

Chapter Eight - GRAND JURY & TRIAL JURY SELECTION

800 GRAND JURY SELECTION

The selection of the grand jury shall be conducted pursuant to Penal Code sections 896 – 908.2. The Jury Commissioner shall ascertain that each nominee complies with the qualifications prescribed by Penal Code section 893.

The Court shall interview all volunteer applicants who have submitted properly completed applications. After certifying the competence and qualifications of the applicants, the Clerk shall deposit their names in five separate boxes according to the supervisory district in which the applicant resides. The Clerk shall randomly draw an appropriate number of applicants as directed by the Court from each supervisory district. The judges shall jointly nominate those applicants for grand jury duty and those names shall be deposited into the “grand jury box” by the Clerk. Another drawing shall be held to reduce the randomly-drawn applicants to not less than twenty-five (25) nor more than thirty (30) names. A final, random drawing shall be held from the pool of not less than twenty-five (25) nor more than thirty (30) names to select the required number of grand jurors.

Any grand juror who fails to obey the oath taken or charge by the court pursuant to Penal Code sections 911 or 914 is subject to removal from office by the Presiding Judge.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

801 TRIAL JURY SELECTION; VENUE

Trial jury selection shall be conducted in accordance with Code of Civil Procedure section 198.5. Jury venires for all South County divisions shall be selected from the South County geographic region, and jury venires for all North County divisions shall be selected from the North County geographic region as defined in rule 201 of these local rules, unless the Presiding Judge or Assistant Presiding Judge orders a countywide venire in the interest of justice.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-00)

802 CIVIL CASE SETTLEMENT; NOTICE & JURY FEES

In the event a civil case settles prior to the commencement of trial, the party who has demanded trial by jury shall notify the Jury Commissioner no later than 3:00 p.m. on the court day prior to the date set for trial. Failure to provide timely notice shall result in the party's forfeiture of the jury fee deposit and liability for all of the costs of the jurors appearing for trial. If the case settles on the day of trial after the jurors have actually appeared and cannot be utilized in another trial on the same date, the parties shall be responsible for the actual costs of all jurors appearing for the trial to be determined by the judge.

(Amended 07-01-09; adopted effective 07-01-98)

803 ACCESS TO JUROR IDENTIFICATION INFORMATION

The Jury Commissioner and all Court employees shall release identifying information concerning jurors and prospective jurors only in accordance with this local rule.

“Identifying information” or “identification information” constitutes all information reported to the Jury Commissioner under penalty of law, including, but not limited to, home addresses, business and work addresses, telephone numbers, fax contact numbers, e-mail addresses, names and other identifying information of family members, vehicle identification information, occupation, and all similar information maintained on file by the Jury Commissioner to assist with the summoning and selection of panels of prospective jurors, including all information furnished pursuant to Code of Civil Procedure section 205.

The fact that an item of information concerning a juror may be recorded in some other public record not under the control of the Jury Commissioner shall not affect the duty to maintain the confidentiality of information filed with the Jury Commissioner.

Access to juror identification information in criminal cases is regulated by the provisions of Code of Civil Procedure section 206.

Access to juror identification information in civil cases shall be controlled by the trial judge or the Presiding Judge if the trial judge who heard the case is unavailable. A party requesting access to juror identification information in a civil case, or in any special proceeding other than a criminal case, shall file a verified petition setting forth good cause for access to such information. The petition shall be heard upon such notice as the assigned judge shall direct, but in no case less than ten (10) court days. In all cases the Clerk shall serve a copy of such petitions, by mail, on the jurors whose identifying information is sought, together with notice of (1) the time and place of the hearing, (2) their right to object both in person and in writing, and (3) their right to decline to discuss the case with any person, regardless of the action of the court on the petition for release of information.

(Amended 07-01-09; adopted effective 07-01-99)

Chapter Nine - COURT CALENDARS & DISTRIBUTION OF CASES

900 DIRECT CALENDAR SYSTEM

The Court maintains a direct calendar system with cases generally assigned to one department for all purposes including trial. The Presiding Judge or Assistant Presiding Judge may assign and re-assign cases to other departments.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

901 SCHEDULES

The Clerk shall post in a prominent public location at each division by 4:00 p.m. every court day, a copy of the weekly schedule of judicial assignments and a copy of the daily calendar the hearings and trials scheduled for the following court day, excluding the name and other identifying information regarding juvenile or other confidential actions except as may otherwise be provided by law.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

902 “AFTER HOURS DUTY” JUDICIAL OFFICERS

The Court shall establish a schedule of judicial officers to be available to consider and to make necessary court orders after regular business hours for the review and setting of bail, issuance of search warrants, and emergency juvenile, domestic violence and other protective orders. The Court has established a system of telephonic or other contact with such “after-hours duty judicial officers,” and shall provide such information to law enforcement agencies and child protective service agencies on a confidential basis.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

903 ISSUANCE OF PROTECTIVE AND CHILD CUSTODY ORDERS

(a) [Communication and Coordination] All judicial officers shall, prior to issuance of criminal protective orders or orders involving child custody or visitation, make reasonable efforts to determine the existence and terms of any prior orders that may have been issued as to any party to the action pursuant to Penal Code section 136.2(i) (1) and (2) and CRC 5.450.

(b) [Coexistence of Orders; Conditions] A family or juvenile court order may coexist with a criminal protective order; orders permitting contact between the restrained person and his or her children shall provide for safe exchange of the children, and shall not contain language that violates a "no contact" order issued in a criminal case; further, that the family or juvenile court order specifies the time, day, place and manner of transfer of the child, as provided by Family Code section 3100.

(c) [Modification of Orders] Any judicial officer to whom a criminal case has been assigned and in which case a criminal protective order has been issued, may, after consultation with the judicial officer assigned to a family or juvenile case where a subsequent child custody or

visitation order has been issued involving the same parties, modify the criminal protective order to allow or restrict contact between the person restrained and his or her children.

(d) ["After Hours" Emergency Protective Orders] Upon application for an emergency protective order by law enforcement or child welfare personnel, and prior to issuing such order, "after hours" duty officers shall inquire of the applying law enforcement or child welfare officer to confirm completion of the required Judicial Council application form for such orders, particularly including information as to such officer's knowledge of the fact and terms of any existing protective or custody orders. The "after hours duty judicial officers" may require further inquiry of the person or persons to be protected concerning the existence and terms of any prior court orders.

(Amended 07-01-09; adopted effective 01-01-04)

904 JUDICIAL ASSISTANCE

(a) [Requests for Assistance] All requests for judicial assistance required by any judicial officer, whether for reasons of judicial absence, disqualification or recusal, or for calendar conflicts or workload, shall be made to the Presiding Judge or Assistant Presiding Judge.

(b) [Sources for Assistance] In determining the need and the appropriate source for obtaining judicial assistance, available sources will be considered in the following order: first, judicial resources of the division where the need arises; second, judicial resources within other divisions located in the same geographic region; and, third, judicial resources in the other geographic region.

(c) [Considerations] In determining sources for judicial assistance, convenience and potential travel requirements for parties, counsel and jurors shall be considered.

(d) [Judicial Council Assistance] Requests for judicial assistance from the Judicial Council Assigned Judges Program shall be made only on approval of the Presiding Judge or Assistant Presiding Judge.

(Amended 07-01-09; adopted 07-01-98; Former Rule 903; re-numbered effective 01-01-04; previously amended effective 01-01-99)

Chapter Ten – GENERAL COURT PROCEDURES

1000 CASE DISPOSITION TIME STANDARDS

To assure timely disposition of all cases consistent with the goals of Government Code section 68607 and California Standards of Judicial Administration 2.1, the Court will actively manage all cases from filing to disposition.

(Amended 07-01-09; adopted effective 07-01-99; previously amended effective 01-01-99)

1001 CONTINUANCES

Continuances shall not be granted based solely on a stipulation of the parties. Scheduled court appearances may not be excused without the specific authorization of a judicial officer and cases may not be taken off calendar without such authorization. The Clerk is not authorized to continue a matter or take a matter off calendar except by direction of a judicial officer.

(Amended 07-01-09; adopted effective 07-01-98)

1002 SCHEDULING HEARINGS & TRIALS

Except upon specific order of a judicial officer or as may otherwise be provided by law, no case shall be scheduled in any division of the court without approval of the Clerk.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 01-01-99)

1003 TIME ESTIMATES

Counsel are required to provide accurate estimates of the time required for hearing when scheduling cases. To the extent permitted by law and in the discretion of the judicial officer presiding, if time estimates are exceeded, any case may be deemed submitted for decision on the evidence presented, ordered off calendar, or a mistrial declared.

(Amended 07-01-09; adopted effective 07-01-98)

1004 ATTENDANCE OF PARTIES & WITNESSES

Counsel in both civil and criminal cases are responsible for having their parties and witnesses present in court promptly so that no proceeding is delayed. It is also the responsibility of counsel to attempt to mitigate unnecessary attendance of witnesses at proceedings where they may not be necessary, and to attempt to schedule witnesses on an “on-call” basis whenever possible. The court will not impose sanctions in cases where there is a short continuance required for the appearance of a witness who has been placed “on-call” in a reasonable manner.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 01-01-99)

1005 APPEARANCE BY TELEPHONE

(a) [Telephone Appearance Program;] The Court has established a Telephone Appearance Program pursuant to CRC 3.670.

(b) [Fees and Costs] Counsel who request(s) to appear by telephone shall pay the costs of any conference calls and shall pay any additional required court fee at the time the motion to appear by telephone is filed with the clerk’s office. The costs of any telephone call(s) involved in such a hearing shall be charged to the first counsel requesting to appear by telephone. Should counsel wish to apportion charges amongst themselves, such arrangements shall be made by counsel without any court intervention. The court is not responsible for the costs of any telephone calls and will not hear any dispute regarding the allocation of such costs between any attorneys appearing by telephone.

(c) [Conference Procedure] When counsel appear by telephone, they shall speak one at a time and shall state their name for the record each time they speak. If counsel does not participate in a conference call after requesting to present oral argument by telephone, the matter shall be deemed submitted by such counsel.

(d) [Court Limitations; Calling Responsibilities] The court reserves the right to limit the number of matters designated for telephonic oral argument on any day in departments assigned for hearing such matters. Counsel requesting telephonic argument in any matter in which oral argument by telephone has been approved by the court shall place a telephone call to the number designated by the court at least five minutes before the time scheduled by the court for telephonic oral argument. If multiple requests to appear by telephone have been granted, the moving party shall place the conference call.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 01-01-99)

1006 STATE PREEMPTION OF LOCAL RULES; CIVIL PRETRIAL & TRIAL

(Rule 1006 repealed effective 07-01-09; adopted 07-01-98)

1007 SPECIAL COURT FORMS

(Rule 1007 repealed effective 07-01-09; adopted 07-01-98)

1008 DIRECT FILING BY FAX

(a) [Fax Filing Requirements; Agency Filing] Any party may file by fax directly to the Court. Direct filing by fax must be made in full compliance with Code of Civil Procedure section 1012.5 and CRC 2.300 – 2.306.

(b) [Fax Numbers] The Court Fax numbers are as follows:

SOUTH COUNTY COURT DIVISIONS:

Santa Barbara - Civil (805) 882-4519
Santa Barbara – Criminal & Traffic (805) 882-4647

NORTH COUNTY COURT DIVISIONS:

Santa Maria - Civil (805) 614-6616
Santa Maria – Criminal & Traffic (805) 614-6591

Lompoc Division (805) 737-5440
Solvang Division (805) 686-7491

(c) [Fax Fees; Credit Cards] All direct Fax filings shall be accompanied by payment of fees by Credit Card, pursuant to CRC 2.304(d).

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 01-01-99, 01-01-03)

1009 EX PARTE ORDERS

All applications for ex parte orders shall comply with CRC 3.1200-3.1207, and shall be filed in the Clerk's office of the appropriate court division where the case is pending. The application, together with the appropriate file, will be presented to the appropriate judicial officer by the clerk. In the absence of a court order properly prepared by counsel or party in *pro per*, the reviewing judge shall record the decision on the application and/or in the court minutes.

(Amended 07-01-09; adopted effective 07-01-98)

1010 COURT RECORDS MANAGEMENT & ACCESS

(a) [Original Court Case Records and Exhibits] Only judicial officers and authorized court personnel shall file, process, remove, replace, edit, mark, copy or destroy original, official, records and exhibits. All access to original records shall be permitted only under direct supervision of authorized Court personnel; and only in accordance with California statutes, the CRC and these local rules.

(b) [Copying and Reproducing Official Court Records] Only judicial officers and authorized court personnel may photocopy or otherwise reproduce original, official records or exhibits. Any such copying or reproduction for public distribution shall be done only by or under the direct supervision of such authorized personnel, subject to any established court charge for these services. Personal photographing or other reproduction of original documents by the public is not permitted. This rule does not apply to the printing or reproduction of documents that may be posted or otherwise made available in electronic form on the Court's websites.

(Amended 07-01-09; adopted effective 01-20-05; Former rule 1010, Acceptance of Certain Hand Printed Documents and Forms, Repealed, effective 1-1-03)

1011 LIMIT ON NUMBER OF COPIES THE CLERK WILL CONFORM

The Clerk will conform a maximum of two (2) copies of any document at the time of filing. Additional copies will be provided by photocopy and the established fee for copies will be charged. If conformed copies are to be returned by mail, a stamped, self-addressed envelope must be included.

(Amended 07-01-09; adopted effective 01-01-03)

Chapter Eleven – ALTERNATIVE DISPUTE RESOLUTION (“ADR”)

1100 ADR COMMITTEE

An ADR Committee is established pursuant to CRC 10.783 for guidance and oversight of all court alternative dispute resolution programs, including the Judicial Arbitration Program. Members of the ADR Committee and the ADR Program Administrator are appointed by the Presiding Judge.

(Amended 07-01-09; adopted 07-01-98; amended effective 01-20-05)

1101 JUDICIAL ARBITRATION; MEDIATION

(a) [Matters Subject to Judicial Arbitration] Any action which is not exempt from judicial arbitration pursuant to Code of Civil Procedure sections 1141.10 – 1141.16 or by other California statutes shall be subject to and referred for judicial arbitration or mediation *in lieu* of arbitration pursuant to the provisions of Code of Civil Procedure sections 1775 – 1775.13. Non-exempt actions may also be referred for judicial arbitration as determined by the judicial officer before whom the case is pending.

(b) [Arbitration Administrator] The ADR Administrator shall serve as Arbitration Administrator and shall establish such local forms, lists of arbitrators and other procedures necessary to implement the Judicial Arbitration Program to the extent not established by California statutes or Standards of Judicial Administration 10.70 – 10.72.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 01-20-05)

1102 COURT ADMINISTERED DISPUTE RESOLUTION (CADRe)

(a) [Service and Filing] Plaintiff(s) shall include with service of complaints a copy of the Court Administered Dispute Resolution (CADRe) Program Information and a Stipulation and Order to Alternative Dispute Resolution (ADR) Process form pursuant to CRC 3.221(c). Not later than fifteen (15) calendar days before the 120-day case management conference (“CMC”) prescribed by rule 1309(d) of these local rules, all counsel and self-represented litigants shall file a completed Case Management Statement [CM-110] and serve it on all other parties. The court will make a determination of the amount in controversy at the CMC pursuant to Code of Civil Procedure section 1141.6.

(b) [ADR Consultation] Counsel and self-represented litigants may be required to attend a consultation with the CADRe staff within ten (10) court days of the 120-day CMC or as otherwise directed by the court. Parties and counsel shall be fully prepared to discuss the appropriate dispute resolution method(s) for the case with the court and CADRe staff.

(c) [Timing, and Disposition, and Reporting] If an ADR process is selected, counsel shall file a fully executed Stipulation and Order to Alternative Dispute Resolution Process form (“ADR Stipulation”) within ten (10) court days after the later of either (1) the 120-day CMC or (2) the CADRe consultation.

The parties shall conduct the ADR process within sixty (60) calendar days of filing the ADR Stipulation unless otherwise approved by the court. The neutral shall file a Statement of Agreement or Non-Agreement [ADR-100] within ten (10) court days of the final ADR session. All reports to the court by any mediator shall comply strictly with Evidence Code sections 1115, *et seq.* regarding disclosure of confidential or privileged information.

Cases that do not resolve through the use of an ADR process shall proceed to trial in accordance with these rules. Participation in an ADR process shall not affect time periods specified in the Trial Court Delay Reduction Act of 1990. Upon any settlement or other disposition of a case other than by trial, where an ADR process has occurred or is pending, notice of such disposition shall be given to all parties, the court, the arbitrator or other ADR neutral involved in the case, and to the CADRe staff as required by CRC 3.1385.

(d) [Mediation in lieu of Judicial Arbitration] Civil cases with an amount in controversy of \$50,000.00 or less that are subject to Judicial Arbitration may be ordered to limited mediation in lieu of judicial arbitration at the request of the parties or the discretion of the court. [Code of Civil Procedure sections 1141.10 – 1141.16 and 1775 – 1775.16].

(Amended 07-01-09; adopted 01-01-98; previously amended effective 01-20-05)

Chapter Twelve – APPELLATE DIVISION

1200 COMPOSITION OF APPELLATE DIVISION

The Presiding Judge recommends, and the Chief Justice of the California Supreme Court assigns judges to the appellate division and designates one of the judges as the presiding judge. Art.VI, sec. 4, Constitution of California; Code of Civil Procedure section 77(a); and, CRC 10.1100. The appellate division judges consider appeals in limited civil, misdemeanor and infraction cases, writ proceedings and trial of Small Claims Court cases on appeal in conformity with CRC 8.880 – 8.936.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

1201 USE OF TRIAL COURT FILE

The original trial court file may be used instead of a clerk’s transcript on appeal in limited civil cases, misdemeanor and infraction appeals pursuant to CRC 8.833, 8.863 and 8.914. The clerk may transmit to the appellate division the complete trial court file with a copy of all docket entries. The original or a copy of the docket entries shall be retained in the trial court.

