR, endorse any particular attorney, nor guarantee the outcome in any particular case.

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

## **DESCRIPTION OF SERVICES AND COST:**

The Court manages a panel of attorneys with special training in mediation and arbitration and a commitment to finding alternatives to formal litigation. The attorneys who serve on the ADR panel have agreed to offer participants a 90-minute session for \$100 (\$50 per party). Additional sessions are available at the attorney's market rate. For more information call the ADR office at: (650)599-1238, or visit the website at: [www.sanmateocourt.org/adr/familylaw](http://www.sanmateocourt.org/adr/familylaw)

### **• Mediation**

Mediation through the ADR program is voluntary. A neutral attorney called a "mediator" meets with parties and/or their attorneys to assist them in reaching an agreement. The mediator facilitates communication between the participants, clarifies issues, explores each party's needs and interests, and helps the participants to consider options for settlement.

The parties may resolve a single issue or the entire case. The agreements reached in mediation are not limited by the results available under the law so mediated solutions can more easily accommodate the circumstances of individual cases. An agreement reached in mediation is binding once it is turned into a court order and signed by the Judge. You cannot be forced to accept a decision in mediation and participating in mediation does not impact your right to a court hearing. If an agreement is not reached you may continue through the court system.

Mediation is private and confidential. The sessions are conducted in the mediator's office. Anything spoken or written during mediation by any of the participants is confidential and may not be disclosed to the Court or any other person without the consent of the participants.

### **• Arbitration**

Arbitration is private and less formal than a court trial. In arbitration a neutral attorney called the "arbitrator" makes a decision based on the information presented by both sides. The arbitrator then prepares a written decision and sends it to both parties and the Court. You decide ahead of time whether the arbitrator's decision will be "binding" or "non-binding". Binding means there is no right to trial and you will accept the arbitrator's decision as final. Non binding means you can accept or reject the decision.

### **• Collaborative Law**

In the collaborative law process, you and the other party each have a private attorney and make a commitment to resolve your disputes without going to court. Similar to mediation, collaborative law operates in the spirit of honesty and cooperation but unlike mediation, there is no neutral third party who facilitates the process. Instead, the four of you have a series of private meetings to create solutions that meet the unique needs of your family. The Peninsula Collaborative Family Law Group is a private organization of local attorneys, specially trained in Collaborative Law, who are available to serve you. For more information, fees, or for a list of their attorneys, please see their web site at: [www.collaborative-law.com](http://www.collaborative-law.com) or call (650)590-2288. Collaborative law attorneys have agreed to conduct some cases at a reduced fee. Please contact the ADR coordinator at (650)599-1238 for more information.

<b>PLAINTIFF/PETITIONER:</b>	<b>CASE NUMBER:</b>
<b>DEFENDANT/RESPONDENT:</b>	

## **FAMILY COURT SERVICES MEDIATION:**

The Court encourages the use of the ADR options described above to resolve custody and parenting plan disputes. However, if you do not reach an agreement on these issues, California law requires you to meet with Family Court Services (FCS) before submitting these issues to a Judge. FCS will first attempt to settle the issues through mediation, however, if no agreement is reached then the FCS counselor will prepare a written recommendation to the Court based upon the best interests of the child(ren). FCS mediation is not confidential and does not address your property or financial disputes. There is no fee for mediation with FCS.

## **DOMESTIC VIOLENCE AND ADR:**

ADR is most effective when parties are able to communicate and solve problems without fear or intimidation. For this reason when there is a history of domestic violence in a relationship, ADR may not be appropriate.

**The undersigned certifies that s/he has read this Notice in compliance with San Mateo County Local Rule 5.5.**

Date:

Date:

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Signature of Respondent

**Attorney certification of compliance with San Mateo County Local Rule 5.5:**

Date:

Date:

\_\_\_\_\_  
Signature of Attorney for Petitioner

\_\_\_\_\_  
Signature of Attorney for Respondent

**DIVISION VI**

**OTHER SPECIAL DEPARTMENTS AND CALENDARS**

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**DIVISION VI  
OTHER SPECIAL DEPARTMENTS AND CALENDARS**

**CHAPTER 1. DEFAULT CALENDAR**

Rule 6.1 Hearing in Uncontested Matters

Defaults, minors' settlements, adoptions and other uncontested matters requiring hearing shall be assigned by the presiding judge to a department for hearing at 9:00 a.m. on any court day.

An application for a hearing in an uncontested matter must be made in writing and must be filed with the Clerk of the Court not less than five court days before the hearing. No matter will be set on the uncontested calendar until all required pleadings and other documents have been filed.

(Adopted, effective July 1, 1996)

Rule 6.1.1 Attorney's Fees in Actions on Promissory Notes and Contracts Providing for Payment of Attorney's Fees

The following attorney's fees shall, under normal circumstances, be awarded in actions on promissory notes and contracts providing for the payment of attorney's fees.

(a) Default action on note or contract:

[See Court Schedule of Attorney Fees on the following page ]

(b) Where prevailing party is entitled to the recovery of a reasonable attorney's fee in an otherwise appropriate clerk's judgment, the clerk shall include an attorney fee computed pursuant to the schedule referred to in subdivision (a) above.

(Adopted, effective July 1, 1996)



