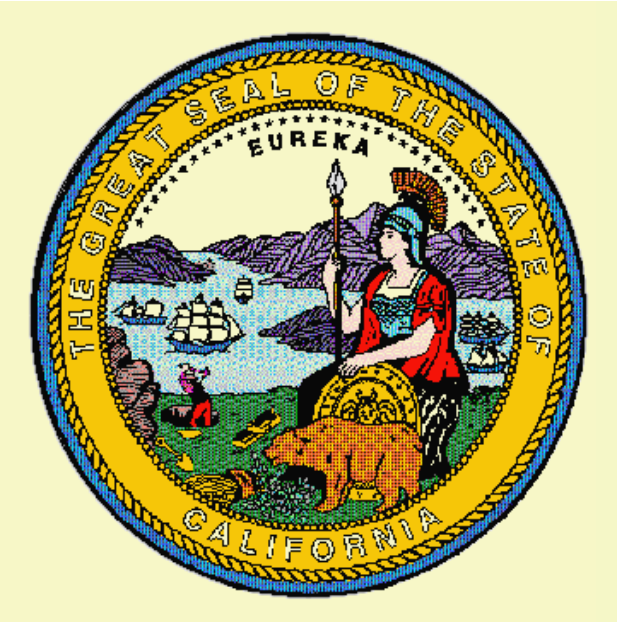
SUPERIOR COURT OF CALIFORNIA

COUNTY OF MADERA

LOCAL RULES OF COURT
ADOPTED AND EFFECTIVE
July 1, 201~~0~~1



JUDGES OF THE COURT

HON. ~~JAMES E. OAKLEY~~MITCHELL C. RIGBY, PRESIDING JUDGE,

~~PROBATE - CIVIL DIVISION PRESIDING JUDGE~~

HON~~. ERIC C. WYATT.~~, D. LYNN JONES, ASSISTANT PRESIDING JUDGE,

HON. THOMAS L. BENDER, JUVENILE DIVISION PRESIDING JUDGE

HON. ~~JENNIFER R. S. DETJEN, CRIMINAL AND~~JAMES E. OAKLEY, APPELLATE ~~DEPARTMENT~~DIVISION PRESIDING JUDGE

HON.~~ D. LYNN JONES~~ DALE J. BLEA HON. ~~MITCHELL C. RIGBY~~

~~HON.~~ ERNEST J. LICALSI

HON. JOSEPH A. SOLDANI

HON. CHARLES A. WIELAND

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HON. ERIC C. WYATT

TEMPORARY JUDGE NANCY C. STAGGS

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MADERA COUNTY SUPERIOR COURT

201~~0~~1 LOCAL RULES

INSTRUCTIONS FOR FILING

The July 201~~0~~1 Rules Pamphlet contains all the Local Rules effective July 1, 201~~0~~1. Please discard all previous pamphlets.

MADERA COUNTY SUPERIOR COURT

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DIVISION 1 COURT ORGANIZATION AND GENERAL PROVISIONS

Chapter 1 Court Calendars.

1.1.1 General Calendar. The Superior Court's business is distributed in accordance with its latest "General Calendar," which sets forth the time, place and any special requirements adopted by the Court for hearing the various types of court business. Before applying or noticing any matter for hearing or for trial, the moving party should ascertain the latest calendar requirements from the Calendar Clerk.

1.1.2 Daily Calendar. The Clerk, not later than the beginning of each court day, shall post a daily court calendar for public examination. Case assignments in Departments 1-10 shall be made for all purposes pursuant to Rule 3.734 of the California Rules of Court. (Effective 7/1/08)

1.1.3 Unification of Court. The Madera County Superior Court is a unified court under the provisions of Article VI, Section 5 of the California Constitution. (Effective 7/1/08)

1.1.4 Title of Court. The official title of this Court is the "Superior Court of the State of California in and for the County of Madera." Litigants may use as a short title "Madera County Superior Court" in pleadings and in addressing the Court in correspondence. (Effective 7/1/08)

Chapter 2 Definitions and Preliminary Provisions.

1.2.1 Authority for Adoption. These rules are adopted pursuant to the authority granted in Government Code § 68070 and Code of Civil Procedure §§ 128 and 187. (Effective 7/1/08)

1.2.2 Effective Date of Rules. These rules are effective July 1, 2010 and on the effective date shall supersede any previous local rules of the Madera County Superior Court and Madera County Municipal Court. (Amended July 1, 2010).

1.2.3 Construction and Effect of Local Rules. The local rules shall be construed as follows:

(a) The local rules are supplementary of and subject to the California Rules of Court and the Code of Civil Procedure and shall be construed so that they do not conflict with state rules or statutory or case law.

(b) The local rules have no retroactive effect.