(Adopted effective 07-01-09)

1202 OFFICIAL ELECTRONIC RECORDING

On stipulation of the parties or on order of the trial court pursuant to CRC 8.835, 8.837(d)(6), 8.868, 8.869(d)(6), 8.915 and 8.916, the original of an official electronic recording of the trial court proceedings, or a copy made by the court, may be transmitted to the appellate division clerk as the record of the oral proceedings without being transcribed. A written transcript of official electronic recordings may be prepared under CRC 2.952.

(Adopted effective 07-01-09)

1203 CLERK’S DUTIES

- (1) The clerk shall retain custody of the original sound recording.
- (2) The clerk shall make the original sound recording available to the parties and counsel for listening in court facilities during normal business hours.
- (3) Within ten (10) court days after a Notice of Appeal is filed, the clerk shall prepare and label one copy of the original sound recording for each party and a copy for the court’s file; the copies shall be provided on magnetic, electronic or digital media.
- (4) The clerk shall promptly mail a copy of the sound recording to known counsel on appeal for each party. If the clerk has not received notice of the appointment or retention of counsel on appeal, the copy shall be mailed to trial counsel and to each party unrepresented at trial and on appeal.

(Adopted effective 07-01-09)

1204 RETURNING COPY OF SOUND RECORDING

Upon signing a stipulated final statement, or upon receiving a copy of the judge's certificate resolving disputed issues, or upon receiving notice of the filing of the record in the reviewing court, or at the request of the reviewing court, trial counsel and self-represented litigant on appeal shall deliver the copy of the sound recording to the Clerk for the use of any counsel on appeal; or, trial counsel shall deliver the copy to counsel on appeal and promptly file a notice with the appellate division stating that it has been delivered or will be delivered to counsel on appeal when the appeal is assigned.

(Adopted effective 07-01-09)

1205 NOTICE OF ORAL ARGUMENT

As soon as the written briefs of all parties are filed or the time for filing briefs has expired, the appellate division clerk shall send a notice of the time and place of oral argument to all parties. The notice must be sent at least twenty (20) calendar days before the hearing date. The presiding judge of the appellate division may shorten the notice period for good cause; in that event, the clerk must notify the parties immediately by telephone or any other expeditious method.

If the presiding judge of the appellate division orders oral argument by videoconference pursuant to Rule 1207, the clerk must advise all parties at least five (5) days prior to the hearing the location from which each judge of the Appellate Division panel assigned to the case will participate.

(Adopted effective 07-01-09)

1206 ORAL ARGUMENT BY VIDEOCONFERENCE

On application of any party or on the court's own motion, the presiding judge of the appellate division may order that oral argument be conducted by videoconference. An application from a party requesting oral argument by videoconference must be filed within ten (10) calendar days after the court sends notice of oral argument pursuant to Rule 1206(b)(1).

If oral argument by videoconference is ordered:

- (1) All judges of the appellate division panel assigned to the case must participate in the entire oral argument either in person or by videoconference. The oral argument shall be open to the public at each location where a judge is participating.
- (2) Unless otherwise ordered by the presiding judge, all parties must appear at oral argument in person.
- (3) The appellate division must ensure that:

a. during oral argument, the participants are visible and their statements are audible to all other participants, court staff, and any members of the public attending the proceedings; and,

b. the source of any statements made by a participant is clearly identified.

(4) The parties shall not be charged a fee to participate in oral argument by videoconference.

(Adopted effective 07-01-09)

Chapter Thirteen - GENERAL CIVIL COURT PROCEDURES

1300 CIVIL CASE CALENDARING

(Rule 1300 repealed effective 07-01-09; Adopted 07-01-98; previously amended effective 01-01-99)

1301 CIVIL LAW & MOTION CALENDARS

(a) [Calendaring] Civil law and motion calendars and hearings ordinarily include, but are not necessarily limited to orders to show cause, defaults, demurrers, discovery motions, actions involving receiverships, injunctions, supplemental proceedings and similar cases. Hearings that cannot be accommodated on the law and motion calendars may be placed on the short cause trial calendar at the discretion of the assigned judicial officer. Law and motion hearings shall be determined on the basis of points and authorities, verified pleadings, affidavits and declarations, unless the court, for good cause shown, allows oral testimony and argument.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99, and 01-01-03)

(b) [Tentative Rulings] Tentative rulings in civil law and motion matters are posted pursuant to CRC 3.1308 and require notice of intent to appear. Tentative rulings are not required, but any judicial officer who does issue tentative rulings shall use this procedure. Tentative rulings shall be made available by telephone notice and, at the option of the judicial officer, by posting on the Court’s web site at <http://www.sbcourts.org/tentativeruling> not later than 3:00 p.m. on the court day preceding the scheduled hearing. The following telephone numbers will provide access to tentative rulings:

Santa Barbara Civil Departments:

Department 3	(805) 882-4512
Department 4	(805) 882-4727
Department 5	(805) 882-4732
Department 6	(805) 882-4734

Santa Maria Civil Departments:

Department 1	(805) 614-6424
Department 2	(805) 614-6467
Department 4	(805) 614-6439

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-03)

1302 NOTICE OF MOTIONS IN LIMINE

In civil jury trials, in addition to any other notice requirements, counsel shall give written notice of any *in limine* motions to avoid inconvenience to jurors.

(a) [Filing of Notice] The notice shall be filed not later than two (2) court days before the first trial call. If the case goes “off calendar” and is subject to the filing of a new At-Issue Memorandum, a new notice shall be filed not later than two (2) court days before the next trial date.

(b) [Copy for Jury Staff] The notice shall be accompanied at the time of filing with a copy, for the Jury Commissioner.

(c) [Time Estimates] The notice shall include the general subject(s) of the motion(s) and counsel's best estimate of the time that will be required to properly hear and resolve the motion(s).

(Amended 07-01-09; adopted effective 07-01-98)

1303 JUDGMENT DEBTOR EXAMINATION

(a) [Application, Issuance] When judgment creditors apply for an order that judgment debtors appear and answer concerning their property pursuant to Code of Civil Procedure sections 708.110, *et seq.*, the Clerk shall issue an order, upon review of the application and direction of a judicial officer, commanding the judgment debtor to appear before a judicial officer of the court at a specified time and place and answer concerning his property.

(b) [Supplemental Proceedings; Proof of Service] Proof of service in supplemental proceedings on a debtor's examination must be submitted to the Clerk at least five (5) days prior to the hearing.

(Amended 07-01-09; adopted effective 07-01-98)

1304 FAILURE TO APPEAR FOR DEBTOR EXAMINATION

When a warrant has been ordered due to failure of the judgment debtor to appear at the examination, the plaintiff has thirty (30) calendar days to file the declaration and obtain a warrant. If the warrant is not obtained within thirty (30) days, the plaintiff must obtain a new order to appear for examination and serve the judgment debtor.

(Amended 07-01-09; adopted effective 07-01-98)

1305 MANDATORY SETTLEMENT CONFERENCE; CRC 3.1380

The Court adopts CRC 3.1380.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

1306 TRIAL BRIEFS

Trial briefs setting forth the issues to be tried and any significant evidentiary issues likely to be presented, accompanied by points and authorities are required to be filed by all parties for all civil court trials with a time estimate of ninety (90) minutes or more and in all civil jury trials. In all cases where a trial confirmation date is set, the trial briefs shall be filed no later than the trial confirmation date. In all other cases, they must be filed at least three (3) court days prior to the date set for trial.

(Amended 07-01-09; adopted effective 07-01-98)

1307 DEFAULTS & UNCONTESTED MATTERS

Civil defaults, settlements and uncontested matters shall be heard on the law and motion calendars and shall be scheduled at least five (5) court days prior to the requested hearing date. A hearing date may be obtained by a telephone request to the Clerk in the division where the case is pending. Any judicial officer may shorten the time requirement in unlawful detainer and other actions requiring immediate judicial determination.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

1308 UNLAWFUL DETAINER PROJECT

(Rule 1308 repealed effective 07-01-09; adopted 07-01-98; previously amended 01-01-99)

1309 CIVIL LITIGATION ADMINISTRATION

(a) [Delay Reduction Policy] This rule is adopted pursuant to the Trial Court Delay Reduction Act of 1990 (Government Code sections 68600 *et seq.*) and CRC 3.711 and 3.714, and shall apply to all general civil actions, and all limited civil actions specified except those actions excluded by Government Code sections 68608-68620 and such other actions specified by the court.

(b) [Assignment of “All-Purpose” Judge; Case Management Noticing] Upon filing of the complaint in general civil cases, a judge will be assigned randomly to hear the case for all purposes. A Case Management Conference (“CMC”) shall be scheduled one hundred twenty (120) calendar days from the date of filing the complaint and notice of the “all-purpose judge” assignment and the date set for the CMC will be sent to the Plaintiff.

All parties in the action shall be notified immediately by the plaintiff of the “all-purpose judge” assignment and of the date set for the CMC. A Proof of Service of the Notice shall be filed by the plaintiff within five (5) court days after service. The plaintiff shall be required to provide such notice to all parties, including, but not limited to, defendants, cross-defendants and intervenors. Failure to give notice and file proof thereof may result in the imposition of sanctions.

(c) [Service of Complaint; Time Extensions] Within sixty (60) days after filing the complaint, the plaintiff(s) in general and limited civil actions shall file proof of service upon the defendant(s). If the plaintiff(s) cannot with reasonable diligence serve process on all named defendants within that time period, the plaintiff(s) may do one of the following: **(1)** file a motion to extend time to serve the defendant(s) no later than sixty (60) calendar days after the date the initial complaint was filed. The motion shall be scheduled for hearing on the civil law & motion calendar within twenty (20) days after filing and such motion shall be accompanied by a declaration stating the reason(s) why the complaint cannot be timely served in accordance with this rule; or **(2)** file an application for an *ex parte* order to extend time for service of process within sixty (60) days, provided that plaintiff(s) use the application form approved by the Court. If the application for an *ex parte* extension is denied, the court shall order the applicant to appear on the civil law & motion calendar and show cause why the application should be granted. It is the policy of this court to disfavor delays in serving or granting extensions of time to answer any pleading.

(d) [Case Management Conference] All parties shall file a case management statement not later than fifteen (15) calendar days before the CMC in accordance with CRC 3.725 and rule 1102. At the CMC, the court shall consider, in addition to the other matters specified by CRC 3.727, ADR methods, including but not limited to mediation, all forms of arbitration, early settlement conferences, use of special masters or referees, private judicial proceedings and judges *pro tempore*. The case may be assigned to ADR prior to setting the case for trial. [See Chapter Eleven of these local rules.]

Counsel and self-represented litigants attending the CMC shall be thoroughly familiar with the case, able to inform the court of any aspect of the case that may assist the court in its determinations for processing the case through settlement or trial; and counsel shall have discussed ADR methods and settlement procedures with their clients have authority to act on behalf of their clients, and shall have entered this information on the case management statement.

The court shall make a determination whether the amount in controversy exceeds or is less than fifty thousand dollars (\$50,000.00) on the CMC order. In cases deemed by the court to have a value in excess of fifty thousand dollars (\$50,000.00), the court may order the parties to attend a continued Case Management and ADR (“CMADDRESS”) orientation conference with a court-appointed facilitator. The facilitator will meet with the parties and their counsel to discuss the case with respect to issues of trial preparation, the volume of anticipated discovery, the potential costs of the litigation if pursued through trial, and assist them in deciding whether ADR would help resolve the dispute.

The parties will be given the opportunity to mediate their case at this conference if they choose. The parties will not have to pay for the services of the facilitator assigned to the case for the first 1.5 hours of the session. The facilitator for each case will be chosen by the CADRe Director from a list of mediators approved by the Court’s ADR Committee. The parties shall be responsible for scheduling the CMADDRESS conference, which must be held within the time limits set by the court in the case management order.

The court may also schedule an Order to Show Cause at the time of the Mandatory Settlement Conference to ensure that the parties have completed the session as required by the case management order. If the parties elect to pursue private ADR with their own facilitator and at their own expense, they must inform the court at the CMC and the court will exempt them from the CMADDRESS conference and schedule a follow-up CMC to ensure that they have held their private mediation by the time set by the court. Parties attending the CMADDRESS conference may continue mediation or other ADR with the assigned facilitator or any mediator after the CMADDRESS conference, but they will be responsible for making a fee arrangement with the selected mediator for subsequent ADR sessions. Personal attendance at the CMADDRESS is required of all parties, their attorney and any claims representatives, except for defendants who are fully insured and represented by a claims agent for their insurance carrier and who do not have to consent to a settlement.

Requests for excused personal attendance must be directed to the Mandatory Settlement Conference Judge. The facilitator will be directed by the court to report to the CADRe Director on the CMADDRESS conference with a form approved by the Court’s ADR Committee and provided to the facilitator upon assignment of the case, and the completed forms will then be placed in the court file.

If the court determines at the CMC that a case has a value of less than fifty thousand dollars (\$50,000.00), the court may assign the case to a limited CADRe mediation with a mediator selected by the CADRe director at no expense to the parties. The court may schedule an Order to Show Cause at the time of the Mandatory Settlement Conference to ensure that the parties have completed the mediation as required by the case management order. The court may also set a date for a mandatory settlement conference (MSC) and trial. Any requests for continuance of these dates must be directed to the assigned trial judge.

Any unlawful detainer case not resolved or set for trial within forty-five (45) calendar days after the date the complaint was filed may be set for CMC to determine the status of such case.

(Amended effective 01-01-12; adopted 07-01-99; previously amended effective 07-01-01, 01-01-03, 01-20-05, 07-01-08 and 07-01-09)

Chapter Fourteen - FAMILY LAW RULES

1400 FAMILY LAW CASE CALENDARING

(Former rule 1400 repealed effective 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

1401 ACTIONS SUBJECT TO THESE RULES

All proceedings filed in the following actions are governed by these rules:

- Actions subject to the Family Law Act, including cases where the Department of Child Support Services appears on behalf of a party
- Actions subject to the Uniform Divorce Recognition Act
- Actions subject to the Uniform Child Custody Jurisdiction and Enforcement Act
- Actions subject to the Uniform Parentage Act
- Actions subject to the Domestic Violence Prevention Act
- Actions subject to Family Code sections 4900 through 5005 (Uniform Interstate Family Support Act).
- Orders to Show Cause, motions or trials in actions brought by the Department of Child Support Services pursuant to Article 4 and 7 of the Welfare and Institution Code
- Adoption proceedings pursuant to Family Code section 8800
- Actions subject to Family Code Section 3900 (support of adult children or parents)
- Post-dissolution of marriage judgment actions involving omitted or reserved property issues
- Non-marital property rights actions consolidated with Family Law Act or Uniform Parentage Act proceedings.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98; previously amended effective 01/01/03)

1402 INFORMATION & ASSISTANCE

Counsel for all parties, and the Clerk for self-represented litigants, shall provide the parties with a copy of these family law rules at the time an action is filed, or as soon thereafter as is practicable. The Clerk may provide other assistance to parties in family law cases only as required or permitted by statute, the California Rules of Court (“CRC”) and these local rules.

(Amended 07-01-09; adopted effective 07-01-98)

1403 SANCTIONS FOR NON-COMPLIANCE

These local rules apply in the absence of a rule prescribed by the California Rules of Court. Strict compliance with these local rules is essential to the expeditious resolution of actions, and sanctions may be imposed for non-compliance.

(Amended 01/01/11; 07-01-09; adopted effective 07-01-98)

1404 COURT ORGANIZATION

All judges and commissioners are designated to hear family law actions, as assigned or reassigned by the Presiding Judge or Assistant Presiding Judge.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

1405 EX PARTE POLICIES

(a) [Ex Parte Applications Disfavored] *Ex parte* applications are disfavored. Whenever possible, *in lieu* of an *ex parte* order, the Court will issue orders shortening time and schedule a hearing on the regular family law and motion calendar. Orders shortening time are also disfavored and must be supported by a substantial showing of good cause.

(b) [Determination Based on Pleadings] *Ex parte* orders will be determined on the pleadings submitted. Requests for *ex parte* orders normally will be determined without oral argument or discussion.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1406 EX PARTE SCHEDULING

(a) [SCHEDULING REQUIREMENTS] The provisions set forth in this rule are not “NOTICE” provisions; they are scheduling provisions and shall be adhered to by all parties and their counsel.

(b) Unless excused under Local Rule 1407(b), all *ex parte* applications require a hearing.

(c) If the provisions of Local Rule 1407(b) are met and a hearing is not required, the *ex parte* application shall be submitted directly to the *ex parte* Clerk.

(d) In all other cases, a party must obtain a date and time for hearing an *ex parte* application by telephonic request to the assistant of the judicial officer to whom the case has been assigned at least 24 hours before the hearing is set. The 24-hour scheduling requirement is for purposes of the Court’s orderly case management. Upon a showing of good cause, the Court may grant leave for an earlier hearing.

(e) This Rule is not intended as a notice requirement and does not alter the notice requirements in Rule 3.1203, CRC.

(Amended 01-01-11; 07-01-09; 01-01-02; adopted effective 07-01-98)

1407 EX PARTE NOTICE

(a) [Notice Requirements] The moving party shall give notice to the responding party immediately upon obtaining a date and time for the *ex parte* hearing. “Immediately” as used in this Rule is defined as within 12 hours of obtaining the date and time from the judicial assistant.