<b>COURT SCHEDULE OF ATTORNEY FEES</b>
--

\$ 0	to	\$ 5,000	\$ 300 or 20% whichever is higher								
5,001	to	5,250	1,035	11,251	to	11,500	1,550	17,251	to	17,500	1,670
5,251	to	5,500	1,070	11,501	to	11,750	1,555	17,501	to	17,750	1,675
5,501	to	5,750	1,105	11,751	to	12,000	1,560	17,751	to	18,000	1,680
5,751	to	6,000	1,140	12,001	to	12,250	1,565	18,001	to	18,250	1,685
6,001	to	6,250	1,170	12,251	to	12,500	1,570	18,251	to	18,500	1,690
6,251	to	6,500	1,200	12,501	to	12,750	1,575	18,501	to	18,750	1,695
6,501	to	6,750	1,230	12,751	to	13,000	1,580	18,751	to	19,000	1,700
6,751	to	7,000	1,280	13,001	to	13,250	1,585	19,001	to	19,250	1,705
7,001	to	7,250	1,285	13,251	to	13,500	1,590	19,251	to	19,500	1,710
7,251	to	7,500	1,310	13,501	to	13,750	1,595	19,501	to	19,750	1,715
7,501	to	7,750	1,335	13,751	to	14,000	1,600	19,751	to	20,000	1,720
7,751	to	8,000	1,380	14,001	to	14,250	1,605	20,001	to	20,250	1,725
8,001	to	8,250	1,380	14,251	to	14,500	1,610	20,251	to	20,500	1,730
8,251	to	8,500	1,400	14,501	to	14,750	1,615	20,501	to	20,750	1,735
8,501	to	8,750	1,420	14,751	to	15,000	1,620	20,751	to	21,000	1,740
8,751	to	9,000	1,440	15,001	to	15,250	1,625	21,001	to	21,250	1,745
9,001	to	9,250	1,455	15,251	to	15,500	1,630	21,251	to	21,500	1,750
9,251	to	9,500	1,470	15,501	to	15,750	1,635	21,501	to	21,750	1,755
9,501	to	9,750	1,485	15,751	to	16,000	1,640	21,751	to	22,000	1,760
9,751	to	10,000	1,500	16,001	to	16,250	1,645	22,001	to	22,250	1,765
10,001	to	10,250	1,510	16,251	to	16,500	1,650	22,251	to	22,500	1,770
10,251	to	10,500	1,520	16,501	to	16,750	1,655	22,501	to	22,750	1,775
10,501	to	10,750	1,530	16,751	to	17,000	1,660	22,751	to	23,000	1,780
10,751	to	11,000	1,540	17,001	to	17,250	1,665				
11,001	to	11,250	1,545	Over \$23,000 - \$1,780 plus 1 ½ % of the amount over \$23,000							

## CHAPTER 2. JUVENILE DEPARTMENT

### Rule 6.2 Hearings

Unless otherwise ordered, the proceedings of the Juvenile Department shall be held in the San Mateo County Juvenile Court at 222 Paul Scannell Drive, San Mateo, at such times as the Juvenile Court judge shall direct.

(Adopted, effective July 1, 1996)

### Rule 6.3 Attorneys for Parties in Dependency Proceedings

(a) **[Timelines]** Attorneys for parties are expected to adhere to the statutory timelines for all hearings. Time waivers will be accepted and continuances granted only on a showing of exceptional circumstances.

(b) **[Experience, training, education; standards of representation]** Every party in a dependency proceeding who is represented by an attorney shall be entitled to competent counsel, as defined in California Rule of Court 1438(b). The San Mateo County Private Defender Program shall be responsible for the establishment of procedures for qualification of attorneys for inclusion on the panel designated to represent parties. Minimum standards of experience, training and education shall conform to CRC 1438 and shall be included in the qualification requirements. Standards of representation shall conform at a minimum to those set forth in CRC 1438. A copy of the procedures and standards established by the Private Defender Program shall be lodged with the court and made available to juvenile court judicial officers.

(c) **[Appointment]** The court shall appoint the Private Defender Program to represent the parties as requested, and the Private Defender Program Managing Attorney shall designate the particular attorneys.

- (1) In exceptional circumstances the court may request that a particular attorney be appointed to represent a party.
- (2) The social worker shall notify the Private Defender Program juvenile office of the need for appointed counsel no later than 9:00 a.m. of the court day preceding the first hearing of the case.
- (3) The court may appoint the Private Defender Program at any time, and shall promptly notify the Private Defender Program juvenile office in writing.

(d) **[Client complaints]** Complaints or questions by a party regarding attorney representation shall be addressed as follows:

- (1) Complaints or questions shall initially be referred for review by the Managing Attorney of the Private Defender Program who shall take appropriate action if required.
- (2) If the issue remains unresolved, the party may submit the complaint or question to the court in writing. The court shall conduct its own review of the complaint or question and take appropriate action if required.

(e) **[Attorney for the child (W & IC 317)]** Counsel for the child in a dependency proceeding is charged with representation of the child's interests, including causes of action and other interests to be advanced or protected by administrative or judicial proceedings within or outside of the juvenile court system.

- (1) Absent exceptional circumstances, the attorney for the child shall have personal contact with the child regardless of the age of the child, and shall interview any child four years or older so the attorney can better represent to the court how the child's wishes and interests may best be addressed.
- (2) The attorney for the child shall investigate any interests of the child beyond the scope of the dependency proceeding and shall immediately advise the juvenile court of information regarding any interest or right of the child to be protected or pursued in other judicial or administrative forums.
  - (A) Judicial Council forms Juvenile dependency Petition (JV-100) and Modification Petition Attachment (JV-180) shall be utilized to inform the court and request direction from the court.
  - (B) Upon receipt of the request by counsel for instructions from the court, the court shall do one or all of the following:
    - (i) Refer the matter to the appropriate agency for further investigation and require a report to the court and counsel within a reasonable time;
    - (ii) Authorize and direct the child's attorney to initiate and pursue appropriate action;
    - (iii) Appoint a guardian ad litem for the child if one is required to initiate appropriate action; or
    - (iv) Take any other action to protect the interests and rights of the child.
- (3) If the court receives information from a person other than the attorney for the child regarding an interest or right of the child, the court shall appoint an attorney for the child if the child is unrepresented, inform that attorney or the attorney of record for the child, of the information, and request the attorney to investigate the matter. After investigation, the attorney shall proceed according to subsection (e)(2).

(Adopted, effective July 1, 1996)

Rule 6.4 Absence of Juvenile Court Judge

In the absence of the Juvenile Court judge, all judges of the court are designated as Juvenile Court judges.

(Adopted, effective July 1, 1996)

### CHAPTER 3. LPS CALENDAR

#### Rule 6.5 LPS Calendar Department

Court proceedings involving the detention, treatment and evaluation of the mentally disordered, developmentally disabled, inebriates, drug abusers, imminently dangerous and suicidal persons shall be held at such time and places as the judge of such department shall prescribe.

(Adopted, effective July 1, 1996)

### CHAPTER 4. NORTHERN DEPARTMENT

#### Rule 6.6 Sessions

A session of this court, referred to in these rules as the "Northern Department," shall be held each court day, at such times as directed by the judge of that department, in the San Mateo County Northern District Court Building at 1050 Mission Road, South San Francisco, or at such other place or places in South San Francisco as the presiding judge shall order from time to time. The presiding judge shall establish by order a schedule for the Northern Department specifying the days and times that each type of proceeding will be conducted.

(Adopted, effective July 1, 1996)

#### Rule 6.7 Matters that May be Heard

In any action or proceeding assigned to the Northern Department pursuant to these rules, all proceedings shall be conducted in the Northern Department, unless otherwise ordered. Other proceedings may be assigned to the Northern Department by the presiding judge.