(c) The local rules shall be construed liberally to effect the ends of justice and efficient administration of the Court. Where the strict application of a rule would work an injustice to any party, each Judge of this Court may excuse compliance with such rule, as the ends of justice may require.

(d) Headings, chapter and rule subdivisions do not affect the scope, meaning or intent of these rules.

(e) Unless the context of the rule otherwise requires,

(1) The singular includes the plural and the plural the singular

(2) “May” is permissive, and “shall” is mandatory, and,

(3) The past, present and future each include the other tenses.

(Effective 7/1/08)

1.2.4 Definitions. Definitions contained within the California Rules of Court apply with equal force in these Rules unless the content or subject matter otherwise requires.

(a) “Clerk” means the Clerk of the Court or his or her deputy. When referring to calendaring matters, “Clerk” refers to the Supervising Clerk of that Division.

(b) “County” means the County of Madera.

(c) "Court" means Superior Court of the County of Madera, and includes (1) any Judge who is elected or appointed a member of this Court, (2) while serving in this Court, any Judge, including a retired judge, assigned by the Chairperson of the Judicial Council to serve this Court, (3) any commissioner or referee appointed by the Judges of this Court, (4) while serving this Court, any retired commissioner who is assigned to serve by the Presiding Judge pursuant to Government Code 72190, or any other provision of law, (5) while serving this Court, and any member of the State Bar of California ordered to act as a temporary judge pursuant to Article VI, section 21, of the California Constitution and Rule 2.810 of the California Rules of Court.

(d) "Division" means the divisions of the Superior Court, as set forth in Local Rule 1.5.2, infra.

(e) "Judicial Officer" includes any judge who is appointed or elected a member of this Court and any commissioner or referee who is appointed by the Judges of this Court.

(f) "Person" includes corporations, associations, public entities and all other entities as well as natural persons.

(Effective 7/1/08, part (d) amended 7/1/10)

1.2.5 Severability of Rules. If any local rule or part of a rule is held to be invalid, all valid portions of that rule which are severable from the invalid portion shall remain valid. If the local rule is held invalid in one or more of its applications, the rule shall remain in effect in all valid applications that are severable from the invalid applications. (Effective 7/1/08)

Chapter 3 The Presiding Judge, Departments and Divisions of the Court.

1.3.1 Duties of Presiding Judge. The Presiding Judge shall:

(a) Prepare, with the assistance of appropriate committees of the Court, such local rules as may be required to expedite and facilitate the business of the Court; submit such proposed rules for consideration, and upon approval by a majority of

the Judges cause the proposed rules to be published and submitted to the local bar association for consideration and recommendation; upon adoption of the rules by a majority of the Judges, cause compliance with appropriate statutory and California Rules of Court directives and cause publication thereof for general distribution.

(b) Designate a Judge to act as Presiding Judge when the Presiding Judge is absent or unable to act.

(c) Act as a Master Calendar Judge to assign cases for trial purposes.

(d) Apportion the business of the Court among the various departments.

(e) Call such meetings of the Judges as may be needed.

(f) Supervise the administrative business of the Court and have general direction and supervision of the attachés of the Court.

(g) Impanel and have charge of the proceedings of the Grand Jury and act as a liaison between the Court and the Grand Jury.

(h) Exercise such additional duties as may be prescribed by statute or state rule of court for presiding judges under the Government Code and the California Rules of Court.

(i) The Presiding Judge may delegate any of the duties in Rule 1.3.1(a)-(h) to other Judicial Officers of this Court as appropriate.

(Effective 7/1/08)

1.3.2 Departments of the Superior Court. There shall be ten departments of the Superior Court, designated as Departments 1 through 10, inclusive. There shall be three divisions of the Superior Court, called the Juvenile Division, the Criminal Division, and the Probate-Civil Division. (Effective 7/1/08)

1.3.3 Criminal Division. The Criminal Division shall hear arraignments, status conferences, trial confirmations, pretrial motions, and all writs concerning criminal matters as well as all traffic matters. (Effective 7/1/08)

1.3.4 Trial Confirmations in Criminal Cases. The Trial Confirmation is a hearing to determine whether the case is going to trial or the parties are able to reach a disposition of the case without trial. (Effective 7/1/08)

1.3.5 The Juvenile Division. The Juvenile Division shall hear all law and matters, and trials not otherwise assigned, in all matters in the Juvenile Court not otherwise assigned by the Presiding Judge. (Effective 7/1/08)

1.3.6 The Probate-Civil Division. The Probate-Civil Division shall hear all decedents estates, trust matters, conservatorships, guardianships, compromises of minors claims under Probate Code 3600, spousal property petitions and miscellaneous actions under the Probate Code, civil law and motion matters, applications for writs, receivers, and the like, and hear all family law matters, unless otherwise assigned by the Presiding Judge. (Effective 7/1/08)