The notice shall fully conform with the requirements of CRC 3.1203[insert hyperlink], and shall be given during normal business hours. Notice may be given by telephone or by personal delivery of written notice.

“Normal business hours” as used in this Rule is defined as the hours between 8:30 a.m. and 5:00 p.m.

Except as provided in subsection (b) of this rule, notice shall be given for all *ex parte* applications, including those requesting orders shortening time.

(b) [Exceptions to Notice Requirement] The notice required by CRC 3.1203 may be excused only upon a finding of exceptional circumstances, which must be supported by a declaration, under oath, which establishes one of the following circumstances to the satisfaction of the Court:

- 1) Notice would frustrate the very purpose of the order sought and lead the applicant to suffer immediate and irreparable injury; or
- 2) Notice is not possible following a good faith attempt.

A hearing is not required and notice need not be given for an application:

- 1) For an order or judgment where the responding party has approved the same;
- 2) For an order or judgment where a default proceeding was the basis upon which the order or judgment was made;
- 3) For issuance of a Request for Order (FL-300) that does not request relief pending the hearing;
- 4) For re-issuance of a Request for Order (FL-300);
- 5) For a wage assignment after issuance of a support order;
- 6) For approval of a Request to Waive Court Fees (FW-001) application;
- 7) For restoration of a former name after entry of judgment;
- 8) For approval pursuant to Local Rule 1507(f) (1)- (3);
- 9) For an order directing both parties to attend a mediation appointment at a specific date and time with Family Court Services*; and/or
- 10) For an order waiving attendance of a party at the Court’s mandatory parent education program, PEACE, where either:
 - a. The requesting party is processing a default judgment and wants the waiver of attendance for the defaulted other party, or
 - b. The requesting party declares that the residence of the party whose attendance is to be waived is geographically distant from any location where a Court-approved parent education program is offered and the latter party has no opportunity to attend a comparable program where he or she lives.

***NOTE: The setting of any Family Court Services mediation appointment is to be done in compliance with Local Rule 1503. In addition, the cover page of the Request for Order (FL-300) must state: “You have the right to reschedule or cancel mediation with good cause. See LR 1503.”**

(c) [Contents of Notice] Notice of the hearing on *ex parte* application must:

- 1) specify the date and time of the *ex parte* hearing; and,
- 2) include a detailed description of the relief sought.

If the responding party is not represented by counsel, the notice must further advise the party that he or she has a right to be present, to be represented by counsel, and to submit a written response to the application.

If the responding party is represented by counsel, the notice must provide the identity of the counsel and all available contact information.

(Amended 01-01-11; 07-01-09; 01-01-02; 07-01-98; adopted effective 07-01-12)

1408 SERVICE & FILING OF *EX PARTE* PLEADINGS

Before scheduling an *ex parte* hearing, the applicant shall attempt to settle all issues to be raised at the hearing. An “attempt to settle all issues” is defined as contacting the opposing party or counsel to initiate settlement discussions.

All required pleadings, including a copy of the proposed order, shall be hand-delivered to responding counsel or self-represented litigant and filed with the *ex parte* clerk at least four (4) business hours before the hearing. “Business hours” as used in this Rule is defined as the hours between 8:30 a.m. and 5:00 p.m.

Responsive papers shall be delivered to the moving party and filed at the judge's chambers at or before the time of the hearing.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1409 *EX PARTE* PLEADINGS REQUIREMENTS

- (a) **[Emergency Nature of Request]** The evidentiary declarations shall contain facts that demonstrate why the matter is appropriately handled *ex parte* rather than by regularly noticed motion or on shortened time. Seeking *ex parte* relief in the absence of an emergency will result in the imposition of sanctions, and the filing of an application for *ex parte* relief shall be deemed a waiver of any right to further notice prior to the imposition of sanctions.
- (b) **[Ex Parte Application and Supporting Declarations]** The *Ex Parte* Application shall include a declaration setting forth the details of the notice given (or of the facts establishing an exception to the notice requirement) and verifying that the discussions required by rule 1408 have occurred.
- (c) **[Evidentiary Requirements]** The Court will consider only those issues supported by evidentiary declarations. A particular order will not be granted if there is an insufficient written factual showing to support the order sought. Evidentiary deficiencies cannot be corrected by verbal statements to the Court at the time of the hearing.

All declarations shall contain sufficient factual information within the personal knowledge of the declarant to adequately support the relief requested. Supporting declarations that include conclusions, feelings, wishes or fears will not adequately support an *ex parte* order.

(d) **[Disclosure of Change of Status Quo]** The parties and counsel have an absolute duty to disclose whether a requested *ex parte* order will result in a change of the *status quo*. Absent such disclosure, in addition to sanctions payable pursuant to Local Rule 1403, the Court may award attorneys' fees and costs incurred to reinstate the *status quo* as sanctions without further notice.

[Proposed Ex Parte Orders] A proposed order setting forth the relief requested shall be served with the moving papers and presented to the judicial officer at the time of the *ex parte* hearing. In the event the proposed order is not signed, the judicial officer shall write the words "not signed" in the place reserved for the judicial officer's signature and the unsigned order shall be filed.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1410 PARTICULAR EX PARTE ORDERS

(a) **[Temporary Restraining Order ("TROs")]** Judicial Council forms shall be used to apply for a TRO. These forms include the Order to Show Cause, Application for Order and Supporting Declaration, and Temporary Restraining Orders (Family Law). Declarations in support of a TRO shall be drafted on a separate sheet and attached to the Application for Order Judicial Council form.

(b) **[Ex Parte Residence Exclusion Order]** *Ex Parte* Residence Exclusion Orders will not be issued without a clear showing of recent physical violence or that there is a credible threat of imminent physical violence. The required evidentiary showing shall include a full description, in detail, of the most recent instance(s) of physical harm, any disposition toward violence, any abuse of alcohol or drugs, and shall specify the date of each occurrence.

(c) **[Stay Away Order]** Requests for orders that require a party to stay away from a residence shall indicate whether that party is residing in the residence or has moved from the subject residence and when he or she moved.

(d) **[Custody/Visitation Orders]** A party who requests an order to establish or modify custody or visitation shall, by sufficient evidentiary declaration(s), establish the following:

- (1) the provisions of any existing order;
- (2) the actual custody arrangement;
- (3) the requested relief;
- (4) the immediate harm or irreparable injury; and
- (5) the status of any referral to Child Welfare Services or law enforcement.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1411 MOTIONS & ORDERS TO SHOW CAUSE

- (a) **[Calendaring]** Proposed dates for hearing an OSC and motions must be approved by the Clerk.
- (b) **[Mandatory Confirmation of Proceeding]** No less than two (2) court days before the scheduled hearing, the moving party shall notify the judicial assistant to the judicial officer to whom the case has been assigned, if the hearing will not proceed as scheduled. The Court may issue sanctions for failure to comply with this provision.
- (c) **[Special Calendaring; TRO Pending Hearing]** When a TRO is granted pending a hearing, the hearing shall be set within twenty-five (25) days of the date of issuance of the TRO.
- (d) **[Special Calendaring; Mediation Without TRO]** If no TRO has been granted and mediation is required, the hearing shall be set at least five (5) court days after the mediation appointment.
- (e) **[Special Calendaring; TRO With Mediation]** If a TRO has been granted and mediation is required prior to the hearing pursuant to rule 1501 (b), the hearing shall be set within twenty-five (25) calendar days of the date of issuance of the TRO and at least five (5) court days after the mediation appointment. An *ex parte* order extending time is required to set the hearing more than twenty-five (25) court days after the issuance of a TRO and/or less than five (5) calendar days after mediation; parties are admonished to determine the availability of mediation appointments prior to seeking a TRO.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1412 FILING & SERVICE OF MOTIONS & ORDERS TO SHOW CAUSE

- (a) **[Moving Documents]** All moving documents must be filed with the Clerk and served in compliance with applicable Code of Civil Procedure (“CCP”) sections and California Rules of Court before the scheduled hearing date, unless an order shortening time has been granted.

When an OSC is issued by the Court, it shall be signed and filed with the Clerk before it is served.

- (b) **[Responsive Documents]** All responsive documents must be filed with the Clerk and served in compliance with applicable Code of Civil Procedure section and California Rules of Court.

Any papers not timely filed may subject the responding party to sanctions and, at the Court’s discretion, may be subject to any of the following:

- (1) The response may not be considered by the Court;
- (2) The matter may be continued by the Court to permit the moving party time to file a reply; and/or

(3) The party or counsel may not be permitted to present oral argument at the hearing.

- (c) **[Reply Documents]** All documents filed in reply to a response to an OSC or motion shall state in the caption "Reply to Response of Petitioner or Respondent to Motion or OSC of Petitioner or Respondent Requesting..." and then specify the relief.

All reply documents must be filed with the Clerk and served in compliance with applicable Code of Civil Procedure section and California Rules of Court.

Any papers not timely filed may subject the responding party to sanctions and, at the Court's discretion, may be subject to any of the following:

(1) The reply may not be considered by the Court;

(2) The matter may be continued by the Court.

- (d) **[Proof of Service]** Proofs of service shall be filed with the court at least two (2) court days before the hearing.

(Amended 01-01-11; 07-01-09; 01-01-02; adopted effective 07-01-98)

1413 HEARINGS ON MOTIONS & ORDERS TO SHOW CAUSE

- (a) **[Mandatory Settlement Attempt]** Before the scheduled hearing on a motion or Order to Show Cause, the parties shall meet and confer in a good faith effort to resolve the issues pending before the Court, to exchange all information required by these rules, and to identify the issues that remain to be presented to the Court at the time of the hearing.

- (b) **[Conduct of First Calendar Call]** At the first call of the calendar, counsel and self-represented litigants shall state their appearances and provide a time estimate for argument. If settlement discussions are continuing, the Court shall be informed and the case may "trail" other cases on the calendar.

- (c) **[Second Calendar Call]** At the second call of the calendar, counsel and self-represented litigants shall announce their appearances, recite any stipulated items for approval, clearly state all contested issues, and may briefly present argument on each contested issue.

- (d) **[Exceeding Time Estimates]** If the time estimate made by the parties at the first call of the calendar is exceeded, the Court may, in its discretion;

- (1) rule without further hearing,
- (2) defer the matter to the end of the calendar if time permits,
- (3) enter interim orders,
- (4) continue the matter to the next available date, or
- (5) order the matter off-calendar.

- (e) **[Objections]** The opposing party's presentation shall not be interrupted, other than with valid objections, and all remarks shall be directed to the Court.

- (f) **[Post-Ruling Argument]** Once the Court has rendered its decision, the case shall not be re-argued. Counsel may, however, question the Court in order to clarify a ruling or correct a mistake.
- (g) **[Time Limitations]** The Family law and motion calendar is designed for hearings estimated to take no longer than fifteen (15) minutes. If it is anticipated that a longer hearing will be required, participants shall so advise the Court at the hearing and request that the matter be set on the Court's short cause calendar.
- (h) [Presentation of Evidence and Oral Testimony]**
- (1) In granting or denying applications for orders, the Court will determine contested issues based solely on the pleadings, admissible evidence contained in declarations timely filed with the Court, and argument. All declarations shall be received in evidence at the hearing, subject to objections and cross-examination. A party seeking to introduce oral evidence at the hearing shall comply with CRC 3.1306.
- (2) The Court may allow a good cause exception to the California Rules of Court and Local Rules of Court that relate to notice requirements for identification and production of live witness testimony in order to facilitate oral testimony for the purpose of affording a full opportunity to be heard by all parties to the action in a timely and efficient manner.
- (i) **[Stipulated Continuance]** If the parties stipulate to a continuance of the hearing, the parties shall immediately advise the Clerk to the judicial officer to whom the case is assigned. The parties shall deliver a written stipulation to the judicial assistant no later than the scheduled start of the hearing.
- (j) **[Contested Requests for Continuances]** Requests for continuances made at the time of the hearing are highly disfavored. If a stipulated continuance cannot be obtained, a motion for continuance shall be made at the earliest possible time before the hearing.
- (k) **[Presence of Counsel]** Self-represented litigants and counsel shall be present when a case is called for hearing except when engaged in another department. If counsel or a self-represented party is engaged in another department at the scheduled start of the hearing, they must advise their opposition and the Clerk to the judicial officer to whom the case is assigned.
- (l) **[Non-Appearance of Moving Party]** If the moving party or counsel is not present at the time a case is called, the requested relief will ordinarily be denied and any affirmative relief requested by the responding party will ordinarily be heard as an uncontested matter.
- (m) **[Non-Appearance of Responding Party]** If the responding party or counsel fails to appear at the time a case is called, and valid proof of timely service is presented, the Court may hear the OSC or motion as an uncontested matter. If valid proof of timely service is not

presented, the Court may continue the hearing to allow the moving party to submit such proof or take the matter off-calendar.

- (n) **[Matters Taken Off-Calendar]** After service of the moving papers, no case shall be taken off-calendar without immediate telephone notice to the responding party and to the Clerk to the judicial officer to whom the case is assigned. Once responding papers requesting affirmative relief have been filed, no case shall be taken off-calendar without the consent of the responding party.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1414 PREPARATION OF ORDERS AFTER HEARING

The parties shall comply with CRC 3.1312 concerning preparation of an order after hearing on a motion, which rule provides as follows:

“Rule 3.1312. Preparation of order

(a) Prevailing party to prepare. Unless the parties waive notice or the Court orders otherwise, the party prevailing on any motion must, within five days of the ruling, mail or deliver a proposed order to the other party for approval as conforming to the Court's order. Within five days after the mailing or delivery, the other party must notify the prevailing party as to whether or not the proposed order is so approved. The opposing party must state any reasons for disapproval. Failure to notify the prevailing party within the time required shall be deemed an approval. Code of Civil Procedure section 1013, relating to service of papers by mail, does not apply to this rule.

(b) Submission of proposed order to Court. Upon expiration of the five-day period provided for approval the prevailing party must promptly transmit the proposed order to the Court together with a summary of any responses from the other party or a statement that no responses were received.

(c) Failure of prevailing party to prepare form. If the prevailing party fails to prepare and submit a proposed order as required by (a) and (b) above, any other party may do so.

(d) Motion unopposed. This rule does not apply if the motion was unopposed and a proposed order was submitted with the moving papers, unless otherwise ordered by the Court.”

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1415 SUPPORT COMPUTATIONS

- (a) **[Income-Based Computations]** Awards of child support and temporary spousal support allocate the income of the parties in an effort to meet the needs of all parties, recognizing that, in most cases, there is not sufficient income to sustain either party at the same

standard of living that existed prior to separation

- (b) **[Computation of Child Support]** Computation of child support will be strictly in accordance with state law. All orders for child support shall specify the amount of support for each minor child in accordance with Family Code section 4055(b)(7).

1415(c) language:

- (c) **[Computation of Temporary Spousal Support]** The Court has adopted the Santa Clara County Support Schedule (“Proposed *Pendente Lite* Calculation”) for the purposes of consultation. The *pendente lite* support that results from the Proposed *Pendente Lite* Calculation is not intended to limit or narrow the Court’s discretion to determine whether the amount of temporary spousal support pursuant to the Proposed *Pendente Lite* Calculation is appropriate in any particular case. Parties or counsel shall submit the Proposed *Pendente Lite* Calculation to the Court for consideration along with all other relevant factors in setting temporary spousal support in an amount determined by the sound discretion of the Court.

In calculating the parties' incomes and various offsets for the purpose of applying the Schedule, the Court will apply the principles set forth in the state child support law.

- (d) **[Income of New Mate or Non-Marital Partner; Temporary Support Proceedings]** Absent unusual circumstances, the income of a new spouse or of a non-marital partner of either party will not be considered in determining temporary support.

If unusual circumstances are found to exist, the new spouse or third-party income shall not be added to the payor/payee's gross income when calculating support. Rather, to the extent such income reduces a party's basic living expenses, it will be considered a factor in rebutting the presumptively-correct amount of temporary child support under the state child support law or temporary spousal support pursuant to the Santa Clara Support Schedule.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1416 FILING & SERVICE OF INCOME & EXPENSE DECLARATION

An Income and Expense Declaration shall be filed by each party when support or attorneys’ fees are at issue. If a previously filed Income and Expense Declaration is alleged to be current and is to be relied upon, a copy shall be attached to the moving or opposing papers.

All blanks on the form shall be completed, and the best available information provided to the Court. Notations such as "unk" for "unknown," "est" for "estimate," "N/A" for "not applicable" and "none" should be used to avoid leaving any blank information item.

If attorneys' fees and/or costs are requested, the paragraph pertaining to attorney's fees must be completed.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1417 FILING & SERVICE OF PAY STUBS

All parties shall affix to their Income and Expense Declaration a copy of his or her last three pay stubs, if employed, or a schedule showing gross receipts less cash expenses for each business, if self-employed, or rental property. All Social Security numbers on the pay stubs shall be completely redacted.

(Amended 01-01-11; 07-01-09; 01-01-03; 07-01-01; adopted effective 07-01-98)

1418 FILING & SERVICE OF SUPPORT CALCULATIONS

(a) **[Declaration re Calculations of Support]** In all matters where child support or temporary spousal support is at issue, a supporting declaration must be filed and served by each party which shall set forth (a) that party's calculation of child support under the state child-support law; and, (b) if spousal support is at issue, that party's calculation of temporary spousal support under the Santa Clara County Support Schedules.

The declaration, when taken together with the Income and Expense Declarations, shall contain admissible evidence establishing each fact necessary to the computation of support.

In the absence of a computerized calculation of support, such declarations must also include admissible evidence establishing the applicable tax rates, taxes and tax calculations.