(Adopted, effective July 1, 1996)

#### Rule 6.8 Northern District

The Northern District includes all areas of San Mateo County from the northern boundary south to and including Burlingame.

(Adopted, effective July 1, 1996)

#### Rule 6.9 Basis for Establishing Northern District Venue

Northern District venue is proper in the following cases:

(a) All proceedings under the Probate Code where the deceased at the time of death or the missing person at the time of disappearance was, or where the incompetent, proposed conservatee or minor is, a resident of the Northern District, and all proceedings where the petitioner for appointment as executor, administrator, conservator or guardian at the time of filing the petition is a resident of the Northern District.

(b) Actions for domestic violence, harassment, and temporary orders only under the Family Law Act where the petitioner resides in the Northern District.

(c) Any action or proceeding where, in the discretion of the presiding judge, convenience of the witnesses, the efficient administration of the court or the ends of justice would be promoted by assignment to the Northern Department.

(Adopted, effective July 1, 1996)

#### Rule 6.10 Procedure for Obtaining Northern District Venue

A party to an action may obtain Northern District venue by one of the following procedures:

(a) The party initiating the action may file concurrently with the initial pleading a completed Northern District Declaration on the form available from the clerk of the court. Upon the filing of such a Declaration stating facts showing Northern District venue to be proper under these rules, the clerk shall assign such action to the Northern Department for all purposes permitted under these rules. If at any time it appears that assignment to the Northern Department was not proper, the presiding judge or the judge of the Northern Department may order such action or proceeding transferred to the county seat.

(b) After an action is filed, any party may make a noticed motion before the presiding judge or the judge of the Northern Department for transfer to the Northern Department. In any default or otherwise uncontested action or proceeding, such order of transfer may be made ex parte. Except in default or uncontested actions or proceedings, within five days after the order for transfer is made, the moving party shall file and serve on all other parties a notice of the transfer.

(Adopted, effective July 1, 1996)

#### Rule 6.11 Transfer from Northern Department

The presiding judge or the judge of the Northern Department, with the approval of the presiding judge, may transfer actions or proceedings pending in the Northern Department to the county seat in any of the following circumstances:

(a) When the parties stipulate to such transfer.

(b) When the convenience of witnesses, the efficient administration of the court or the ends of justice would be promoted by the change.

(c) When it appears that the action was improperly assigned to the Northern Department.

(Adopted, effective July 1, 1996)

Rule 6.12 Filing of Papers and Keeping Records of Northern Department

(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.

(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.

(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.

(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.

(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.

(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.

(Adopted, effective July 1, 1996)

**DIVISION VII  
PRETRIAL PROCEEDINGS IN CLASS ACTIONS**

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DIVISION VII  
PRETRIAL PROCEEDINGS IN CLASS ACTIONS

Rule 7.1 Introduction

This division sets out the pretrial procedures to be used by this court in class action suits brought under Code of Civil Procedure Section 382 or Civil Code Sections 1750, et seq., to determine class issues and for terminating class suits prior to trial. The rule sets forth general procedures and does not purport to codify the law governing class actions. It is the intent of this court that this rule be applied flexibly and in light of the particular circumstances of a given case. In appropriate cases<sup>1</sup>, any named party may move for relief from compliance with this rule on the ground that the pending case does not involve a class action of the nature contemplated by this rule.

(Adopted, effective July 1, 1996)

Rule 7.2 Issues Subject to Pretrial Determination

(a) (Class Issues) To the extent required by applicable law, the court shall consider the following class issues to determine whether a class action properly exists:

(1) Constitution of the class (composition, number, location, description, possible subclasses, etc. of the class).

(2) Whether common issues of law or fact predominate over individual issues.

(3) Superiority of the class action to other available methods for the fair and efficient adjudication of the controversy.

(4) Membership of the class representative in the class.

(5) Ability of class representative to fairly and adequately protect the interests of the class.

(6) Necessity for and contents of notice.

(b) (Additional Issues) When appropriate, the court may also consider additional pertinent issues, including consolidation, severance, coordination, bifurcation, communication with the class, intervention, joinder, and precedence of discovery.

(Adopted, effective July 1, 1996)

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<sup>1</sup>For example, a taxpayer action under C.C.P. Section 526(a) or an action by an association as the representative of its members (see, e.g., Professional Fire Fighters v. City of Los Angeles, 60 C. 2d 276, 32 Cal. Rptr. 830 (1963)); a mandamus action to compel performance of a public duty (see, e.g., Diaz v. Quitoriano, 268 C.A. 2d 807, 74 Cal. Rptr. 358 (1969)); actions analogous to those defined by Rule 23(b)(1) and (b)(2) of the Federal Rules of Civil Procedure.



### Rule 7.3 Caption of Pleadings

All complaints for or against a class party shall include in the caption the designation "CLASS ACTION". This designation shall be typewritten in capital letters on the first page of the complaint immediately below the Clerk of the Court's file number but above the general description of the nature of the complaint.

(Adopted, effective July 1, 1996)

### Rule 7.4 Pretrial Proceedings

Two types of pretrial proceedings may be scheduled to resolve issues involved in class actions.

(a) (Informal Conferences) One or more conferences, informal in nature, may, in the discretion of the court, be held upon written notice of any named party or the court. The conferences will be held in chambers to discuss class issues involved, establishment of precedence of discovery, scheduling of hearings and other matters. At these conferences no evidence may be presented, but the court will expect all attorneys to have sufficient knowledge of the class issues to discuss proposed stipulations resolving any class issues.

(1)(Timing) The conference may be held any time after all the defendants have made an appearance in the case, following written notice at least fifteen days before the date of the conference.

(2)(Order) At the conclusion of the conference, the court shall make an order embracing any stipulations of the parties and establishing a schedule for discovery, the date for subsequent informal conferences, if any, and the initial pretrial hearing on class issues. The order will be binding on all parties until modified or terminated. Nothing contained herein shall preclude a party from stating on the record any objection to the court's conference order.

(b) (Pretrial hearings on class issues) One or more pretrial hearings will be held to resolve class issues. Presentation of evidence at the hearing will be through declarations submitted and previously discovered evidence. Oral testimony will not be permitted except on leave of court. The burden of proof on all class issues is on the party alleging the existence of the class, and all class issues must be proved by a preponderance of the evidence.

(1)(Initial hearings) An initial pretrial hearing will be held to resolve, at least, class issues (1) - (5) listed in Rule 7.2(a) (and, if appropriate, also issue 6). All motions must be accompanied by documents on all issues to be presented to the court. The party who has alleged the existence of the class must submit declarations on issues 1, 4 and 5.