1.3.7 Districts of Superior Court. There is one district of the Superior Court. It is designated as the Madera County Superior Court District. (Effective 7/1/08)

1.3.8 Family Law, Civil and Probate Hearings in Eastern County. Family law, civil, and probate hearings may be held in Eastern Madera County. Such cases may include ones in which a party, the decedent, or the proposed ward or conservatee resides within that area defined as the former Sierra Division of the Madera County Municipal Court District. (Effective 7/1/08)

1.3.9 Any action or proceeding may be transferred to and from Eastern Madera County by the Court on its own motion or on noticed motion by any party where the action was improperly filed or for other good cause shown. (Effective 7/1/08)

1.3.10 Unless otherwise designated by the Court by Policy Memorandum, or in individual cases as directed by the trial judge, sessions at Eastern Madera County

shall be conducted at the Mountain Government Center, 40601 Road 274, Bass Lake, California, in the courtroom of Department 8 of this Court. (Effective 7/1/08)

1.3.11 Any Order to Show Cause on a case previously heard in the Madera Division may be filed in Eastern Madera County provided both parties reside in the defined area for handling Eastern Madera County cases and the moving party presents a declaration to that effect. (Effective 7/1/08)

1.3.12 Location of Departments 1-7 and 9-10. Departments 1 through 7 and 9 through 10 are located at the Madera County Main Courthouse, 209 West Yosemite Avenue, Madera, California 93637. (Effective 7/1/08)

1.3.13 Department 8 The Sierra Division is located at 40601 Road 274, Bass Lake, California 93604. (Effective 7/1/08)

1.3.14 Department 11. Juvenile Court is located at 28219 Avenue 14, 93638. (Added January 1, 2010).

Chapter 4 Court Reporter, Interpreter and Translator.

1.4.1 Court Reporters. A court reporter is mandatory on all proceedings save and except appeals to the Superior Court, small claims cases, case management conferences, and initial arraignments on criminal complaints. The Court in its discretion can order those proceedings reported. (Effective 7/1/08)

1.4.2 Fee of Court Reporter in Civil Proceedings.

(a) In any civil case in which a trial or hearing is expected to last more than one (1) hour, but not more than four (4) hours, and official reporting services are required, the parties shall deposit with the Civil Division their pro rata shares of the fee for one-half (½) day of official reporting services.

(b) In any civil case in which a trial or hearing is expected to last more than four (4) hours and official reporting services are required, the parties shall deposit with the Civil Division their pro rata shares of the fee for one (1) full day of official reporting services.

(c) The fee shall be deposited at the beginning of the trial or hearing. The fee for any subsequent day of the trial or hearing shall be deposited with the Civil Division at the beginning of each subsequent day.

(d) The receipt issued by the Civil Division for payment of the above fees shall be shown to the Judge's Clerk at the beginning of the proceeding, or the trial or hearing will not proceed.

(Effective 7/1/08)

1.4.3 Interpreters and Translators.

(a) List of Approved Interpreters and Translators. The Court Executive Officer shall maintain for public examination a list of Court-approved interpreters and translators, including their particular languages. If an interpreter for a particular language is on the list, no interpreter for that language may be used who is not on the list, except for good cause shown.

(b) Use of Interpreters. Interpreters will not be provided for civil or small claims matters, unless otherwise ordered by the Court. Upon request, the Clerk will provide the names of authorized interpreters with whom a party may make arrangements for interpreting services, or may refer the party to the court's interpreter coordinator. Any party requiring the services of an interpreter is responsible for arranging and paying for the services of such interpreters unless otherwise ordered by the Court.

(Effective 7/1/08)

Chapter 5 Transfer of Administrative Procedures.

1.5.1 Designation of Clerk. The Court Executive Officer shall be the Clerk of the Superior Court. (Effective 7/1/08)

Chapter 6 Attorney, Investigator and Expert Fees.

1.6.1 Attorney Fees in Cases Involving Minors or Incompetent Persons. In cases compromised by a guardian ad litem under Code of Civil Procedure 372 or by Probate Code 3500; the attorney fees awarded by the Court shall, under normal circumstances, not exceed the following amounts:

(a) Twenty-five percent (25%) of the amount recovered when the case is settled during trial.

(b) Thirty-three and one-third percent (33 1/3%) of the amount recovered when the case is settled during trial after a substantial part of plaintiff's case has been introduced or after judgment.

(c) Not more than the fees prescribed in 1.5.1(b) when the case is settled between the times specified in Rules 1.5.1(a) and 1.5.1(b)

(d) Forty percent (40%) of the amount recovered when the case is settled after the filing of respondent's brief on appeal.

(e) An amount less than 1.5.1(a), which shall reflect actual work done, when the recovery is under an uninsured motorist clause in an insurance policy.