(b) **[Computerized Calculations of Support]** Computerized calculations of support may be attached to the Declaration required under local rule 1418(a) as follows:

- (1) The calculations must be based on a computer program currently in effect, including the latest released amendments to that program.
- (2) The DISSOMASTER™ program is utilized by the Court. The Court will take judicial notice of the provisions of the federal Internal Revenue Code, the California Revenue & Taxation Code and applicable regulations, and the accuracy of the amount of applicable taxes calculated by the DISSOMASTER™ program pursuant to Evidence Code sections 452(b), 453, 455(b) and 1500.5.
- (3) If the DISSOMASTER™ program is used, the "Formal Report" must be submitted.
- (4) If the DISSOMASTER™ program is used, the default "settings" established in each new version of the software must be utilized, including: FICA, FICA Hospital Insurance, Federal Self-Employment Tax, State Disability Insurance, state income tax, and Santa Clara County Guideline Deductible Spousal Support. California shall be selected as the "Tax State," unless one of the parties resides in another state. The declaration must describe any differences in the assumptions ("settings") employed and those required by this Rule.
- (5) The computation shall: compute child support under state law and spousal support under the Santa Clara County Support Schedule; allocate Child Care Expenses equally between the parents; not base Guideline Child Support on adjusted nets; adjust nets for tax consequences of spousal support in fixed shares; and, release dependency exemptions via Internal Revenue Code Section 8332.

- (6) If a Judicial-Council-approved computer program other than DISSOMASTER™ is used, comparable assumptions and settings shall be used, and a comparable printout shall be provided.

(Amended 01-01-11; 07-01-09; 01-01-03; adopted effective 07-01-98)

1419 EXCHANGE OF ADDITIONAL FINANCIAL DOCUMENTS

- (a) **[Moving Party's Obligations]** Absent issuance of a protective order, at the time of service of moving papers in any matter seeking child support, spousal support, attorneys fees or costs (other than matters commenced by the Department of Child Support Services under Family Code sections 17402, 17404, 17400, 17416, and 17420), the moving party shall serve each of the following documents in the moving party's possession or control. These documents shall not be filed with the Court. Exact duplicates of the documents served and a proof of service shall be available at the time of the hearing to be introduced into evidence if requested and admissible.

(1) If the moving party is a wage earner or unemployed:

- a. a copy of individual federal income tax returns including all schedules for the two (2) years before the motion or OSC was filed;
- b. a copy of all personal bank account statements for the twelve (12) months before the motion or OSC was filed and a copy of the last three pay stubs received before the motion or OSC was filed;
- c. a copy of all W-2 and 1099 forms not attached to individual tax returns but which reflected income received during the twelve (12) months before the motion or OSC was filed;
- d. a copy of rule 1419; and,
- e. a declaration explaining the failure by the moving party to comply with any of the foregoing requirements.

(2) If the moving party is self-employed:

- a. a copy of individual federal income tax returns including all schedules for the two (2) years before the motion or OSC was filed;
- b. a copy of all W-2 and 1099 forms not attached to individual tax returns but which reflected income received during the twelve (12) months before the motion or OSC was filed;
- c. a copy of all periodic profit and loss statements and balance sheets prepared in the ordinary course of business for the business entity during the twelve (12) months before the motion or OSC was filed;
- d. a copy of all personal bank account statements and corresponding check registers for the twelve (12) months before the motion or OSC was filed;
- e. a copy of all loan applications submitted to financial institutions or third persons on behalf of the moving party during the past twelve (12) months before the motion or OSC was filed;
- f. a written offer to either supply a copy of the business books and records requested by the opposing party upon five (5) days' notice or an offer to

permit the opposing party or his or her attorney to inspect such books and records upon five (5) days' notice;

- g. a copy of Local Rule 1419; and,
- h. a declaration explaining the party's failure to comply with any of the foregoing requirements.

(3) If the moving party holds a thirty percent (30%) or more interest in any business entity:

- a. a copy of individual federal income tax returns, including all schedules for the past two years;
- b. a copy of all W-2 and 1099 forms not attached to tax returns but which reflected income received by the moving party or the business entity during the twelve (12) months before the motion or OSC was filed;
- c. a copy of all periodic profit and loss statements and balance sheets prepared in the ordinary course of business for the business entity during the twelve (12) months before the motion or OSC was filed;
- d. a copy of all personal bank account statements and corresponding check registers for the twelve (12) months before the motion or OSC was filed;
- e. a copy of all loan applications submitted to financial institutions or third persons on behalf of the moving party during the past twelve (12) months before the motion or OSC was filed;
- f. a written offer to either supply a copy of the business books and records requested by the opposing party upon five (5) days notice or an offer to permit the opposing party or his or her attorney to inspect such books and records upon five (5) days notice; and
- g. a copy of Local Rule 1419; and,
- h. a declaration explaining the party's failure to comply with any of the foregoing requirements.

(b) [Responding Party's Obligations] Absent issuance of a protective order, at the time of service of responsive pleadings in any matter seeking child support, spousal support, attorneys fees or costs, the responding party shall also serve each of the following documents as are in the responding party's possession or control or a declaration explaining the party's failure to comply with the following requirements. These documents shall not be filed with the Court. Exact duplicates of the documents and a proof of service shall be available at the time of the hearing to be introduced into evidence if requested and admissible.

- (1) If the responding party is a wage earner or unemployed,** the same documents as are required to be served by the moving party under Local Rule 1419(a) 1, unless such documents were previously served by the moving party.
- (2) If the responding party is self-employed,** the same documents as are required to be served by the moving party under Local Rule 1419(a) 2, unless such documents were previously served by the moving party.

The responding party shall offer to either supply a copy of the business books and records requested by the moving party upon two (2) days' notice or offer to permit the moving party or his or her attorney to inspect such books and records upon two (2) days' written notice.

- (3) **If the responding party holds a 30% or more interest in any business entity**, the same documents as are required to be served by the moving party under Local Rule 1419(a)(3), unless such documents were previously served by the moving party.

The responding party shall offer to either supply a copy of the business books and records requested by the moving party upon two (2) days' notice or offer to permit the moving party or his or her attorney to inspect such books and records upon two (2) days' written notice.

- (c) **[Automatic Protective Order]** Parties and counsel receiving documents served pursuant to this Rule shall not release such documents or disseminate any information contained in those documents to any third party other than experts retained for the purposes of the family law proceeding.
- (d) **[Sanctions]** Failure to comply with this Rule will result in the imposition of sanctions or orders to pay reasonable attorneys' fees occasioned by the failure to comply.

(Amended 01-01-11; 07-01-09; 01-01-03; adopted effective 07-01-98)

1420 VOLUNTARY SETTLEMENT CONFERENCES

(a) [Court Participation; Prerequisites] A voluntary settlement conference is a procedure adopted to promote the early disposition of family law actions and to reduce the cost of family law litigation. Participation in this procedure shall be a good faith attempt to settle one or more contested issues only after the parties have attempted to settle the issues themselves and when the parties are prepared fully to discuss the issues fully with the Court. This procedure shall not be used as a substitute for discovery.

(b) [Filing of Joint Request] To participate in a voluntary settlement conference, the parties shall file, in the department of the judicial officer requested to hear the conference, a Joint Request for Voluntary Settlement Conference. The Joint Request shall contain:

- (1) confirmation that the parties have met and conferred in a good faith effort to settle the contested issues; and that the probability of settling contested issues with the assistance of the Court is substantial and,
- (2) a summary of the contested issues and the respective positions of the parties on those contested issues.

(c) [Scheduling the Conference] A voluntary settlement conference will be scheduled by the judge to whom the request is submitted and shall not be a ground for continuance of a calendar call or trial.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1421 TRIAL SETTING/CASE MANAGEMENT CONFERENCE

(a) [Time of Filing] Sixty (60) days after the Petition is served either party may file a Request for Trial Setting/Case Management Conference statement. The Santa Barbara County Superior Court Form entitled “Request – Counter Request for Case Management/Trial Setting Conference (Family Law)” shall be used. The form must be fully completed and must contain all of the information requested.

The Request for Trial Setting/Case Management Conference statement shall be served on the opposing party in the matter prescribed by CCP section 1013.

The Clerk will set a date for the Trial Setting/Case Management Conference hearing upon receipt of a properly served Request.

The non-requesting party may file and serve a Counter-Request for Trial Setting/ Case Management Conference statement up to within two (2) days of the scheduled court hearing on the matter.

(Amended 01-01-11; 07-01-09; 01-01-03; adopted effective 07-01-98)

1422 CONDUCT OF TRIAL SETTING/CASE MANAGEMENT CONFERENCES.

At the Trial Setting/Case Management Conference the parties must be prepared for the Family Law trial department judge to inquire of the parties/counsel whether the case is ready to be set for trial on all issues or hearing on specified issues. At the Trial Setting/Case Management Conference hearing the assigned trial judge may do any of the following:

(a) Set the matter for trial/hearing utilizing the trial/hearing time estimate provided by the parties/counsel as follows:

(1) as a short cause matter that can be heard in one court day or less and make any appropriate pre-trial/ pre-hearing orders necessary; or,

(2) as a long cause matter that cannot be heard in one court day or less and make any appropriate pre-trial/pre-hearing orders necessary, including but not limited to, setting a mandatory settlement conference date, or setting a trial confirmation hearing at which the Court may require the parties to advance the cost of the estimated court reporter’s fees for trial/hearing.

(b) Determine that the matter is not ready for trial/hearing and issue a Case Management Plan specifically tailored to the case. The Case Management Plan may include meet and confer and/or discovery requirements that must be completed before the matter may be set for trial/hearing.

(c) Make any other Case Management Orders necessary to facilitate a timely progression of the case to trial and/or hearing affording each party with the opportunity to be heard and to present witnesses and other evidence in a timely noticed manner.

(Amended 01-01-11; 07-01-09; 01-01-03; adopted effective 07-01-98)

1423 MANDATORY SETTLEMENT CONFERENCE

In the event the Court sets a Mandatory Settlement Conference (“MSC”) date pursuant to Local Rule 1422 above:

- a. **Each party and the trial attorney for each party shall personally attend the settlement conference unless excused by the Court for good cause (see CRC 3.1380(b)).**
- b. **Failure to reasonably prepare** for, appear at, or participate in good faith in a settlement conference as required by these local rules or order of the Court constitutes an unlawful interference with the proceedings of the Court, punishable as contempt pursuant to CRC 2.30 and CCP section 575.2. The court may order the non-performing party or counsel to pay the opposing party’s reasonable expenses, including attorneys' fees, in addition to any other sanctions permitted by law.
- c. **No less than 5 (five) court days** before the Mandatory Settlement Conference, each party shall lodge with the court and serve on the other party:
 1. An MSC Statement which shall address all contested issues, and state a settlement proposal as to each contested issue. The Statement and shall be withdrawn from the court file and returned to the submitting party at the conclusion of the conference.
 2. A current Income and Expense Declaration and, if child or spousal support is an issue, a current DissoMaster™ or other computer generated printout showing what each party believes to be the appropriate levels of support.

(Amended 01-01-12; 07-01-09; adopted effective 07-01-98)

1424 TRIAL

(a) [Continuances] Once a trial date is set, no continuances will be granted except upon noticed motion for good cause shown in the department to which the case has been assigned. It is not appropriate to request a continuance at the calendar call.

b) [Presence of Counsel] Counsel shall be present at the time a case is called for trial; failure to be present will be deemed sufficient cause for ordering the case off calendar, proceeding to hear the matter in the absence of counsel, or the imposition of sanctions.

(c) [Settled Cases] A case will not be removed from the trial calendar unless either: (a) a written settlement agreement covering all issues is submitted to the court; or (b) the parties and counsel appear and recite an agreement covering all issues into the record in sufficient detail to enable the court to enforce such agreement.

(d) [Exceeding Trial Time Estimates] Failure to complete a trial within the time estimate given at the time of the trial calendar call may result in a mistrial whenever the court's calendar will be adversely affected by allowing time in excess of the estimate.

(e) [Language Interpreter] The party calling a witness for whom an interpreter is required shall arrange in advance for the interpreter's presence and shall be responsible for his or her compensation.

(f) [Conference With Trial Judge] At the mutual request of counsel prior to the commencement of trial, the court may conduct a brief, in-chambers conference to resolve questions concerning the order of proof, motions *in limine* or other issues related to the mechanics of trial. The time necessary for any pre-trial conference will be deemed part of the trial time for the purpose of estimating long and short cause matters.

(g) [Marking Exhibits] Counsel shall contact the Clerk to the judicial officer to whom the case is assigned, for instructions regarding the marking of exhibits.

(h) [Trial of Requests for Fees, Costs and Sanctions] Trial of a request for attorneys' fees, costs or sanctions under Family Code section 274 or Code of Civil Procedure section 128.5 shall be bifurcated from all other issues before the court and shall be conducted after the conclusion of the trial.

(Amended 07-01-09; adopted effective 07-01-98)

1425 FORM OF JUDGMENTS

(a) [Specific Recitals] All orders concerning child custody, child visitation, child support, spousal support, injunctive relief, retention of jurisdiction, and attorney's fees shall be set forth as prescribed by the Judicial Council Judgment form. The division of the community estate and confirmation of separate property may be set forth either in the body of the Judgment or in an attached agreement incorporated by reference in the Judgment.

(b) [Child Support Calculations] All orders for child support shall specify the amount of support for each minor child in accordance with Family Code section 4055(b)(7).

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 01-01-03)

1426 PREPARATION OF JUDGMENTS

(a) [Approval of Judgment] The party ordered to prepare a Judgment shall serve opposing counsel with the proposed Judgment within twenty (20) days of the order. Within twenty (20) days of its receipt, opposing counsel shall approve or decline to approve the proposed Judgment, stating alternative proposed language. If the parties are unable to agree on the language of the Judgment, either party may request a hearing.

(b) [Failure to Approve Proposed Judgment] If the responding party fails to approve or object to the proposed Judgment within twenty (20) days of its receipt, the proposed Judgment may be transmitted to the Clerk for the judge's signature by the party ordered to prepare the Judgment

accompanied by a declaration, with a copy to the opposing party, setting for the applicable dates and explaining the circumstances.

(c) [Failure to Prepare Proposed Judgment] If the party ordered to prepare the Judgment fails to prepare and serve the Judgment, then the opposing party may prepare a proposed Judgment and transmit it to the Clerk for the judge's signature, accompanied by a declaration, with a copy to the opposing party, setting forth the applicable dates and explaining the circumstances.

(Amended 07-01-09; adopted effective; 07-01-98)

Chapter Fifteen - FAMILY COURT SERVICES

1500 OFFICE OF FAMILY LAW FACILITATOR

(a) [Office Established] An office of Family Law Facilitator is established in each geographic region as required by the Family Law Facilitator Act, Family Code (“FC”) section 10000 et seq. (See Local Rules 201-204)

(b) [Additional Duties] Attorney family law facilitators appointed by the court shall, in addition to the duties and services prescribed by FC section 10004 , also provide and perform the duties and services permitted under FC section 10005 (a) and (b) as assigned by the Presiding or Assistant Presiding Judge supervising the division to which the facilitator is appointed.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1501 MEDIATION

(a) [Description; Purpose] The purpose of Family Court mediation is to provide a confidential forum for separated parents to meet and discuss custody and visitation issues with a court-appointed mediator. The goal is to develop an agreed-upon parenting plan focused on the best interests of the children.

(b) [Required Mediation] Mediation by Family Court Services is required before any hearing on a contested issue of child custody or visitation. Mediation is also required when a court order or judgment provides for mediation at the request of either party, or when a court has ordered mediation, even though no motion is pending. Unless excused by the Court for good cause, the mediation requirement must be met.

(c) [Voluntary Mediation] When a family law action has been filed, but no motion or Order to Show Cause (OSC) is pending, a mediation session may be scheduled upon the request of either party to resolve any issue of custody or visitation. If a party refuses to attend a voluntary mediation, that party’s refusal may be used as good cause to order attorneys fees as sanctions under FC section 271 or any other statute that imposes fees as sanctions for failure to cooperate.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1502 CONFIDENTIALITY

All mediation proceedings shall be held in private and all communications between the parties and the mediator shall be deemed confidential. Statements made during mediation by the mediator, or by any party, witness or attorney, shall be inadmissible in future hearings. Proposed agreements prepared by the mediators shall not be attached to pleadings and filed with the court unless signed by all parties to the mediation, and by counsel for any represented party. The court may impose sanctions upon parties or counsel who attempt to introduce such statements in evidence or make reference to the Court in any manner to any statements made in mediation. The mediator shall not be available as a witness in any proceedings. No information shall be

communicated by the mediator to the court other than described in Local Rule 1503(d). By written agreement or stipulation made in open court, the parties may agree to waive confidentiality in future mediation sessions. However, disclosure of statements by minors is discouraged notwithstanding the waiver of the children's privilege by the holder(s) thereof.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1503 PROCEDURES

(a) [Scheduling Mediation] Parents shall cooperate as much as possible in scheduling a mediation appointment. The parent wanting resolution of the custody or visitation issue(s) shall contact the other parent to determine the most mutually convenient day(s) of the week and time slot (morning or afternoon) for an appointment. The appointment is set by calling the Mediation Appointment Secretary ("Secretary") at Family Court Services in the designated region.

(b) [Notice of Mediation] Within three (3) court days after getting a mediation appointment, the parent who set the appointment shall file and serve on the other parent a Notice of Mediation (see Local Form # SC-4018). The use of the Notice of Mediation form is mandatory.