(2)(Subsequent hearings) A subsequent hearing may be held to resolve class issues not earlier resolved or, upon a sufficient showing of changed factual circumstances having occurred or new evidence having been discovered after the earlier hearing, to reconsider class issues. If issue was not determined earlier, that issue must be determined at the subsequent hearing.

(3) (Filing of documents) All notices of motion for pretrial proceedings to resolve class issues must be filed and served at least thirty days before the date of the hearing. All response documents must be filed at least fifteen days before the date of the hearing. All documents in reply to the response must be filed at least five days before the date of the hearing.

(4)(Contents of documents) Every notice of motion for pretrial proceedings to resolve class issues must be accompanied by appropriate declarations and by a memorandum of points and

authorities, including a statement separately discussing each class issue to be resolved in terms of the pleadings, the evidence before the court, and such other matters as are appropriate to set forth that party's position on each issue.

(Adopted, effective July 1, 1996)

#### Rule 7.5 Notice to Public Entity or Official

When a public entity, or a public official or public employee in his or her official capacity is an unnamed member of the class, notice of the pendency of the class action shall be given to that entity, official, or employee, if known. If the action seeks relief, other than money damages, for adverse environmental effects which affect the public generally, notice shall be served on the State Attorney General.

(Adopted, effective July 1, 1996)

#### Rule 7.6 Class Action Order

At the conclusion of each hearing, the court will make an order upon the issues presented to it. The order will be final if it dismisses the maintainability of the action as a class action; if the order does not dismiss the action as a class action it will be interlocutory in nature and may be rescinded or modified as the changed circumstances of the action require. An order certifying a class supersedes the pleadings but does not relieve the party from the burden of proving at trial the matters included within class issues (1) through (5) of Rule 7.2(a).

(Adopted, effective July 1, 1996)

#### Rule 7.7 Early or Separate Trial

Any named party may move for, or the court on its own motion may order, an early trial of appropriate issues under Code of Civil Procedure Section 597 or Section 598, or a separate trial of any cause of action or issue under Code of Civil Procedure Section 1048(b). At the conclusion of the trial on bifurcated issues, the court will make its order establishing the proof (or failure therefor) upon the issues presented. The order will constitute a final determination of said issues for all trial purposes.

(Adopted, effective July 1, 1996)

#### Rule 7.8 Certificate of Readiness

No certificate of readiness may be filed until all class issues have been resolved and appropriate orders made.

(Adopted, effective July 1, 1996)

#### Rule 7.9 Settlement of Class Claims

All agreements between the parties which settle the claims of the class and terminate the action must be approved by the court after a settlement hearing. The notice of any motion for approval of the agreement must be accompanied by a copy of the proposed notice to the class on the proposed settlement and by the proposed method of giving notice, which shall be the same as that previously used in the case, unless otherwise determined by the court. All agreements on fees to be paid to attorneys for the class as part of the settlement should be

included in the settlement. Regardless of the sum agreed upon by the parties, the court will award only that amount of fees which it determines to be reasonable.

(Adopted, effective July 1, 1996)

Rule 7.10 Retention of Jurisdiction

Where the judgment of the court requires the parties to perform future acts beyond mere payment of a money judgment, the judgment shall provide for the court's retention of jurisdiction while satisfaction of the judgment is being effected.

(Adopted, effective July 1, 1996)

Rule 7.11 Dismissals

Dismissals or partial dismissals in class actions are subject to prior court approval. Any request for dismissal must be accompanied by at least one declaration setting forth the facts upon which the party relies in seeking the dismissal, as well as the full terms of any settlement between the named parties. Notice to the class may be required before the dismissal is approved.

(Adopted, effective July 1, 1996)

**DIVISION VIII  
APPOINTMENT OF SPECIAL MASTERS AND REFEREES  
FOR THE HANDLING OF COMPLEX CASES - SUPERIOR COURT**

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**DIVISION VIII  
APPOINTMENT OF SPECIAL MASTERS AND REFEREES  
FOR THE HANDLING OF COMPLEX CASES - SUPERIOR COURT**

Rule 8.1 Power to Appoint

The court may, at any stage in the proceedings, appoint a special master or referee for the purpose of conducting proceedings in complex cases, pursuant to Code of Civil Procedure sections 638-645.1, including settlement, in accordance with the provisions of this rule.

(Adopted, effective July 1, 1996)

Rule 8.2 Definition

"Complex cases" are those cases that require specialized management to avoid placing unnecessary burdens on the court or litigants. These include, but are not limited to, multiple related cases, cases with extensive pretrial activity, extended trial times, large numbers of parties, complex factual issues, and/or extensive post-judgment court supervision.

(Adopted, effective July 1, 1996)

Rule 8.3 Identification

Counsel shall, upon the filing of a complaint, cross-complaint, answer, or at any point counsel so concludes, file and notice a motion with the presiding judge, stating that the case is complex, as herein defined. The presiding judge shall screen such cases and determine which cases are to be referred to a special master or referee.

(Adopted, effective July 1, 1996)

Rule 8.4 Appointment of Special Master or Referee

The presiding judge may, in accordance with the provisions of Code of Civil Procedure sections 638-645.1, in any case determined by the presiding judge to be complex, or on noticed motion of any party, appoint a special master or referee. The compensation of the special master or referee shall be fixed by the presiding judge pursuant to Code of Civil Procedure section 645.1 or pursuant to the agreement of all parties.

(Adopted, effective July 1, 1996)

Rule 8.5 Supervision of Special Master or Referee

The presiding judge, or any judge designated by the presiding judge, shall supervise the work of the special master or referee.

(Adopted, effective July 1, 1996)

Rule 8.6 Duties of Special Master or Referee

The special master or referee shall, in addition to the powers and duties conferred by Code of Civil Procedure section 639,

- (a) Review the court's file and meet with counsel;

- (b) When deemed appropriate, require counsel to provide statements pertaining to factual and legal issues;
- (c) Require the attendance of counsel and parties (or representatives of parties with full authority to settle) at all settlement conferences;
- (d) When deemed appropriate, meet with counsel and the parties (or their representatives) together and/or separately;
- (e) Refer special problems affecting settlement which require the assistance of the court to the presiding judge, or to the supervising judge designated by the presiding judge;
- (f) Determine the procedure, time, place and duration of all settlement conferences, subject to the direction of the presiding judge, or supervising judge designated by the presiding judge; and
- (g) Determine the procedure, time, place and duration of all settlement conferences, subject to the direction of the presiding judge, or supervising judge designated by the presiding judge; and
- (h) Upon determination that settlement cannot be reached under the circumstances then prevailing, report the status of the matter to the presiding judge together with such recommendations as may assist the court in securing the ultimate settlement of the case.