(c) [Inability to Agree on Date of Mediation] If the parents cannot agree on a mutually convenient date for the mediation appointment, then the parent wanting resolution of the custody or visitation issue shall nevertheless schedule a mediation appointment and give notice to the other parent by filing and serving the Notice of Mediation form.

(d) [Cancellation of Mediation Appointment] If the other parent is unable to attend the scheduled appointment, then he or she has the responsibility to do the following:

(1) File and serve a Notice of Cancellation (see Local Form # SC-4017). The use of the Notice of Cancellation of Mediation form is mandatory and must be filed and served on the other parent, unless there is an emergency, within seven (7) calendar days of the receipt of the Notice of Mediation; and

(2) Cancel the mediation appointment with the Secretary no less than seven (7) calendar days before the scheduled mediation.

The parent who cancelled the mediation appointment must work as soon as practicable and in good faith with the other parent to reschedule the appointment to a mutually convenient date and time.

(e) [Disputes Regarding Scheduling, Attendance and Cancellation of the Mediation Appointment] In addition to the procedure outlined above, if a dispute regarding the attendance at, cancellation of, scheduling of or re-scheduling of a mediation appointment arises, either parent may file a "Request for Case Management Conference/Trial Setting" (see Local Form SC-4014). The Court will then schedule a hearing on the matter and give notice to the parents. The staff of Family Court Services is not authorized or required under any circumstances to referee scheduling disputes between parents or counsel.

(f) [Agreements Reached in Mediation] If a tentative agreement has been reached between the parents at the mediation, the mediator shall prepare a written agreement and present it to the self-represented parent(s) or the counsel for parent(s), if represented, for approval. No agreement

shall be presented to the court, nor shall the court approve any agreement, until it has been signed by the parties and approved by their counsel, if retained.

(g) [Reports of Mediator] If no agreement is reached at mediation, the mediator may inform the Court whether further mediation should be or has been scheduled.

(h) [Sanctions for Failure to Make Reasonable Efforts to Contact the Other Parent Prior to Setting the Mediation Appointment] Failure to make reasonable efforts to confer to a mutually agreeable mediation date may result in the imposition of sanctions against either party or counsel in the discretion of the Court.

(i) [Sanctions for Failure to Attend Mediation] Failure to attend mediation before a hearing or trial on custody and/or visitation without good cause may subject the parents to monetary and/or issue sanctions in the discretion of the Court. Among the factors the Court may consider in determining if a parent had good cause for not attending mediation are:

- Whether a Notice of Mediation was properly served on the other parent and filed with the court;
- Whether a Notice of Cancellation was properly served on the other parent and filed with the Court;
- Whether the Secretary for Family Court Services and the other parent were notified of the cancellation no less than seven (7) calendar days before the mediation appointment; and
- Other circumstances that may have happened after the seven-day cancellation deadline which caused a parent to miss a scheduled mediation session.

(Amended effective 07-01-12, amended 05-06-11; 07-01-09; adopted effective 07-01-98)

1504 PARTICIPANTS

(a) [Parties Required to be Present] The parties and their minor children who are ages six (6) or older are required to participate in mediation. Other interested persons may be included in the process at the mediator's sole discretion. In cases of domestic violence, a support person may be present at mediation as permitted by FC section 5519.

(b) [Presence of Children] Children six (6) years of age and older on the date of mediation shall be present. The parent having the child with him/her on the date of mediation is required to bring the child. If the child is twelve (12) years of age or younger, that parent shall also provide a person to supervise or remove the child after completion of the child's interview. Children under six (6) years of age shall not be brought to the Family Court Services Offices unless the mediator requires their presence. The mediator may excuse the presence of any child.

(c) [Participation of Counsel] It is recommended that counsel confirm with the local mediation office to ascertain whether or not to appear at mediation. If permitted by the mediator, Counsel

may be personally present at the commencement of mediation. The mediator has sole discretion to exclude attorneys from the mediation proceeding.

(d) [Language Interpreters] If an interpreter is required to assist the mediation process, it is the responsibility of the party needing the interpreter to provide one. A family member should not be used as the interpreter without the consent of the other party and opposing counsel. The interpreter shall interpret only and shall not offer opinions, suggestions or comments.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1505 PROHIBITIONS & SANCTIONS

(a) [Weapons and Recording Devices] No weapons, tape recorders or electronic surveillance devices may be brought to the Family Court Services Office or to any Family Court mediation.

(b) [Referrals to Attorneys] In the event any party seeks a referral to an attorney, the mediator shall make no recommendation of private counsel but will advise the party that the services of the Family Law Facilitator are available.

(c) [Abuse of Process; Sanctions] The court may impose sanctions against parties and counsel for abuse of the mediation process, including but not limited to: failure to properly schedule mediation, failure to give the required notice, failure to reasonably cooperate in scheduling a mediation, and failure to attend a properly scheduled mediation.

(d) [Mediator Conflicts of Interest] Absent full disclosure and consent, a mediator shall not participate in the mediation process if an attorney-client or psychotherapist-patient relationship exists or existed between the mediator and any party or counsel.

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1506 CUSTODY EVALUATIONS

The Santa Barbara Superior Court advises all litigants, attorneys and evaluators that the processes and procedures set out in Family Code sections 211, 3110 – 3118 and the CRC 5.220, 5.225, 5.230 and 5.235 are adopted in their entirety. (CRC 5.220 (d) (1) (A) (i)).

All parties and evaluators are advised to review those statutes and rules before seeking, stipulating to or performing a custody evaluation.

(a) [Peremptory Challenges] Peremptory challenges to court-appointed investigator-evaluators are not allowed. (CRC 5.220 (d) (1) (A) (ii)).

(b) [Withdrawal of Evaluator] Evaluators may move the Court at any time to withdraw from a case. The motion for withdrawal shall be heard on the regular law and motion calendar unless there are exigent circumstances that qualify as an emergency and require an ex parte

hearing (See Local Rule 1408). (CRC 5.220 (d) (1) (A) (iii)).

- (c) **[Complaints]** Generally, complaints regarding an evaluator’s performance shall be addressed at the time of the hearing related to the evaluation report, unless there are exigent circumstances that qualify the complaint as an emergency that requires an ex parte hearing. (CRC 5.220 (d) (1) (A) (iv); (CRC 5.225 (j) (1) (A)).
- (d) **[Ex parte Communications]** Ex parte communications between the evaluator and the parties or their counsel shall be governed by (CRC 5.235). (CRC 5.220 (d) (1) (A) (v)).
- (e) **[Initial Order]** At the outset of the evaluation, the evaluator shall be provided with a copy of the order of appointment that specifies the statute under which the evaluation is to be completed (Evidence Code section 730, FC section 3110 or CCP section 2032.010 et seq), and that sets forth the purpose and scope of the evaluation. (CRC 5.220 (B) (i) and (ii)).
- (f) **[Conduct and Education of Evaluator]** All child custody evaluators shall adhere to the conduct and educational requirements of the Local Rules and the Rules of Court Rules 5.220, 5.225, 5.230, and 5.235. (CRC 5.220 (d) (1) (C))
- (g) **[Fees]** Any order for evaluation shall make a determination and allocation between the parties any fees or costs for the evaluation and shall set forth the sanctions for failure to pay. Such order may include a reservation of jurisdiction for re-allocation. (CRC 5.220 (d) (1) (D)).

(Amended 01-01-11; 07-01-09; adopted effective 07-01-98)

1507 PARENT EDUCATION PROGRAMS

(a) [Requirement to Attend] All parties to a family law proceeding in which there are minor children, including, but not limited to actions for parentage or legal separation, nullity, dissolution of marriage, or actions to establish or modify custody or visitation, including uncontested cases, shall attend and complete the program entitled “Parent Education and Co-Parenting Effectively” (“PEACE”). Parties shall attend prior to the first of the following events:

- (1) expiration of sixty (60) days following service of the pleadings that commence the proceeding; or
- (2) custody mediation provided through Family Court Services; or,
- (3) entry of any order or judgment involving custody or visitation.

(b) [Purpose of Program and Description] The purpose of the program is to provide education and encouragement for parents to engage fully in parenting and effective cooperation. The program will teach cooperative parenting skills with emphasis on the effects of custody and visitation litigation on children.

(c) [Instructions, Registration and Fee for Attendance] No fee will be charged for the program. Written instructions regarding the requirement of attendance and registration for the

parenting education program shall be provided by the Clerk to any party filing any of the documents described in rule 1507(a). A copy of these written instructions shall be served on the opposing party by the filing party at the time of service of the documents described above.

(d) [Attendance Before Mediation; Exceptions] If any party has not completed the required parent education program by the date on which the mediation is scheduled, the mediation date may be reset to a later time to permit the party to attend the program. The mediator may proceed with the mediation if it is in the best interests of the children. In such a case, the mediator shall first require any party who has not attended the program and who has failed to obtain a waiver of the requirement, to sign a written stipulation, which will be incorporated in a court order, requiring that party to attend the required program not later than a specified date.

(e) [Failure to Attend and Remedies]

(1) If a party does not attend the parent education program as required by this rule, the other party may move the court for an order compelling attendance and for an award of attorney fees or other sanctions.

(2) If one party does not attend the parent education program as required by this rule, and the other party seeks the entry of any order or judgment involving custody or visitation of minor children, the party seeking such order shall first move the court for an order compelling the other party to attend the program and for an award of attorney fees or other sanctions. If the court grants the order to compel attendance and the other party does not comply, then the court may, upon application and a showing of good cause, enter the requested order or judgment.

(3) If the court enters an order or judgment for good cause when one party has not completed the program, the non-complying party may not seek any affirmative relief with respect to any child-related issue(s) until:

(a) that party has completed the program; or,

(b) that party obtains leave of court to proceed by application with a showing of good cause.

(f) [Exceptions to Requirement for Attendance]

(1) Nothing in this rule supersedes the right of the parties to seek ex parte relief as provided in these rules prior to attending the parent education programs.

(2) If attendance at the “PEACE” program will be a hardship, the court may require and accept attendance by a party at an equivalent parent education program located in another county or state.

(3) An order delaying or waiving the requirement of attendance at the parent education program may be obtained from the court upon a showing of good cause.

(g) [Certification of Attendance] The instructors of the “PEACE ” program shall provide attendees with a “Certificate of Attendance” verifying completion of the course by each attending party.

(Amended 01-01-11; 07-01-09; 07-01-08; 01-01-03; 01-01-99; adopted 07-01-98)

1508 CO-PARENTING PROGRAMS

(a) [Requirement to Attend] The parties may be ordered to attend other parenting education programs. The parties shall attend when:

- (1) the court orders the parties to attend the program because the court determines a high degree of conflict exists consistent with the criteria prescribed by Family Code section 3190;
- (2) the parents stipulate that they will both attend the program; or
- (3) the court orders both parents to attend based upon a recommendation from Family Court Services or a recommendation from a child custody evaluator that is made in accordance with the criteria set forth in FC section 3190.

The court may also order parties to attend classes in child development, child psychology, parenting and related topics.

(b) [Purposes of Programs] The purposes of the programs are to provide instructional counseling to the parents to (1) reduce conflict, (2) reduce the children's exposure to conflict between their parents, (3) educate parents about communication options and problem solving, (4) help parents understand their accountability under existing court orders, and (5) improve understanding of child development, parenting skills and the effect of parent conflict on children.

(c) [Failure to Comply] Failure to comply with an ordered parenting education program shall result in an order to repeat the entire program or another appropriate sanction.

(d) [Fee for Attendance] The parties shall be assessed a fee to defray the cost of the parenting program in an amount to be established by the court. Such fee shall be waived for any party who obtains an order from the court to proceed in forma pauperis. Any fees associated with any parenting education shall be allocated pursuant to court order.

(e) [Inadmissibility] Statements made during parenting education by any attendee, instructor or either parent shall be inadmissible in future hearings. Sanctions shall be imposed upon a party and counsel who attempt to introduce such statements into evidence.

(Amended 01-01-11; 07-01-09; 07-01-08; adopted effective 07/01/99)

Chapter Sixteen - MENTAL HEALTH RULES

1600 MENTAL HEALTH CASE CALENDARING

(Rule 1600 repealed effective 07-01-09; adopted effective 07-01-98; previously amended effective 01-01-99)

1601 CAPACITY HEARINGS FOR INVOLUNTARY MEDICATION

(a) [Filing of Petition] Santa Barbara County Mental Health Department petitions for capacity hearings pursuant to Welfare & Institutions Code (“W&I”) section 5333 shall be filed with the Clerk or with the Deputy Clerk at the Psychiatric Health Facility (“PHF”), located at 315 Camino Del Remedio, Santa Barbara by 4:45 p.m. of each court day. The form of the Petition for Capacity Hearing shall be the form included in the Appendix to these local rules. A copy of the Petition shall be provided to the person who is the subject of the Petition and his or her advocate or counsel at the time it is filed.

If the filing of the petition is at the PHF, the Deputy Clerk shall promptly call the Clerk for assignment of a case number, and shall thereafter electronically transmit a fax of the Petition to the Clerk.

(b) [Scheduling Capacity Hearings] Upon the issuance of a case number, the Clerk or, if filed at the PHF, the Deputy Clerk shall give notice of the capacity hearing to the person who is the subject of the petition, and his or her advocate or counsel. The capacity hearing shall be held before a hearing officer at the PHF in accordance with the following local policy schedule developed by the Presiding Judge and the County Director of Alcohol, Drugs and Mental Health Services (“ADMHS”) to insure that all parties can appropriately respond to the petition:

- Petitions filed on Mondays and Tuesdays shall be heard on Wednesdays.
- Petitions filed on Wednesdays and Thursdays shall be heard on Fridays.
- Petitions filed on Fridays shall be heard on Mondays.

Earlier hearings can be calendared with the consent of all involved parties.

(c) [Postponement of capacity hearings] Postponement of capacity hearings may be made by the Clerk or Deputy Clerk in the event of the following hardships: petitions filed on or intervening weekends or legal holidays; untimely physical illness of hearing officer, patient, patient's counsel or advocate, attending physician, or treatment facility counselor or the physical unavailability of the patient at the PHF. In no event shall capacity hearings be held beyond seventy-two (72) hours of filing of the initial petition.

(Amended 07-01-09; adopted effective 07-01-98)

1602 CAPACITY HEARING DETERMINATIONS

The person who is the subject of the capacity hearing shall be given oral notification of the determination at the conclusion of the hearing, by the hearing officer. As soon as thereafter as is

practical, the person, his or her counsel or advocate, and the director of the facility where the person is receiving treatment shall be provided with written notification of the hearing determination, which shall include a statement of the evidence relied upon and the reason for the determination. A copy of the ruling shall be submitted to the Clerk.

Upon completion of the capacity hearing, the Deputy Clerk at the PHF shall personally deliver the original Petition, if filed with the Deputy Clerk, and all other documents related to the hearing to the Clerk.

(Amended 07-01-09; adopted effective 07-01-98)

1603 CAPACITY HEARING APPEALS

(a) [Appeal of Capacity Hearing Determinations] Appeal of a capacity hearing determination may be made to the Court by the patient or with the consent of the County Counsel, by the person who files the original petition W&I Code section 5334). The form to be used for an appeal made on behalf of the patient shall be the form included in the Appendix to these local rules.

Appeals of capacity hearing determinations shall be filed with the Clerk or with the Deputy Clerk by 4:45 p.m. of each court day.

If an Appeal is filed at the PHF, the Deputy Clerk shall promptly call the Clerk and shall thereafter fax a copy of the Appeal to the Clerk. Appeal case numbers shall be the same as the capacity hearing petition number.

All appeals to the Court shall be subject to *de novo* review and shall be heard within seventy (72) hours not including weekends and holidays.

(b) [Representation on Appeal] Upon request or upon court order, the Public Defender shall represent any person who is not financially able to employ counsel in appeal proceedings resulting from capacity hearing determinations. In cases where the patient's representative on appeal is the Public Defender, a copy of the Appeal shall be provided to the Public Defender.

(Amended 07-01-09; adopted effective 07-01-98)

1604 CAPACITY HEARING OFFICER QUALIFICATIONS & APPOINTMENT

Capacity hearings shall be conducted by a judge, a commissioner or referee, or a court-appointed hearing officer. All commissioners, referees, and hearing officers shall be appointed by the court from a list of attorneys unanimously approved by a panel composed of the local ADMHS Director, the Public Defender, and the County Counsel or District Attorney designated by the Board of Supervisors. No employee of the county ADMHS or of any facility designated by the County and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation may serve as a hearing officer. All hearing officers shall receive training in the issues specific to capacity hearings.

(Amended 07-01-09; adopted effective 07-01-98)

1605 CERTIFICATION REVIEW HEARINGS FOR INVOLUNTARILY DETAINED PSYCHIATRIC PATIENTS

(a)(1) [Requirement for a Notice of Certification] To detain a person involuntarily in a facility designated by the County and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation, placed under W&I Code section 5150 in such a seventy-two(72) hour treatment and evaluation facility for up to fourteen (14) days of intensive treatment (W&I Code section 5250); or for up to an additional fourteen (14) days of intensive treatment for suicidal persons (W&I Code section 5260); or, for up to an additional thirty (30) days of intensive treatment for gravely disabled persons (W&I Code section 5270.15), a Notice of Certification for such involuntary detention shall be executed designating the particular detention period applicable and the facts forming the basis of the need for such involuntary detention and intensive treatment.

(a)(2) The Notice of Certification shall be signed by two “professional persons” who personally participated in the evaluation. (Welfare & Institutions code sections 5251, 5261 and 5270.20).

(b) [Form of Notice of Certification] The Notice of Certification forms for W&I code sections 5250 and 5270.15 are prescribed in W&I code section 5252. The Notice form for W&I Code section 5260 is prescribed in W&I Code Sections 5262. Both forms are included in the Appendix to these Rules.

(c) [Notice to the Court] Upon the completion of the Notice of Certification form by the “two professionals”, the treating facility shall place an identification number in the top portion of the form. A copy of the form shall then be promptly faxed to the Clerk. The original form shall be personally delivered to the Deputy Clerk assigned to the treatment facility in which the patient is detained.

(d) [Notice to Patient and Others] A copy of the Notice of Certification for a hearing under W&I Code section 5250 shall be personally delivered to the Director of the approved treatment facility or his or her designee and to the patient certified. A copy shall be promptly provided either personally or by fax to the patient’s counsel, if any, the patient rights advocate and such other person(s) as the patient designates. (W&I Code section 5253). For the additional certifications under Welfare & Institutions code sections 5260 and 5270.15, the copy distribution above shall apply plus a copy to the County Counsel.

(e)(1) [Time Elements for Hearings] The Certification Review Hearings shall be held within four (4) days from the date on which the patient is certified to be detained involuntarily, to receive intensive treatment, or for additional detention for further intensive treatment. A patient certified under W&I Code section 5250 also shall have a certification hearing within seven (7) days of the original involuntary admission to the treatment and evaluation facility under the committing W&I Code section 5150.

(e)(2) Hearings may be postponed up to forty-eight (48) hours upon the request of the patient or his or her attorney or advocate.

(e)(3) A patient may bypass the certification review hearing by requesting a judicial review via *habeas corpus*.

(Amended 07-01-09; adopted effective 07-01-99)

1606 CERTIFICATION REVIEW HEARING DETERMINATIONS

The person who is the subject of a certification review hearing shall be given oral notification of the determination at the conclusion of the certification review hearing by the hearing officer. As soon as thereafter as is practical, the person, his or her counsel or advocate, and the director of the facility where the person is receiving treatment, shall be provided with written notification of the certification review hearing determination, which shall include a statement of the evidence relied upon and the reason for the determination. Upon completion of the certification review hearing, the Deputy Clerk at the treatment facility shall deliver the original of the notice of certification, and all other writings and documents of the certification review hearing together with the original of the hearing officer's written determination to the Clerk.

(Amended 07-01-09; adopted effective 07-01-99)

1607 CERTIFICATION REVIEW HEARING APPEALS

(a)(1) [Appeal of Certification Review Hearing Determination] Appeals of certification review hearings shall be filed with the Clerk or with the Deputy Clerk assigned at each facility designated by Santa Barbara County and approved by the State Department of Mental health as a facility for seventy-two (72) hour treatment and evaluation by 4:45 p.m. of each Court business day.

(a)(2) If the filing of an Appeal is at an approved treatment facility, the Deputy Clerk assigned at the treatment facility shall promptly call the Clerk or his or her designee for assignment of a case number and shall thereafter fax a copy of the Appeal to the Clerk.

(a)(3) Upon the filing of an Appeal, the Clerk or the Deputy Clerk at an approved treatment facility shall promptly provide a copy of the Appeal, either personally or by fax to the Director of the treatment facility or his or her designee, the patient's rights advocate, the patient's counsel, if any, the Public Defender and the County Counsel.

(b) [Representation on Appeal] Upon request, or upon court order, the Public Defender shall represent any person who is not financially able to employ counsel in appeal proceedings resulting from certification review determinations.

(Amended 07-01-09; adopted effective 07-01-99)

1608 CERTIFICATION REVIEW HEARING OFFICER QUALIFICATIONS & APPOINTMENTS

The certification review hearing shall be conducted by either a court-appointed commissioner or referee, or a certification review hearing officer. The certification review hearing officer shall be either a state qualified administrative law hearing officer, a medical doctor, a licensed psychologist, a registered nurse, a lawyer, a certified law student, a licensed clinical social worker, or a licensed marriage, family and child counselor. Licensed psychologists, licensed social workers, licensed marriage, family and child counselors, and registered nurses who serve as certification review hearing officers shall have had a minimum of five (5) years experience in mental health. Certification review hearing officers shall be selected from a list of eligible persons unanimously approved by a panel composed of the Director of ADMHS, the Public

Defender, and the County Counsel or District Attorney designated by the Board of Supervisors. No employee of the ADMHS or of any facility designated by the county and approved by the State Department of Mental Health as a facility for seventy-two (72) hour treatment and evaluation may serve as a certification review hearing officer.

(Amended 07-01-09; adopted effective 07-01-99)

Chapter Seventeen – PROBATE RULES

1700 PROBATE CASE CALENDARING

(Rule 1700 Repealed effective 07-01-09; adopted 07-01-98; previously amended 01-01-99)

1701 CALENDAR POLICY

- (a) **[Venue]** All probate cases shall be assigned/scheduled to a region based upon the residence address of the decedent and pursuant to rule 203.
- (b) **[Review of Files Prior to Hearing]** Probate matters will be examined prior to the hearing by the probate examiner or a probate attorney. The court will strive to post the notes of the probate attorney or probate examiner on the court's website (www.sbcourts.org/tentativeruling) at least five (5) court days before the scheduled hearing date, although the court reserves the right to post the notes closer to the hearing date. It is the party's responsibility to check the website regularly prior to the date of the hearing.
- (1) If the matter is unopposed and recommended for approval by the probate attorney or probate examiner, the order will be presented to the Court for signature and no appearance will be necessary.
 - (2) If the matter is not recommended for approval, the probate examiner or probate attorney will in most cases prepare notes setting forth any defects. The probate examiner or probate attorney may recommend a continuance of the matter for two (2) weeks or more for compliance. If a continuance is not recommended, the following procedures apply:
 - a. In order to be considered at the calendared hearing, all documents must be filed no later than noon two (2) court days prior to the hearing. Probate notes will be updated upon review of a timely submission. It is the party's responsibility to check the website regularly prior to the date of the hearing.
 - b. Documents filed after the deadline will not be reviewed by the probate examiner or probate attorney for the calendared hearing regardless of when the probate notes were posted. If no appearance is made, the court will continue the matter for two (2) weeks or longer.
 - (3) If nonapproval is based on other issues, the matter will require an appearance.
 - (4) Appearances are required in all matters for which probate notes are not posted or that do not indicate otherwise.
- (c) **[Objections to Pre-Approved Matters]** At the time scheduled for hearing, all cases on the calendar will be called. If an objection is made when a case is called, the court will schedule a hearing on a future date to allow for the filing of written objections. If no objections are

made when a case is called, or if written objections are not on file at the time of any new hearing date, the tentative ruling will be deemed the final order.

- (d) [Proposed Probate Orders]** Proposed orders or judgments shall be submitted on or before noon at least one week prior to the hearing.

(Amended 01-01-13; adopted 07-01-98; previously amended effective 01-20-05 and 07-01-09)

1702 APPOINTMENT OF PERSONAL REPRESENTATIVES

- (a) [Petition for Letters]** The petition shall be filed on the approved Judicial Council form and shall conform with Probate Code section 8002.
- (b) [Notice of Petition]** The petitioner or petitioner's attorney shall be responsible for publication of notice where required and where notice by mail is required to be given, petitioner or petitioner's attorney shall give the notice and file a proper proof of service. If there is no one entitled to notice, a statement to that effect shall appear on the proof of service of the Notice of Petition to Administer Estate (DE-121).
- (c) [Proof of Wills]** Ordinarily, oral testimony will not be necessary to prove the will. In any uncontested proceeding, the evidence of one or more subscribing witnesses may be received by declaration or affidavit on the approved Judicial Council form.
- (d) [Submission of Duties of Personal Representative]** Individual personal representatives shall read, sign, and file with the clerk the Duties and Liabilities of Personal Representative (Judicial Council form DE-147).

If a bond is not required, the proposed personal representative shall submit the form (DE-147) prior to the hearing on the petition for appointment. If a bond is required, the proposed personal representative may submit the form (DE-147) prior to the hearing or with the bond after the hearing.

Individual personal representatives are not required to complete the Confidential Supplement to Duties and Liabilities of Personal Representative (Judicial Council form DE-147(S)).

Corporate personal representatives are not required to submit the form (DE-147).

- (e) [Submission of Letters of Personal Representative]** If a bond is not required, the proposed personal representative shall take the prescribed oath of office and sign, date, and submit the Letters prior to the hearing on the petition for appointment. If a bond is required, the proposed personal representative may submit the executed Letters prior to the hearing or with the bond after the hearing.
- (f) [Declination to Serve / Consent to Serve]** If a person nominated as personal representative in the will declines to act, a signed declination must be filed prior to the hearing on the petition for probate unless evidence is produced that the nominated person is not competent

pursuant to Probate Code section 8402, refuses to act, or cannot be located.

Similarly, a written declination must 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, or evidence must be produced that the person with priority is not competent under Probate Code section 8402 or refuses to act.

Where a petition seeks the appointment as personal representative of one or more persons other than the petitioner, a consent to serve as personal representative must be filed for each such proposed personal representative.

- (g) **[Will Submitted for Safekeeping]** The original will must be submitted at the time of filing unless previously lodged with the Court for safekeeping. If the will was previously lodged for safekeeping, it is petitioner's responsibility to notify the clerk upon filing the petition for probate that the will was previously lodged.
- (h) **[Lost Wills]** If the original of an instrument being offered for probate has been lost or destroyed, the petition for probate must include a declaration regarding the circumstances of the inability to file the original instrument. The declaration must address the presumption of revocation described in Probate Code section 6124.

(Amended 01-01-13; adopted effective 07-01-98; previously amended effective 01-01-12)

1703 BOND OF PERSONAL REPRESENTATIVE

- (a) **[When Required]** Bond shall be required in all cases unless waived by the will. Waiver of bond by heir and/or beneficiaries pursuant to Probate Code sections 8480 and 8481(a)(2) will be considered by the Court and permitted on a case-by-case basis. If required, the bond must be approved by the judge after it is filed and before Letters are issued.

(Amended 01-01-13; adopted effective 07-01-98; previously amended effective 07-01-00 and 01-01-12)

1704 INVENTORY & APPRAISAL

- (a) **[Deadline for Filing]** Probate Code section 8800 requires the Inventory and Appraisal be filed within four (4) months after the appointment or within such further time as the court deems reasonable under the circumstances of the particular case. If the personal representative neglects or refuses to file the Inventory within the time prescribed, the court, upon notice, may revoke the personal representative's letters.

(b) **[Preparation of Inventory]** The Inventory and Appraisal shall conform to the requirements of Probate Code sections 8850 and 8900. The California Probate Referee's Association has published the Probate Referee's Guide, which may be consulted at www.probatereferees.org. Although not an official publication, this pamphlet is a good reference. In the case of real property, the full legal description, street address, and County Assessor's parcel number shall be included.

(c) [Increase or Decrease of Bond] If required, upon filing the Inventory and Appraisal, the personal representative or the attorney for the estate shall apply to the court for an increase or reduction in the amount of the bond as required by California Rules of Court, rule 7.204.

(Amended 01-01-12; adopted effective 07-01-98; previously amended effective 07-01-00)

1705 CREDITOR'S CLAIM

(a) [Forms] Claims shall be submitted on the form approved by the Judicial Council.

(b) [Claims Filed with the Court] The personal representative shall allow or reject the claim by filing a separate allowance or rejection of the claim on the appropriate Judicial Council form.

(Amended 01-01-12; adopted effective 07-01-98; previously amended effective 01-01-03)

1706 SALES OF REAL OR PERSONAL PROPERTY

(a) [Forms] Petitions to Confirm Sales of Real Property shall be on the Judicial Council approved forms. Care must be taken to complete all applicable forms. Failure to do so may require continuance or re-notice of the petition.

(b) [Brokers Commissions on Real Property Sales] The court will not approve a real estate commission in excess of 6% except in unusual cases where a larger commission is justified because of exceptional circumstances.

(c) [Real Property Descriptions] A Petition to Confirm Sale of Real Property shall, in addition to the legal description, contain the street address or other familiar designation of property, and the County Assessor's parcel number for the property.

(d) [Appearance by Attorney for Sales Confirmation] In hearing petitions for confirmation of sale of real property and for sale of personal property where bidding is authorized, the court ordinarily will not proceed with confirmation of the sale in the absence of the attorney of record. Counsel should inform the original bidder and his or her agent of the time and place of hearing and advise that they be in court for the hearing.

(e) [Sale of Personal Property; Appraisal] Sales of personal property will not be approved or confirmed by the court unless the property has been appraised. When necessary, a partial inventory and appraisal may be filed for this purpose.

(f) [Additional Bond at Sale] The Petition to Confirm Sale must set forth the amount of additional bond required as a result of the sale, or if the bond is waived or if no additional bond is required, must contain a statement to that effect.

(g) [Approval of Overbid on Credit Sales] If the sale of personal property returned for confirmation is upon credit, a higher bid pursuant to Probate Code section 10262, whether on the same or additional credit terms, shall not be approved unless the personal representative or the personal representative's attorney informs the court that the overbid is acceptable.

(h) [Increased Bid Forms] When there is a successful overbid in open court on a sale of real property, an "Increased Bid in Open Court" form (local court form number (SC-6004) must be completed, signed, and filed with the court before the conclusion of the hearing; otherwise,

confirmation is not effective. This form is available from the courtroom clerk or from the court's website.

(Amended 01-01-12; adopted effective 07-01-98; previously amended effective 01-01-03 and 07-01-09)

1707 ACCOUNTS OF PERSONAL REPRESENTATIVES

The court will approve a final distribution without an account only when there has been strict compliance with Probate Code section 10954 and California Rules of Court, rule 7.550.

(Amended 01-01-12; adopted effective 07-01-98; previously amended 07-01-00)

1708 FEES OF PERSONAL REPRESENTATIVES

(a) [Basis for Computation] The Petition for Distribution shall state the amount of the statutory commissions requested to be paid to the personal representative and to the attorney. The petition shall set forth the basis and the computation of the statutory fees in accordance with Probate Code sections 10800 and 10810.

(b) [Allowance on Account of Fees] Allowances on account of statutory fees will be granted only in proportion to the actual work performed to date. See California Rules of Court, rule 7.701. In any event, the last 25% of the statutory fees will not ordinarily be allowed before the approval of the final account and decree of distribution.

(c) [Extraordinary Fees] Any application for fees for extraordinary services must be set forth with particularity and in accordance with California Rules of Court, rules 7.702 and 7.703.

(Amended 01-01-12; adopted effective 07-01-98)

1709 PRELIMINARY & FINAL DISTRIBUTION

(a) [Petition Detail] The Petition for Distribution must list and describe in detail all property to be distributed in the manner required by California Rule of Court, rule 7.651. Description by reference to the inventory is not acceptable.

(b) [Description of Distributees] The Petition for Distribution must set forth in detail the precise manner in which the estate is to be distributed. A general allegation that the estate is to be distributed in accordance with the terms of the will is not sufficient. The petition must set forth the name of the distributee and a statement as to whether the distributee is a minor or adult.

(c) [Intestacy] Heirs who take by virtue of intestacy must be sufficiently described to permit the court to determine if the laws of intestate succession have been properly applied.

(d) [Minors] If the distributee is a minor, the manner in which the funds are to be distributed must be identified. Probate Code section 3413 governs the distribution of money belonging to a minor. If money belonging to the minor is to be distributed to a fiduciary (e.g., a probate guardian, a trustee or custodian), the fiduciary must be identified in the petition.

In addition, the following documents must be submitted under the appropriate circumstances:

- (1) Declaration from the parent(s) that the minor's estate, including the bequest, does not exceed the statutory maximum if distribution is to be made under Probate Code section 3401;
- (2) A separate "Order To Deposit Money Into Blocked Account" (MC-355) if a blocked account is to be used. Within 15 court days following the date of the minute order, the "Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account" (MC-356) must be filed with the Probate Court. The court will set a review hearing to ensure that the Receipt and Acknowledgment has been filed;
- (3) A certified copy of the Letters of Guardianship, if distribution is to be made to a probate guardian;
- (4) The consent of the custodian to act, if distribution is to be made to a custodian under the California Uniform Transfers to Minors Act (Prob. Code, § 3900 et seq.).

(e) [Order for Distribution] Orders should be drawn so as to set forth the full plan of distribution. Orders may not contain distribution plans which refer to the petition or any other document.

(f) [Trustees] If distribution is to a trustee who is not the personal representative, the consent of the nominated trustee to act must be on file prior to the hearing on the petition for distribution to the trustee.

(g) [Distribution Pursuant to Agreement] If distribution is to be other than according to the terms of the will or the laws of intestate succession, there must be a written agreement on file and signed by all parties affected by the distribution.

(h) [Distribution to Deceased Heir or Beneficiary] When an heir or beneficiary dies during administration of an estate, the order must provide for distribution to the personal representative of the estate of the heir or beneficiary, or, if applicable, to the person(s) entitled to the property in a summary proceeding pursuant to a declaration or affidavit under Probate Code section 13101.

If distribution is to be made to a person collecting assets under Probate Code section 13100, the required affidavit or declaration pursuant to Probate Code section 13101 must be filed before distribution will be ordered. If the required affidavit or declaration cannot be filed, the petition must state why it cannot be filed.

(i) [Distribution Pursuant to Assignment] When distribution is requested pursuant to an assignment by a distributee, the assignment must be filed in the proceeding. The court may require additional information, including consideration paid, to assure that the assignor fully comprehends the effect of the assignment, that it was voluntarily made, and was not grossly unreasonable.

(j) [Distribution Pursuant to Disclaimer] A copy of a disclaimer must be on file prior to the hearing on a petition for distribution of an affected asset. The proposed distribution must comply with Probate Code sections 282 and 21110 as well as any other sections that may apply.