(Adopted, effective July 1, 1996)

#### Rule 8.7 Court Order

Upon determination by the presiding judge that reference to a special master or referee should be made, the presiding judge shall sign and file an order designating the special master and referee and fixing compensation pursuant to this rule. The presiding judge, upon recommendation of the special master or referee, may allocate compensation among parties on an equitable basis.

(Adopted, effective July 1, 1996)

#### Rule 8.8 Trial Judge

At the sole discretion of the presiding judge, the trial judge in complex cases may, or may not, be the judge designated by the presiding judge to supervise the special master or referee.

(Adopted, effective July 1, 1996)

#### Rule 8.9 Special Master Additional Powers

The special master or referee may, on his or her own motion or on motion of any party, and upon good cause shown, order the designation of experts and their availability for depositions.

(Adopted, effective July 1, 1996)

Rule 8.10 Copies of Orders and Referee Reports

~~All parties or referees who file an order or report with the court, pursuant to California Rules of Court, Rules 244.1 and 244.2, must provide an additional conformed copy of the document along with the original for filing with the clerk of the court. The additional copy requirement applies to any order appointing referees pursuant to the Code of Civil Procedure sections 638 and 639, the referee's report under Code of Civil Procedure section 643, and any order of the court concerning the compensation of the referee.~~

(Adopted, effective January 1, 2002) **(REPEALED, effective January 1, 2005)**

DIVISION IX  
CRIMINAL DEPARTMENT

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DIVISION IX  
CRIMINAL DEPARTMENT

Rule 9.1 Pretrial Motions in Criminal Cases

- (a) Notwithstanding the minimum time limits set out in the California Rules of Court, all pretrial motions, accompanied by points and authorities, shall be served and filed at least fifteen (15) calendar days, all papers opposing the motion at least five (5) calendar days, and all reply papers at least two (2) court days before the time of the hearing.
- (b) Motions shall be in writing unless good cause to the contrary is shown, within the time deadlines and other provisions described above. Motions shall be heard upon application and as set by the court.
- (c) In misdemeanor cases in which the defendant has waived the right to a speedy trial, all pretrial motions shall, if possible, be set and heard prior to the date of the pretrial conference. When such motions cannot be so calendared, a later hearing date will be permitted only when a written declaration setting forth good cause for the late hearing has been filed and approved. Such declarations should be filed prior to the date of the pretrial conference and served on the opposing party.
- (d) In misdemeanor cases, if a motion to strike a prior conviction cannot be timely heard due to lack of documentation, it will then be heard at the time of sentencing.
- (e) Written motions filed pursuant to Penal Code Section 1538.5 shall specifically describe and list the property or evidence which is the subject of the motion to suppress. Furthermore, the motion and supporting documents shall specifically state the theory or theories relied upon, and cite the specific authority or authorities offered in support of such theory or theories.

(Adopted, effective July 1, 1996)

Rule 9.2 Sentencing

- (a) In all criminal matters, the judge who indicates a sentence upon which a plea is subsequently entered or who hears a trial, either jury or non-jury, normally shall impose sentence in that case.
- (b) The judge imposing sentence may order that a case be returned to that judge for all subsequent proceedings, including, but not limited to, modifications and violations of probation.

(Adopted, effective July 1, 1996)

Rule 9.3 Continuances

A trial date or evidentiary hearing may be continued only in open court, both sides being represented. Written notice of a motion to continue as required by Penal Code Section 1050 may be waived if the motion is known to be unopposed, and the proffered good cause is not contested.

(Adopted, effective July 1, 1996)

#### Rule 9.4 Written Arraignments

The attorney for a non-custody misdemeanor defendant may waive the formalities of arraignment, enter a not guilty plea and set the matter for pretrial hearing and trial, or for pretrial hearing, as may be appropriate, by personally appearing at the clerk's office of the designated branch at least two court days prior to the date set for the first appearance and by executing on behalf of the defendant, a written document to that effect on a form provided by the court.

(Adopted, effective July 1, 1996) (Amended, effective July 1, 2003)

#### Rule 9.5 Investigative Reports -- Discovery

(Adopted, effective July 1, 1996) (**Repealed**, effective January 1, 2003)

#### Rule 9.6 Preparation of Reporter's Transcript on Appeal in Criminal Cases

The reporter shall commence preparation of the transcript upon a verdict of guilty in all felony trials. If a notice of appeal has not been filed within 60 days of sentencing the reporter shall cease preparation of the reporter's transcript and submit a bill for the completed pages of the transcript. Rule 35(b) of the California Rules of Court shall otherwise apply.

(Adopted, effective July 1, 1996)

#### Rule 9.7 Trial by Declaration for Traffic Infractions

In order to expedite the handling and disposition of all traffic infractions, any defendant may elect to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, subject to the provisions of Vehicle Code Section 40902. Testimony and other relevant evidence may be introduced in the form of the notice to appear issued pursuant to Vehicle Code Section 40500, a business record or receipt, a sworn declaration of the arresting officer, or a written statement or letter signed by the defendant. If the defendant is dissatisfied with a decision of the court in a trial by declaration, the defendant shall be granted a trial de novo.

(Adopted, effective January 1, 1998)

#### Rule 9.8 Confidentiality Of Victim Or Witness Information In Law Enforcement, Arrest Or Investigative Reports [Penal Code §964(C)]

##### A. Law Enforcement Reports Impacted

1. Law Enforcement, arrest or investigative reports that contain confidential personal information regarding a witness or victim are to be sealed pursuant to Penal Code section 964(a). These reports will be sealed once they are filed or lodged with the Court if they are submitted for the following purposes:
  - a) If the report is being submitted by a prosecutor in support of a criminal complaint, indictment, or information, or
  - b) If the report is submitted by the prosecutor or law enforcement officer in support of a search or arrest warrant.

2. This Rule is an exception to the California Rule of Court 243.1, as provided by paragraph (a)(2) of Rule 243.1.
3. Pursuant to Penal Code §964(c), this procedure will not be construed to impair or affect any of the following:
  - a) Provisions of Chapter 10 of Title 6 of Part 2 (commencing with Penal Code §1054);
  - b) Procedures regarding informant disclosure provided by Evidence Code §§ 1040 to 1042 inclusive, or as altering procedures regarding sealed search warrant affidavits as provided by People vs. Hobbs (1994) 7 Cal4th 948; or
  - c) A criminal defense counsel's access to unredacted reports otherwise authorized by law, or the submission of documents in support of a civil complaint.