(Amended 01-01-12; adopted effective 07-01-98)

1710 CONTESTED MATTERS; ORAL OBJECTIONS

If an oral objection is made at the hearing on any petition, the court shall continue the hearing for a reasonable time to allow the filing of written objections and shall further designate a briefing schedule, if appropriate.

(Amended 01-01-12; adopted effective 07-01-98; previously amended effective 07-01-00)

1711 MISCELLANEOUS PETITIONS & ORDERS

(a) [Petition for Entitlement to Distribution] A petition under Probate Code section 11700 must set forth the specific determination which the petitioner believes the court should make and must provide for a complete disposition of the property of the estate.

(b) [Petition for Instructions] A Petition for Instructions is limited to those matters for which no other procedure is provided. The Petition for Instructions should set forth the matter on which the desires instructions in precise detail. If the petitioner is taking a position on the issue, the petition shall set forth the position as well as the legal basis for such position. The petition shall be accompanied by a proposed Order of Instructions which sets forth the instructions in clear and explicit language.

(c) [Orders Correcting Clerical Errors] If, through any inadvertence, the minute order or the decree fails to state the order actually made by the court, and such inadvertence is brought to the attention of the court by affidavit, the court will, on its own motion, make a *nunc pro tunc* order correcting the mistake. The *nunc pro tunc* order must not take the form of an amended order and should be in substantially the following form: "Upon consideration of the affidavit or declaration of _____, to correct a clerical error, the (title of order to be corrected), is corrected on the court's own motion by striking the following: ' _____ ' and by inserting *in lieu* thereof _____!"

The original order shall not be changed by the clerk, but will be used in connection with the *nunc pro tunc* order correcting it. To prevent further errors, a complete clause or sentence should be stricken even if it is intended to correct only one word or a single figure.

(d) [Order Prescribing or Dispensing With Notice] An order prescribing or dispensing with notice should be submitted to the judicial officer assigned to the probate calendar before the petition is heard. A request for an order dispensing with notice should be accompanied by a *a declaration* of due diligence. (See Calif. *Rules of Court*, rule 7.52; Local Court Form SC-6014.)

(e) [Spousal Property Petition] If the basis for claim that property should pass or be confirmed to the surviving spouse is that the property is community or quasi-community property, then the following information must be included in the spousal property petition:

- (1) Date and place of marriage;

- (2) Whether decedent owned any real and personal property on date of marriage, and if so, a description and approximation of values;
- (3) For each asset for which a determination that it pass or be confirmed to the surviving spouse, a description of the manner in which the asset was acquired by decedent, **including source of funds or loans, title to asset**, etc.;
- (4) Any additional facts upon which the claim that property is community or quasicommunity property is based.

If the claim is based on a document, a copy of the document must be attached to the petition and properly authenticated.

(f) [Petition to Determine Title to Real or Personal Property (Prob. Code, § 850)] Petitions filed pursuant to Probate Code section 850 must be set for hearing at least 30 days from the date of filing. Because personal service is required, the hearing should be set more than 30 days from the date of filing to avoid continuances. See Probate Code section 851.

(Amended 01-01-12; adopted effective 07-01-98; previously amended effective 07-01-00)

1712 GUARDIANSHIPS

(a) [Contents of Petition] The Petition for Appointment of Guardian shall be on the form prescribed by the Judicial Council and shall comply with the provisions of Probate Code section 1510. A petition by only one parent for Letters of Guardianship must be personally served on the other parent, together with notice of the hearing, at least fifteen (15) days before the hearing unless the petition is accompanied by a Consent to Appointment and Waiver of Notice signed by the other parent, or the petition sets forth the fact that the other parent is not living. In any action for guardianship of the person, a declaration under the Uniform Child Custody Jurisdictional Act shall be filed with the Petition for Appointment and at any time there is a change of address of the minor.

(b) [Notice] Notice shall be given to the persons listed and in the manner prescribed by Probate Code sections 1460 and 1511.

(c) [Investigation] An investigation shall be conducted pursuant to the provisions of Probate Code section 1513. The court investigator or other designated agency shall conduct an investigation and report to the Court prior to the appointment of a guardian.

(d) [Inventory and Appraisal] The Court requires strict compliance with Probate Code section 2610. An Inventory must be filed by the guardian of the estate in all cases. Each inventory item shall be clearly and concisely described. In the case of real property, a full legal description, street address, and Assessor's parcel number must be included.

(e) [Blocked Account]

- (1) **Policy to Block Minor's Estates:** Absent a showing of good cause, it is the policy of the Court to block all funds in a guardianship estate pursuant to Probate Code section 2456. The fact that a parent is appointed as guardian of the estate does not constitute good cause for waiving this policy.
- (2) **Receipt from Institution:** When the Court orders funds to be deposited into a blocked account, the guardian must file the Judicial Council form "Receipt and Acknowledgement of Order for the Deposit of Money Into Blocked Account" (MC-356). This form must be signed by an authorized signatory of the institution into which the funds were deposited. The Court will set a hearing to review the filed Receipt and Acknowledgement. Appearance may not be required at the review hearing if the Receipt is in order.
- (3) **Accounting for Blocked Accounts:** If funds are maintained in a blocked account, the guardian is not excused from submitting a timely accounting (see subdivision (f)). However, the Court may accept proof of continued deposits, such as submission of all original account statements during the period of accounting, instead of the statutory accounting schedules.

(f) [Accountings]

- (1) **Content:** The accounting should include a list of all receipts and all disbursements of the guardian. If an item is not self-explanatory, an explanation must appear either in the accounting or in the report accompanying the accounting. Accountings should conform to the requirements set forth in this rule and with Probate Code sections 1060-1064 and 2620 as well as Calif. Rules of Court rule 7.575.
- (2) **Frequency of Accountings:** The first accounting must be filed one year from the date of appointment. Thereafter, accountings must be filed biennially or as ordered by the Court. The Court will require strict compliance with Probate Code section 2620.
- (3) **Reports Accompanying Accountings:** The report accompanying the guardian's accountings should contain a statement of the age, health, activity and whereabouts of the minor. Alternatively, the guardian may submit the Confidential Guardianship Status Report (Judicial Council form GC-251).

(g) [Support Obligation of Parents] Regardless whether the funds are maintained in a blocked account, they may not be used for the ordinary expenses of supporting a minor where there is a parent living who has the obligation to support the minor. In all cases, the guardian must obtain Court approval prior to the expenditure of funds for support of a minor.

- (1) **Petition for Authority to Expend Funds for Support from Non-Blocked Account:** If the funds are not maintained in a blocked account, a Petition for Authority to Expend Funds for Support may be submitted.

Such requests must be accompanied by a financial declaration by the parent or parents describing their income and expenses and, if applicable, other circumstances justifying the use of the minor's assets. If the request is for multiple items, each item must be listed separately, with its cost.

Requests to pay for educational or recreational programs must describe the program and include a statement as to the necessity or appropriateness of the program for the minor.

Requests to pay for medical or dental care, including orthodontia, should include a declaration from the guardian explaining why the expense is not covered by insurance.

- (2) **Petition for Withdrawal of Funds from Blocked Account:** If the funds are maintained in a blocked account, a Petition for Withdrawal of Funds from Blocked Account (Judicial Council MC-357) may be submitted. The petition must be calendared and should not be submitted *ex parte*. Petitioner must use attachments to supply the information described paragraph 1 (above) that is not otherwise called for on the Judicial Council form .

(h) [Allowance of Fees] No Petition for Fees will be considered until the Inventory and Appraisal has been filed. Petition for Fees pursuant to Probate Code section 2640 prior to the filing of the first accounting must include a complete and detailed statement of the services rendered which support the requested fees.

(i) [Bond] A bond will not be required for a petition for appointment of guardian of the person only. Bond will be required of all persons appointed as guardians of the estates of minors unless the guardian can establish that the requirement of bond should be dispensed with pursuant to the provisions of Probate Code sections 2323, 2324 or 2328.

(j) [Investments by Guardian] The Court will not routinely grant the additional powers to the guardian pursuant to Probate Code sections 2590 and 2591. If a guardian wishes to invest or expend funds belonging to the minor, the guardian should petition the Court for authorization. If expenditures or investments are made by the guardian without prior authorization, such acts will not be considered for approval except on settlement of accounting. Except in rare and unusual cases, the Court will not approve investment in unsecured loans or loans to a near relative unless secured.

(k) [Final Accounting] A guardian's report will normally not be approved if accompanied by a Waiver of Accounting unless the minor is present in court and available to testify.

(Amended 01-01-13; adopted effective 07-01-98; previously amended effective 07-01-09)

1713 TEMPORARY GUARDIANSHIPS & CONSERVATORSHIPS

(a) The Petition for Appointment of a Temporary Conservator/Guardian may be brought *ex parte* provided that the notice provisions of Probate Code section 2250(c) are satisfied, either by serving notice or by submission of a declaration showing facts sufficient to allow the court to determine that good cause exists to eliminate or alter the notice requirements, and provided that the following information is submitted:

- (1) the original and a copy of the petition and proposed order;
- (2) a detailed statement of facts in the petition establishing the necessity for the temporary guardianship/conservatorship; and,
- (3) an endorsed filed copy of the petition for appointment of the permanent conservator/guardian. If the attorney is informed that the petition for appointment of a permanent conservator/guardian will be contested, all known potential objectors shall be

notified at least twenty-four (24) hours in advance of the time and place the petition for appointment of the temporary conservator/guardian will be presented.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 07-01-00)

1714 CONSERVATORSHIPS

(a) [Contents of Conservatorship Petitions] The Petition for Appointment of Conservator shall be on the form prescribed by the Judicial Council (GC-310) and shall comply with the provisions of Probate Code section 1821. When filing the petition, the petitioner shall provide the clerk with two extra copies of each document filed and delivered to the Court, including an Order Appointing Court Investigator.

If the proposed conservatee is developmentally disabled and the petitioner is requesting appointment as a limited conservator, the petition shall include the information required in Probate Code sections 1830 and 2351.5. (See local forms for appropriate attachments.)

(b) [Notice of Hearing] The petitioner or petitioner's attorney shall be responsible for preparation of the notice of hearing and the citation and is responsible for service of the notice of hearing and citation in accord with Probate Code sections 1822, 1823 and 1460.

(c) [Letters of Conservatorship] Prior to issuance of the Letters of Conservatorship, conservators shall take the prescribed oath of office as conservator and submit the Letters of Conservatorship in advance of the hearing. Parties are required to comply with Probate Code section 2300.

(d) [Duties of Conservator] Prior to issuance of the Letters, conservators shall acquire the current version of "Handbook for Conservators" and complete and file with the clerk the Duties of the Conservator form. It is recommended that the conservator watch the video *With Heart: Understanding Conservatorship*, which can be streamed at <http://www.courts.ca.gov/partners/150.htm>. It can also be viewed by making arrangements with the clerk's office.

(e) [Conservatorship Inventory and Appraisal] The Court requires strict compliance with the provisions of Probate Code section 2610 and the filing of the Inventory and Appraisal within ninety (90) days of the Conservator's appointment. Each inventory item shall be clearly and precisely described. In the case of real property the full legal description, street address and Assessor's parcel number must be included.

(f) [Conservatorship Accountings]

(1) Form and Format: All accountings must follow the content and format required in CRC 7.575. Accountings are designated as either standard or simplified. All accountings must use Judicial Council Form GC-400(SUM)/GC-405(SUM) for the Summary of Account. Guardians and conservators presenting standard accountings may, but are not required to, use the optional Judicial Council forms designated as GC-400. Those guardians and conservators presenting standard accountings who do not use the optional Judicial

Council forms are required to use the content and format called for in those forms, but may submit accountings prepared on conventional accounting programs. Guardians and conservators presenting simplified accountings must use the Judicial Council forms designated as GC-405(SUM) .

All accountings must provide all information required in Probate Code §§1060 - 1064.

- (2) Schedule for Submission:** At the time the Court appoints a conservator or guardian, and unless the Court dispenses with accountings, the Court will set a compliance date for the conservator or guardian to file his or her first accounting and report, which will typically be no later than 90 days after the first year anniversary of the appointment of the conservator or guardian. If the conservator or guardian has filed the accounting and all is in order, this will be a nonappearance matter. Each time the Court hears a subsequent accounting and report, it will set a compliance date for the next accounting and report, which will typically be every two years thereafter.
- (3) Lodging of Confidential Financial Statements:** Pursuant to Probate Code §2620, the guardian or conservator may elect to lodge with the Court the originals of the account statements and all other documents referenced in §2620(c). The originals of all such documents shall be released by the Court as provided in §2620(c)(8).
- (4) Allegation re Trust:** At the time of each accounting, a verified summary or recapitulation showing the following shall be filed as a confidential statement:

 - a. A description of the conservatee’s beneficial interest in the trust;
 - b. The amount of income generated for the benefit of the conservatee, regardless whether distributed or applied to principal;
 - c. The name, address, and telephone number of the trustee; and
 - d. Any income distributed to or for the benefit of the conservatee. Such income must be included in an accounting to the Court pursuant to Probate Code section 2620.
- (5) Organization of Confidential Financial Statements:** The financial institution account statements must be presented in the same sequence as they are listed in the schedule of property on hand. The petitioner must in addition highlight the following information contained on each account statement:

 - a. Name, address of account holder;
 - b. The account or property description number;
 - c. The account type or property description;
 - d. The statement period;
 - e. The reported balance at the close of the accounting period.

Petitioner must file a reconciliation declaration when the reported balance on the financial institution account statement is not the same as stated in the schedule of property on hand. The declaration must explain the reason for the discrepancy

between the balances listed.

- (6) Statement re Sufficiency of Bond:** Sufficiency of the bond must be addressed in all interim accountings. Where bond has been posted, there must be an allegation as to the total bond posted, the fair market value of personal property on hand at the close of the accounting period, plus an estimated annual gross income from the real and personal property, and any additional bond thereby required. (Probate Code §8482.) The calculation for the reasonable amount for cost of recovery to collect on the bond must be included in the report. (CRC 7.207.)

The petition must also contain an allegation as to the date the bond was last renewed and when the next premium is due.

- (7) Final Accounting:** When a final accounting or report is filed, notice of hearing must be given pursuant to Probate Code section 2621. If the conservatee is deceased, notice of hearing must be given to the personal representative or trustee of any trust of which the conservatee was settlor and beneficiary. If the conservator is also the personal representative of the deceased conservatee's estate or there is no personal representative, notice must be given to the deceased conservatee's heirs and devisees.

A final accounting must be required on termination of the conservatorship of an estate except under the following circumstances: (1) the former conservatee who has been restored to full capacity waives the accounting; (2) if the conservatee is deceased, when an accounting is waived by those persons entitled to receive distribution of the estate as provided in Probate Code section 10954; except that if conservator is also the personal representative of the conservatee's estate or trustee of a trust that is the beneficiary of a will, waivers must be required by all heirs or devisees; or (3) when the Court has ordered that accountings are not required pursuant to Probate Code section 2628 and the conditions of that section are otherwise met.

The report must include a statement of the specific assets on hand.

The final report and/or accounting must be filed within 90 days of termination of the conservatorship of the estate.

- (8) Order Dispensing with Accounting:** If a conservatorship estate qualifies under Probate Code section 2628, the Court may grant a petition ex parte to dispense with the filing of an accounting.

The petition may be brought at any time after the inventory and appraisal has been filed.

The petition shall state:

The value of the estate at the beginning and end of the accounting period, exclusive of conservatee's residence. It is not sufficient to allege that the total net value, exclusive of the residence, is less than the statutory amount. A copy of financial statements showing

the ending balances shall be filed with the petition.

The amount and nature of the "public benefit payments". It is not sufficient to allege that monthly payments, exclusive of public benefit payments, were less than \$2,000.

A description of any other monthly income for each month of the accounting period, excluding wages and salaries of conservatee, demonstrating that the estate meets the requirements of Probate Code section 2628.

(g) [Counsel for Proposed Conservatee or Conservatee]

(1) **[Appointment]** If the Court determines that it is statutorily required or in the best interests of the proposed conservatee or conservatee, the Court shall appoint counsel for the conservatee from the list of attorneys qualified to accept such appointments maintained by the clerk, any other attorney appropriate for such appointment or the Public Defender's Office. Within forty-eight (48) hours of the appointment, the Court shall order a "meet and confer" for all counsel involved in the conservatorship proceeding, in person or by telephone.

(2) **[Role of Court Appointed Counsel]** Attorneys who are appointed as counsel for conservatees pursuant to Probate Code sections 1470, 1471, or 2356.5 have the following ethical obligations:

a. Clients Who Are Non-Communicative or Clearly Delusional or Not Opposed to the Request Before the Court

If the client is noncommunicative, or clearly delusional, or not opposed to the request before the Court, the attorney must evaluate the request before the Court and must orally report to the Court his or her observations and recommendations as to what would be in the client's best interests, unless a written report is requested by the Court. Where a conflict arises between the attorney and the proposed conservatee or conservatee concerning the best interests of the proposed conservatee or conservatee, the Court may appoint a successor attorney.

b. Clients Who Are Communicative, Alert and Are Opposed to the Request Before the Court

If the client is communicative, alert and opposed to the request before the Court, and if the attorney has a good faith belief that sufficient grounds exist to support the position taken by the client, the attorney must use all reasonable and appropriate means to obtain the result sought by the client.

c. Clients Who Have Impaired Judgment and Are Opposed to the Request Before the Court

If the client appears to have impaired judgment and is opposed to the request before the Court, the attorney must report to the Court the attorney's observations and

recommendations as to what would be in the client's best interests, as well as the fact that the client is opposed to the request and the apparent reasons for the opposition. The attorney must ensure that the client is given the opportunity to directly address the Court, if reasonably possible.

d. Attorney to Disclose Proper Relationship

The attorney must disclose to the Court and all parties whether the attorney currently represents, or has previously represented, the conservator or proposed conservator.