**B. Access to Sealed Reports**

Any individual or agency, who does not have access to the report as allowable by law, may obtain access to a redacted version of the sealed report by following these procedures:

1. File with the Court an Ex Parte Application for an Order to view the report. This Ex Parte application must state the case number, title of the case, and the reasons and basis for your request to gain access to the sealed report.
2. Please see Local Rule 3.19 for filing, scheduling and hearing procedures. All Ex Parte Applications for an Order to view a sealed law enforcement report containing victim/witness information under this Rule must be scheduled for the Presiding Judge's Ex Parte hearing calendar that is heard daily between 2:00 PM to 3:30 PM.
3. Individuals who obtain an order granting access to a sealed report pursuant to this Rule shall present the order at the Criminal Court Clerk's Office to request the report. The Clerk's office will arrange to obtain a copy of the redacted report and will notify the applicant when the report is available for pick up.

(Adopted, effective July 1, 2005)

**Rule 9.9 Traffic Pre-Trial Discovery Motions.** An informal discovery request can be made anytime after a case is filed.

1. The defendant or his/her attorney must make this request in writing and the original is to be filed with the police agency that issued the citation.
2. The citing police agency has 15 days to respond and provide the requested material and information.
3. A copy of the informal request shall be filed with the District Attorney's Office who in turn will provide the Court Clerk's office Traffic Division with a copy of the request.
4. If the police agency does not respond to the request within 15 days of service, the defendant may seek a court order to compel Discovery.
5. The motion to compel discovery must be filed at the earliest possible date and at least five court days prior to the trial date. Written notice must be served on all parties at least five court days prior to the hearing. The original written motion to compel discovery and the proposed order should be filed in the Court Clerk's office Traffic Division with a copy

served on the police agency that issued the citation and the District Attorney's Office. The motion should indicate a hearing date that is before the trial date.

(Adopted, effective July 1, 2006)

**DIVISION X  
JUDICIAL ARBITRATION FOR CIVIL CASES**

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**DIVISION X  
JUDICIAL ARBITRATION FOR CIVIL CASES**

Rule 10.1 Judicial Arbitration for Civil Cases

A. Use of Arbitrator's Panel

The combined courts shall use the same panel of arbitrators promulgated pursuant to CRC Section 1604.

B. Pleadings Submitted to Arbitrator

Each party in a case referred to arbitration may lodge with the arbitrator a copy of the latest complaint, answer, cross-complaint, or answer to cross-complaint filed by that party and arbitration brief, if any. Documents shall be lodged with the arbitrator at least five (5) court days prior to the scheduled hearing or whenever the assigned arbitrator requires.

C. Length of Arbitration Hearings

Hearings shall not exceed three (3) hours, or in the arbitrator's discretion, upon good cause shown, a maximum of five (5) hours except as otherwise provided herein. If any party believes that the hearing will require more than five (5) hours ("lengthy hearing"), that party may obtain permission for such lengthy hearing by either:

(1) Filing at least five (5) court days before the hearing a written stipulation among the parties and the arbitrator for a lengthy hearing and providing for payment by the parties of a reasonable rate of compensation for the arbitrator for each hour of hearing in excess of five (5) hours; or

(2) Obtaining a Court order by written application showing good cause for a lengthy hearing made to the Court at or before the time when the matter is referred to arbitration.

D. Requests for Continuances - Hearing Date and Jurisdiction of the Arbitrator.

Any request to continue a judicial arbitration hearing will automatically vacate the current arbitration hearing date. Any application to the court for a continuance of the arbitration hearing shall be submitted on a Court provided form entitled "Ex Parte Motion and Stipulation for Continuance of Judicial Arbitration Hearing." Parties can obtain a copy of the form by contacting the court's judicial arbitration administrator.

E. Requests to Change ADR Processes

1. It is the policy of this court that all judicial arbitration hearings shall be conducted in accordance with California Rules of Court, sections 1600-1618. At the time of the case management hearing, the court expects parties to be prepared to select the appropriate ADR process for their case. [CRC, section 212(e)(6)].

2. Parties may not switch from court ordered judicial arbitration to another form of ADR on the day of the judicial arbitration hearing. However, if the parties believe that another ADR process might be more beneficial to their case, they may request permission from the court to switch ADR processes. Parties must submit their request to the court using the Court provided "*Stipulation and [Proposed] Order to {Mediation, Neutral Evaluation, etc.} in Lieu of Court Ordered Judicial Arbitration*" form. [See Local Rule 2.3(h)(3)].

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2005)

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CIVIL RULES

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DIVISION XI  
CIVIL RULES

RULE 11.1 Motions and Notice of Motions

(a) All motions shall be heard only upon such notice as may be required by law. Any response shall be delivered to the Court with proof of actual service on the opposing party no less than two (2) court days before the date of the hearing, notwithstanding the provisions of C.C.P. Section 1005. Time constraints imposed as a result of the failure of a criminal defendant to waive time constitute good cause for an order shortening time.

(b) All motions shall be noticed and responded to in writing, and all notices, responses, points and authorities and supporting documents shall state with particularity the grounds for the motion or the opposition, all relevant facts, and specific points and authorities in support of the motion or opposition.

(c) All motions requiring testimony will be heard only upon a special setting or on a regular calendar appropriate for such hearing, the date to be obtained from the Clerk.

(Adopted, effective July 1, 1996)

Rule 11.2 Information Forms for Data Processing

The court may prescribe forms for filing with such papers as may be necessary to accommodate data processing and statistical reporting requirements. These forms will normally be required with all first appearances or any other pleadings which affect the status of the parties in an action, including proofs of service of summons, memoranda to set, any documents requiring a hearing, and such other documents as may be identified by the court as requiring the input of special data to a case management/statistical reporting system. Specific statements of policy requiring the filing of these forms, and amendments thereto, will be published as they are approved by the court through customary media and bar liaison channels. These forms will be made available at the Court clerk's offices, as appropriate.

(Adopted, effective July 1, 1996)

Rule 11.3 Long-Cause Prearbitration, Settlement and Trial Setting

(a) For purposes of these rules, any civil action requiring more than four hours for trial or in which a Jury is demanded is deemed to be a long cause matter. All other actions are short-cause matters.

(b) Prearbitration, settlement and trial-setting conferences shall be conducted in accordance with the California Rules of Court and the rules of this Court, with notice of such conferences to be given by the Clerk.

(c) The Presiding Judge or a Judge designated by him or her shall hold a combined Prearbitration or mediation, settlement and setting conference for every long-cause civil action. All matters which are or will be subject to arbitration or mediation under the provisions of Chapter 2.5, Title III, or title 11.6 of Part 3 of the Code of Civil Procedure (Sec. 1141.10 et seq., or Sec. 1775 et seq.) or Rules 1600 et seq., or 1630 et seq. of the California Rules of Court shall be arbitrated or mediated, except those matters which the conference Judge determines to be not amenable to arbitration or mediation or cases in which arbitration or mediation is not likely to result in a reduction in the time or expense of litigation. In all other long-cause matters which are by law not subject to arbitration or mediation, or determined to be not amenable thereto, a settlement and setting conference shall be held.



(d) Upon filing of a memorandum to set in all long-cause matters, the Clerk shall forthwith set a conference. Notwithstanding any other provision of these rules, a judge of this court assigned to hear civil matters, upon that judge's own motion or upon application by a party, may require that any case, including those defined as short causes, may be subject to a settlement conference. In such event, the conference shall be conducted pursuant to this rule.

(e) At the conference, the conference Judge shall attempt to effect settlement of the case. If no settlement is effected and the Judge determines it appropriate to do so, the Judge may adjourn the conference from time to time for further settlement discussions. If no settlement is effected, the matter shall be ordered to be submitted to arbitration unless it is not subject, or amenable, to arbitration. In all cases set for trial a final settlement conference shall be set approximately three weeks prior to trial date.

(f) At all settlement conferences, all parties shall: (1) Have clients and principals in attendance or on telephone standby. (2) Prepare and submit to the Court, at least two full court days prior to the day of the conference, a written statement containing all of the following: (a) the facts and respective contentions of the parties to prove or disprove the right of recovery; (b) items and amounts of special damages; (c) nature and extent of injuries incurred and claimed residuals supported by written medical reports when available; (d) any wage loss claim, showing methods of computation; (e) any claim for future medical expenses and earnings loss; and (f) statements of the most recent demand and offer.

(g) The trial attorney or a fully informed associate with settlement authority shall attend for each party.

(h) Counsel shall be prepared to make a bona fide offer of settlement.

(i) ARBITRATION. After a case has been ordered to arbitration and the arbitrator has been selected, not later than five (5) days prior to the date set for the arbitration hearing, each party shall lodge with the arbitrator a legible copy of each pleading that party has previously filed with the court and each court order which the party has obtained.

(j) After arbitration, if a party elects to have a trial de novo pursuant to Code of Civil Procedure Section 1141.20, trial will be set by the Clerk. The case shall receive priority and shall be set on the first trial date reasonably available. A settlement conference shall also be set approximately three weeks prior to the trial date.

(Adopted, effective July 1, 1996)

#### Rule 11.4 Civil Case Assignment

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 or until the case is assigned to a trial department.

( Amended, effective January 1, 1997)

Rule 11.5 Juries: Fees and Demands

Jury fees shall be deposited and may be refunded as provided in Code of Civil Procedure Sections 631 and 631.3. No refunds of the Jury fees deposited shall be made where the party making the deposit has failed to give the Clerk written notice of settlement or of the granting of a motion of continuance at least two court days before the date set for trial. Parties in civil actions shall be deemed to have waived their right to a trial by jury in all cases in which they would otherwise be entitled to such a trial, by an express waiver or failure to demand a jury, or in any other manner prescribed by law, specifically including but not limited law to, a failure to demand a jury in compliance with California Rule of Court 507 in all cases entitled to trial-setting preference.

In unlawful detainer cases in which a jury is demanded, a jury will be deemed to be waived unless the party demanding the jury either: (1) deposits jury fees or (2) obtains an order to proceed in forma pauperis, and prior to 10 AM on the third full court day prior to the day set for trial - not counting weekends or non-judicial days established pursuant to law.

(Adopted, effective July 1, 1996)

Rule 11.6 Voluntary Arbitration

In all short-cause matters, the parties may stipulate to arbitration. Cost of such arbitration will be borne as the parties stipulate or, if there be no stipulation, by the losing party.

(Adopted, effective July 1, 1996)

Rule 11.7 Summary Judgment Motions - Form of Motion

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 11.8 Summary Adjudication Motions -- Form of Motion

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 11.9 Summary Judgment/Adjudication Motions - Form of Opposition Separate Statement

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 9999)

Rule 11.10 Summary Judgment Motions/Adjudication -- Format of Evidence

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 11.11 Summary Judgment Motions/Adjudication -- Opposition on Ground of Unavailability of Evidence

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 11.12 Summary Judgment Motions/Adjudication -- Proposed Order Denying Motions

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 11.13 Summary Judgment Motions/Adjudication -- Objection to Evidence.

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 11.14 Summary Judgment Motions/Adjudication -- Form of Written Objections to Evidence.

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 11.15 Summary Judgment Motions/Adjudication -- Sanctions.

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 11.16 Delay Reduction Policy and Standards

(a) **TIMELY DISPOSITION OF CIVIL CASES STATEMENT OF POLICY.** It is the policy of the Superior Court of California, County of San Mateo to manage all municipal court type cases from the time of filing the first document invoking court jurisdiction through final disposition. Parties are encouraged to proceed at a more accelerated pace, especially in those cases involving promissory notes, simple breach of contract, money due and other cases susceptible to early disposition. This policy is intended to comply with existing law, maximize efficient use of court resources and resolve cases within the Standards of Timely Disposition adopted by the American Bar Association.

(b) **TIME STANDARDS.** The following standards are adopted for resolution of civil cases.

(1) **GENERAL CIVIL.** A general civil case is any civil case other than a small claims or unlawful detainer.

(A) 90% of all the general civil cases shall be completed within twelve (12) months from the date of filing complaint

(B) 98% of all general civil cases shall be completed within eighteen (18) months from the date of filing complaint.

(C) 100% of all general civil cases shall be completed within twenty-four (24) months from the date of filing complaint.

(2) **UNLAWFUL DETAINER.**

(A) 90 % of all unlawful detainer cases shall be completed within thirty (30) days from filing of the complaint.

(B) 100% of all unlawful detainer cases shall be completed within forty-five (45) days from filing of the complaint.

(3) **SMALL CLAIMS.**

(A) 100% of all small claims cases where defendant resides within the county shall be completed within thirty (30) days from the filing of the claim of plaintiff.