(Amended 01-01-13; adopted effective 07-01-98, previously amended effective 07-01-00, 01-01-08 and 07-01-09)

Chapter Eighteen – SMALL CLAIMS RULES

1800 SMALL CLAIMS CASE CALENDARING

(Rule 1800 Repealed effective 07-01-09; adopted 07-01-98; amended effective 01-01-99)

1801 DISPUTE RESOLUTION

In any Small Claims action, the parties may be referred to an Alternative Dispute Resolution (ADR) Officer by the assigned judicial officer on the date and time set for trial. When the court refers the a case for ADR on the date set for trial, and upon arrival of the parties in court, the ADR Officer will be present to accept the referral and. will attempt to settle the case. The case will be subject to the procedures and forms utilized for ADR proceedings. [See Chapter 11, these local rules] If ADR resolution does not occur, the parties will return to the courtroom to proceed to trial before the assigned judicial officer.

(Amended 07-01-09; adopted effective 07-01-98)

1802 CONTINUANCES

The court will grant continuances in Small Claims actions only for good legal cause. Upon a showing of good cause, the parties will be expected to agree to a new date for trial and to file court forms stating such agreement, or request that the court re-schedule the trial. Continuance dates will ordinarily be set not more than thirty (30) days after the original trial date.

(Amended 07-01-09; adopted effective 07-01-98)

Chapter Nineteen – CRIMINAL RULES

1900 CRIMINAL CASE CALENDARING

(Rule 1900 Repealed effective 07-01-09; adopted 07-01-98; previously amended 01-01-99)

1901 STAFFING, AVAILABILITY, PREPARATION, PROSECUTION & DEFENSE

(Rule 1901 Repealed effective 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

1902 PRE-TRIAL SERVICES

The Court has established Pre-Trial Services Units for investigation, and processing requests for setting of bail and release of arrested persons on their own recognizance and for recommendations to the court. This Unit provides the primary contact for arrested persons and law enforcement with the "after hours" duty judges for issuance of emergency orders, arrest and search warrants, own recognizance releases and setting of bail in accordance with the established bail schedule.

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

1903 OWN RECOGNIZANCE BAIL REVIEW HEARINGS

Hearings on applications for reduction of bail and own recognizance not less than one (1) full court day prior to the date of the hearing. Pre-Trial Services Unit staff may request a continuance of to complete their investigation and submission of their report. If a continuance is requested, the Pre-Trial Services staff will notify the defense and prosecuting attorneys promptly.

(Amended 07-01-09; adopted effective 07-01-98)

1904 MANDATORY APPEARANCES

(a) [Felony Cases] Except as authorized by Penal Code Section 977(b), a defendant in a felony case must be personally present at all scheduled appearances, and at any other time ordered by the court. No felony case or hearing shall be canceled or continued without the defendant's presence in open court.

(b) [Misdemeanor Cases] Misdemeanor defendants may appear in person or by counsel unless the court orders a defendant to be present.

(c) [Attorney of Record] The attorney of record in any case must be personally present for all scheduled court appearances unless prior authorization to be absent is granted by the court.

(Amended 07-01-09; adopted effective 07-01-98)

1905 ENTERING *NOLO CONTENDERE* OR GUILTY PLEA

In all misdemeanor and felony cases, before a plea of guilty or *nolo contendere* is accepted, the defendant and the defendant's attorney shall execute and file a Court-approved form for waiver of constitutional rights.

(Amended 07-01-09; adopted effective 07-01-98)

1906 SPECIAL CUSTODY ARRAIGNMENT SESSIONS

Under special circumstances, the court may conduct an arraignment of a prisoner at the custody facility where the prisoner is confined. All hearings must be open to the public except those hearings authorized by law to be closed.

(Amended 07-01-09; adopted effective 07-01-98)

1907 NOTICE OF MOTION; POINTS & AUTHORITIES

Any motion requesting relief must be accompanied by a memorandum of points and authorities filed at least ten (10) calendar days prior to the hearing even when the opposing party waives the formality of written notice.

(Amended 07-01-09; adopted effective 07-01-98)

1908 DISCOVERY

The Court has promulgated a standing order of continuing mutual discovery pursuant to Penal Code sections 1054, *et seq.*

(Amended 07-01-09; adopted effective 07-01-98)

Chapter Twenty – JUVENILE CASES

2000 JUVENILE CASE CALENDARING

(Rule 2000 Repealed effective 07-01-09; adopted 07-01-98; previously amended 01-01-99)

2001 JUVENILE COURT PRESIDING JUDGE

The juvenile court presiding judge shall establish policies and procedures relating to all juvenile court actions consistent with California statutes, the CRC and these local rules.

(Amended 07-01-09; adopted 07-01-98, previously amended effective 01-01-99)

2002 DETENTION FACILITIES

(a) [W&I Code Sec. 300 and 601 Minors] Minors taken into temporary custody as persons described by Welfare & Institutions (W&I) Code sections 300 or 601 shall be delivered to and detained at Santa Barbara County Department of Social Services shelter care homes for W&I Code section 300 cases and to a Santa Barbara County Probation Department designated non-secure detention facility for W&I Code section 601 cases, respectively.

(b) [W&I Code Sec. 602 Minors] Minors taken into temporary custody as persons described by the provisions of W&I Code section 602 shall be delivered to and initially detained at the Santa Barbara Juvenile Hall facilities located in the appropriate North County or South County region consistent with rule 201.

2003 TRANSPORTATION OF MINORS

Minors taken into temporary custody shall be transported by the law enforcement agency which has taken the minor into custody; provided, however, that in an emergency or if a probation officer or a child protective services caseworker has volunteered to accept responsibility for transportation of the minor, the law enforcement agency shall be relieved of the transportation responsibility. The law enforcement agency shall be responsible to provide information sufficient to complete the Juvenile Admission Record prescribed in rule 2004.

(Amended 07-01-09; adopted effective 07-01-98)

2004 INFORMATION PROVIDED AT TIME OF DELIVERY

When a minor described by W&I Code section 602 is delivered to any designated detention facility, a Santa Barbara County Probation Department Juvenile Admission Record form shall either accompany the minor or be completed at the time custody is transferred. The information to complete the form shall be provided by a law enforcement officer having knowledge of the facts subjecting the minor to Juvenile Court jurisdiction, the facts of the apprehension and temporary custody of the minor, and, if continued detention is recommended by the law enforcement agency, the basis of such recommendation. The form shall be left with the Juvenile Hall receiving officer or the operator of either the shelter care home or non-secure facility.

(Amended 07-01-09; adopted effective 07-01-98)

2005 PROBATION DEPARTMENT DETENTION / RELEASE DECISIONS

The Probation Department shall assign personnel on duty 24 hours a day, seven (7) days a week who are authorized to make the following release or detention decisions consistent with the criteria specified by W&I Code section 628.

- (a) designate placement of minors alleged to be subject to W&I Code section 601 jurisdiction minors at a non-secure detention facility in response to inquiries by law enforcement agencies;
- (b) release minors taken into temporary custody to a parent, guardian or responsible relative.
- (c) arrange placement in a non-secure facility for minors alleged to be subject to W&I Code section 602 jurisdiction who do not require 24-hour secure detention but are described in W&I Code section 628.
- (d) release to a parent, guardian or responsible adult on “home supervision “or electronic monitoring under terms and conditions agreed to in writing by the minors those who are alleged to be subject to W&I Code section 602 jurisdiction, who do not require 24-hour secure detention and who are not described in W&I Code section 628; and,
- (e) detain in a secure facility those minors alleged to be subject to W&I section 602 jurisdiction who are described in W&I Code section 628.

(Amended 07-01-09; adopted 07-01-98)

2006 RESERVED

2007 FILING JUVENILE PETITIONS

- (a) [Filing Locations]** All Juvenile petitions and intercounty transfers shall be filed with the Clerk at the appropriate North County and South County region juvenile court facilities.
- (b) [Occurrence Jurisdiction]** Petitions for both Santa Barbara County resident minors and for minors whose legal residence is outside the county shall be filed in the appropriate North County and South County region office of the Clerk where the circumstances alleged in the petition occurred.

(Amended 07-01-09; adopted effective 07-01-98; amended effective 01-01-03)

2008 PROBATION & SOCIAL SERVICES REPORTS

Social study reports, whether prepared by the Probation Department or the Social Services Department, shall be made available to the Juvenile Court, and all parties or counsel within a reasonable time prior to the date scheduled by the court for hearings. The reports shall be filed in the same manner as juvenile petitions.

(Amended 07-01-09; adopted effective 07-01-98)

2009 COURT-APPOINTED COUNSEL IN DEPENDENCY CASES

In all juvenile court proceedings filed pursuant to W&I Code section 300 the appointment and substitution or relief of counsel for the parties shall be governed by CRC 5.660 and by these local rules.

(a) Competency of Appointed Counsel

1. Attorneys appointed to represent parties in dependency cases are required to meet the standards of training and competency prescribed in CRC 5.660. The juvenile court judicial officers may require proof that counsel have successfully completed the continuing education and training required by Rule 5.660.
2. Counsel failing to complete required continuing education, or otherwise demonstrating a lack of such professional skill, learning, and ability as is required to fulfill competently the responsibilities of appointed counsel for parties in dependency cases, will be prohibited by the court from further appointment, until these requirements are met.
3. These standards do not apply to privately retained counsel.
4. The assignment to appear in a dependency case on behalf of a party represented by a public office, including the Attorney General, District Attorney, Public Defender and County Counsel, constitutes an implied certification to the court that in the opinion of the head of the agency, the assigned deputy possesses the skill, learning, experience, and training required by these rules and appropriate to the representation undertaken. No other or further certification is required in the absence of particular evidence of a lack of qualifications required by Rule 5.660.

(Amended 07-01-09; adopted effective 07-01-99)

(b) Review and Resolution of Complaints by Parties

Complaints by parties concerning the adequacy of representation by appointed counsel shall be referred to the court when informal discussion between counsel and the client does not resolve the complaint to the client's satisfaction. All appointed counsel have the duty to bring unresolved complaints regarding representation to the attention of the judicial officer to whom a case is assigned. Counsel have the duty to tell parties dissatisfied with their representation of their right to bring the matter to the attention of the court. When necessary to protect the privacy of the complaining party or the confidentiality of information protected by the attorney-client privilege, the court will examine the complaint of the party *in camera*, by procedures analogous to a hearing in criminal cases pursuant to *People v. Marsden* (1970) 2 Cal.3d 118.

(c) Procedures to Inform Court of Interests of Dependent Child

All counsel have a continuing duty to advise the court of any information bearing upon the best interests of a minor subject to dependency proceedings that is not privileged under applicable law. However, counsel have no duty under this rule to disclose information

adverse to the interest of counsel's client, where such disclosure would violate a privilege or the Rules of Professional Conduct.

2010 COURT-APPOINTED SPECIAL ADVOCATES (CASA)

(a) [Adoption and Oversight of CASA Program] The court designates CASA of Santa Barbara to recruit, screen, select, train, supervise, and support lay volunteers for appointment by the court to help define the best interests of the child in juvenile court dependency and wardship proceedings. CASA of Santa Barbara shall comply with CRC 5.655.

(d) [CASA Reports; Distribution] Court-appointed CASA volunteers shall submit a written court report for all hearings; for filing with the court no later than two court days prior to a hearing. Copies shall be served on attorneys for the parties and the child welfare case worker or probation officer, as appropriate.

No copies of CASA reports will be distributed to foster parents, group homes, or any other parties or organizations not specifically provided herein except as may be required by California statutes, the CRC, these local rules or upon order of a Judge of the Juvenile Court.

(Amended 07-01-09; adopted effective 07-01-03)

2011 SETTLEMENTS, DISCOVERY & OTHER PROCEDURES

(a) Settlement Conference

The court will set a pretrial (readiness and settlement) conference for every contested action. Cases will not ordinarily be scheduled for a contested hearing until all parties who have appeared in the action have been served with the report and recommendation of the petitioner.

(b) Discovery

1. All discovery materials should be exchanged between the parties and served upon all other parties who have appeared in the action no later than the pretrial conference.
2. When a witness with relevant evidence is discovered after the pretrial conference, the party who seeks to present the testimony shall serve all parties who have appeared in the action with appropriate discovery information on the next court day.

(Adopted 07-01-09; formerly subsection (a) of rule 2009, adopted effective 07-01-98)

Chapter Twenty-One – TRAFFIC CASES

2100 TRAFFIC CASE CALENDARING

(Rule 2100 Repealed 07-01-09; adopted effective 07-01-90; amended effective 01-01-09)

2101 MINISTERIAL AUTHORITY OF CLERK

The Clerk is authorized to process bail forfeitures, proofs of correction, initial continuances, traffic school referrals and other ministerial or minor discretionary matters to the extent permitted by law and subject to the directions, policies and procedures of the region where a case is pending. CRC 4.104 Vehicle Code section 41501 and 42005].

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99, and 01-01-03)

2102 CONTINUANCES BY CLERK

The Clerk has authority to grant extensions of court appearances for traffic infractions, including mechanical defects charges, for not more than thirty (30) calendar days after the date noted on the citation for the first scheduled appearance. The Clerk shall not grant extensions of any court appearances in misdemeanor offenses without approval of a judicial officer.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 01-01-03, and 07-01-03)

2103 TRAFFIC CITATION RELEASES

All persons released on their promise to appear in infraction cases by a law enforcement agency shall be required to appear for arraignment in court between twenty-one (21) and thirty (30) calendar days after issuance of the notice to appear.

(Amended 07-01-09; adopted effective 07-01-98)

2104 RELEASE ON BAIL

All persons released on bail by a law enforcement agency in a misdemeanor traffic action shall be required to appear in the traffic court not more than thirty (30) calendar days after the acceptance of bail.

(Amended 07-01-09; adopted effective 07-01-98)

2105 TRAFFIC SCHOOL

Successful completion of a certified traffic school program is permitted as a method of disposition and dismissal of specified traffic infractions consistent with directions provided by the Clerk. Upon posting bail and paying an additional administrative fee, the Clerk may authorize traffic school attendance without further approval of a judicial officer. [Vehicle Code section 42007]

(Amended 07-01-09; adopted 07-01-98; previously amended effective 01-01-99)

2106 TRIAL BY WRITTEN DECLARATION

A defendant may elect a trial by written declaration on an alleged violation of a Vehicle Code infraction or any local ordinance adopted pursuant to Vehicle Code section 40902.

(Amended 07-01-09; adopted effective 07-01-98)

2107 FAILURE TO APPEAR; TRIAL BY WRITTEN DECLARATION

(a) [Failure to Appear; Proceeding In Absentia] Failure to appear as promised (FTA) on a traffic infraction will result in the Court deeming that the defendant has consented that the Court may proceed *in absentia*, in a trial by written declaration pursuant to Vehicle Code section 40903, and the case will be adjudicated solely on the merits of the citing document. The Court will notify the defendant of the disposition of the case and the amount of imposed fines and penalties, and a notice of conviction shall be reported to the California Department of Motor Vehicles.

(b) [Late Charges on Failure to Pay] A civil assessment in the amount of three hundred dollars (\$300.00) will be added to any sums not paid within twenty (20) calendar days of mailing the notice prescribed in subsection (a) [Penal Code sec. 1214.1].

(c) [License Renewal Hold] Failure to pay (FTP) a fine will result in the court notifying the Department of Motor Vehicles (DMV) pursuant to Vehicle Code section 40509.5 of such failure. The DMV will then suspend the driver's license pursuant to Vehicle Code section 13365.

(Amended 07-01-09; adopted effective 07-01-98)

APPENDICES

APPENDIX 1: COURT GEOGRAPHIC JURISDICTION MAP

http://www.sbcourts.org/general_info/SuperiorCourtJurisdiction.gif

APPENDIX 2: SPECIAL LOCAL COURT FORMS

- http://www.sbcourts.org/general_info/formslist.htm

- NEW LOCAL FORMS:

SC-6026	Request for Order Dispensing with Accountings and Bond
SC-6027	Order Granting ExParte Request to Dispense Acctg/Bond
SC-6028	First and Final Report of Personal Representation etc
SC-6029	Reserved- Order on First/Final Report of Personal Representation etc
SC-6030	Fee Declaration: Conservator
SC-6031	Report of Status of Administration
SC-6032	Order on Report on Status of Administration
SC-6033	Order Appointing Counsel for Conservatee
SC-6034	Attachment to Letters of Conservatorship (Limited)
SC-6035	Attachment to Order Appointing Limited Conservator
SC-6036	Attachment to Petition for Appt of Limited Conservator
SC-6037	Petition for Authority to Use Guardianship Funds/Minor
SC-6038	Order re use of Guardianship Funds for Support of Minor
SC-6039	Petition for Visitation
SC-6040	Visitation Order

APPENDIX 3: SUPERIOR COURT SERVICES, FILING FEES & CHARGES

http://www.sbcourts.org/general_info/fees/

APPENDIX 4: APPROVED COURT SERVICE VENDOR RATE & FEE SCHEDULE

(For Non-Employee, Professional and Specialized Personal Services TO the Courts)

http://www.sbcourts.org/general_info/fee_sched.htm

APPENDIX 5: GUIDELINES FOR ATTORNEYS PRACTICING BEFORE THE SANTA BARBARA COUNTY TRIAL COURTS

http://www.sbcourts.org/general_info/APPENDIX5.pdf

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