(B) 100 % of all small claims cases where defendant resides outside the county shall be completed within sixty (60) days from the filing of the claim of plaintiff.

(Adopted, effective July 1, 1996)

RULE 11.17 General Civil Delay Reduction Procedural Rules

In order to meet the established standards for the timely disposition of civil cases, the following procedural rules are hereby adopted. In the case of any inconsistency between these Delay Reduction Rules and the California Rules of Court for the Municipal Court, these Delay Reduction Rules shall take precedence consistent with the policy and standards set forth herein.

(a) SERVICE OF COMPLAINT AND PROOF OF SERVICE. Within sixty (60) days of filing the complaint, the complaint must be served and a proof of service must be filed with the Court. If a responsive pleading is filed within the sixty (60) days, then it is not mandatory for the plaintiff to file a proof of service within that period. No extension of time to file and serve a responsive pleading shall be granted by plaintiff beyond sixty (60) days from the date of service of the complaint.

(1) The failure to serve the complaint and file a proof of service as required herein shall result in the issuance by the Court of a Notice of Possible Dismissal of the action. Said Notice will be sent by the Court to all parties who appeared in the action.

(2) A hearing on the dismissal of the action, or other sanctions as may be deemed appropriate by the Court, shall be set for a date not less than thirty (30) days after the date of mailing of the Notice to all parties.

(3) Written opposition to the dismissal and/or other sanctions must be filed and served at least five (5) court days prior to the hearing. Said opposition shall include a supporting declaration showing good cause why sanctions should not be imposed. The filing and service of said opposition within the prescribed time is mandatory for the matter to be heard. If opposition is not so filed and served, the Court may on its own motion without hearing dismiss the action, or impose other appropriate sanctions.

(4) If no good cause is shown excusing compliance with these Delay Reduction Rules, the Court may impose sanctions, including dismissal of the action.

(5) If a proof of service or responsive pleading is filed within thirty (30) days after the date of the mailing of the Notice, the hearing will not be held and the action will resume its position on the Delay Reduction Track.

(b) CROSS-COMPLAINTS.

(1) Cross-complaints and responsive pleadings thereto shall be controlled by these rules.

(2) No cross-complaint shall be filed by a defendant after the date that defendant's answer has been filed, without leave of Court. A cross-complainant may not grant any cross-defendant an extension of time to file a responsive pleading to the cross-complaint beyond sixty (60) days of service of the cross-complaint.

(3) In order to assure the expedited handling of the action under these Delay Reduction Rules, the Court on noticed motion of any party or its own noticed motion may sever a cross-

complaint where continued processing of said cross-complaint will result in undue delay in bringing the underlying complaint to trial.

(c) **MEMORANDUM TO SET.** Within eight (8) months of the filing of the complaint, plaintiff shall file and serve a memorandum to set the case for trial on all parties who have appeared in the action. If any other party has filed and served a memorandum to set within eight (8) months of the filing of the complaint, plaintiff need not do so.

(1) The failure to file and serve a memorandum to set as required herein shall result in the issuance by the Court of a Notice of Possible Dismissal of the action. Said Notice will be sent by the Court to all parties who have appeared in the action.

(2) A hearing on the dismissal of the action, or other sanctions as may be deemed appropriate by the Court, shall be set for a date not less than thirty (30) days after the date of mailing of the Notice to all parties.

(3) Written opposition to the dismissal and/or other sanctions must be filed and served at least five (5) Court days prior to the hearing. Said opposition shall include a supporting declaration showing good cause why sanctions should not be imposed. The filing and service of said opposition within the prescribed time is mandatory for the matter to be heard. If opposition is not so filed and served, the Court may on its own motion without hearing dismiss the action, or impose other appropriate sanctions.

(4) If no good cause is shown excusing compliance with these Delay Reduction Rules, the Court may impose sanctions, including dismissal of the action.

(5) If a memorandum to set is filed and served within thirty (30) days after the date of the mailing of the Notice, the hearing will not be held and the action will resume its position on the Delay Reduction Track.

(d) **SERVICE OF THESE RULES ON NEW PARTIES.** Plaintiff shall serve upon each defendant along with the summons and complaint a copy of the Delay Reduction coversheet provided by the Court when the complaint is filed. Said coversheet will summarize these Delay Reduction Rules including the Rule relating to unlawful detainer actions. Any party, including cross-complainants, must serve this coversheet along with any pleading bringing a new party into the action.

(Adopted, effective July 1, 1996)

#### Rule 11.18 Continuances

Pursuant to CRC Section 75 and CRC Standards of Judicial Administration, Section 9, no case shall be continued except upon an affirmative showing of good cause. Motions to continue shall be in writing and supported by affidavits or declarations detailing specific facts showing that a continuance is necessary. A stipulation by all parties to a continuance does not constitute good cause.

(Adopted, effective July 1, 1996)

Rule 11.19 Required Action

Action shall be taken on all calendared cases and a future date for action shall always be set. No case shall go "off calendar" without a future action date being set.

(Adopted, effective July 1, 1996)

Rule 11.20 Failure to Comply With Delay Reduction Rules

If, at any time, a party fails to pursue a case to disposition or fails to comply with the requirements of these rules, an order to show cause may be issued by the Court and a hearing held to determine whether good cause exists for such failure and to consider imposition of sanctions under the Local Rules of this Court, CCP Section 177.5, or Section 128.5, or dismissal of the action pursuant to CCP Section 583.410 and the appendix to the Standards of Judicial Administration Section 2.3.

(Adopted, effective July 1, 1996)

Rule 11.21 Unlawful Detainer

Unlawful detainer actions are controlled by these Rules. A Memorandum to Set or a default judgment must be filed with the Court and served within twenty-five (25) days of the filing of the Complaint. If a memorandum to set or a default judgment is not so filed and served, the Court on its own motion, without further notice, may dismiss the action.

(Adopted, effective July 1, 1996)

RULE 11.22 Pro-Tem Judges

(a) When an attorney is named as a plaintiff in a civil or small claims case filed in the Superior Court of California, County of San Mateo, that attorney may not sit as a judge pro-tem of the court during the pendency of the case or within six months following the resolution of the case.

(b) When an attorney is named as a defendant in two or more civil or small claims cases filed in the Superior Court of California, County of San Mateo, that attorney may not sit as a judge pro-tem of the court during the pendency of the cases after the second case has been filed or within six months following the resolution of both cases.

(Adopted, effective July 1, 1996)(Amended, effective July 1, 1996)