(Effective 7/1/08)

1.6.2 Computation of Fees. In computing fees, parents claiming reimbursement for expenses shall, except in cases of hardship, pay their proportionate share of the attorney fees. Expenses of litigation to be reimbursed shall not be included in the "amount recovered" for the purpose of fixing fees. Such expenses of litigation shall be separately itemized. (Effective 7/1/08)

1.6.3 Court Approval of Employment Contract. Except for good cause shown, no contract of employment providing for attorney fees shall be approved by the Court in

advance. Under no circumstances shall the contract be considered for approval in advance without the client's appearance on the application for court approval. (Effective 7/1/08)

1.6.4 Attorney Fees in Actions on Promissory Notes, Contracts Providing for Payment of Attorney Fees and Foreclosures. The following attorney fees shall, under normal circumstances, be awarded in actions on promissory notes, contracts providing for the payment of attorney fees and foreclosures:

(a) Default action on note or contract, exclusive of costs:

$0.01 to $1,000	15%, with minimum fee of $75
$1000.01 to $10,000	$150 plus 6% excess over $1,000
$10,000.01 to $50,000	$690 plus 3% of excess over $10,000
$50,000.01 to $100,000	$1,890, plus 2% of excess over $50,000
Over $100,000	$2,690 plus 1% of excess over $100,000

In an action upon contract providing for an attorney fee, the Clerk shall include in the judgment an attorney fee in accordance with this schedule, not to exceed the amount prayed for in the complaint.

(b) Contested Action on Note or Contract:

$0.01 to $1,000	50%, with a minimum of $500
$1,000.01 to $10,000	$500 plus 15% of excess over $1,000
$10,000.01 to $50,000	$1,850 plus 10% of excess over 10,000
$50,000.01 to $100,000	$5,850. plus 8% of excess over $50,000
Over $100,000	$9,850 plus 6% of excess over $100,000

(c) Foreclosure of Mortgage or Trust Deed. The same amount as computed under Rule 1.6.4 applies, then increased by ten percent (10%).

(d) Foreclosure of Assessment or Bond Lien Relating to a Public Improvement. The same amount as computed under Rule 1.5.1 or 1.5.2, except that the minimum fee shall be $75 in an action involving one assessment or bond and an additional $20 for each additional assessment or bond being foreclosed in the same action.

(e) Additional Fees. A petition for compensation for additional services rendered under this part shall include an itemized statement of the services rendered or to be rendered by the attorney and a reference in the caption and prayer to the request for additional fees. An appearance by the attorney or the parties is not normally required. In determining such fees, the Court shall consider the experience of counsel, the time expended, the complexity of the issues, the amount in controversy and the results achieved.

(Effective 7/1/08)

1.6.5 Fees for Court-Appointed Attorneys. The following attorney fees shall, under normal circumstances, be awarded by the Court to court-appointed attorneys if reasonably necessary legal services are tendered in the Superior Court:

(a) Counsel is to be paid at a flat rate of $65 per hour for all court-appointed cases.

(b) In determining fees, the Court shall consider the difficulty of the tasks performed and the reasonable value of time expended.

(c) The Court may, by separate Policy Memorandum, adjust the amount paid to attorneys for court appointed cases, with distinctions for capital and non-capital cases, as well as other distinguishing factors.

(Effective 7/1/08)

1.6.6 Motions for Investigators. Motions for the payment of investigators, experts, or others for the preparation or presentation of the defense in a capital case, pursuant to Penal Code 987.9, shall be presented to a Judge designated by the Presiding Judge.

Comment: Under Penal Code 987.9(a), the Judge hearing the motion is disqualified from presiding over the trial of the case.

(Effective 7/1/08)

1.6.7 Investigators and Experts -Fee Schedule. The following schedule will be applied to investigators and forensic experts appointed by the Court:

General Felony	$50.00/hr
Capital/Life Without Parole	$50.00/hr
Mileage	$ 0.55/mile
Per Diem	$50.00/day
Narcotic evaluation and report	$400.00 per exam & report*
Sex offender exam and report	$400.00 per exam & report*
Penal Code § 1368, Competency to Stand Trial	$400.00*
Penal Code § 1026, Sanity at the Time of Crime	$400.00*
Penal Code § 1027, Restoration to Sanity	$400.00*
Evidence Code § 1017,	
Confidential Psychiatric Evaluation for Defense	$400.00*
Evaluation for General Sentencing Guidelines,	
Evidence Code § 460	$400.00*
Court appearances:	
Full day	$600.00
Half day	$350.00

* Evaluations and reports involving travel to and from either the Central California Women's Facility or the Valley State Prison for Women may charge an additional $100 per exam, report or evaluation.

Extremely lengthy cases requiring extensive review of records (greater than 50 pages) or other extremely complex cases may be negotiated on a case by case basis with the Court.

This fee schedule may be adjusted from time to time by Policy Memorandum of the Court. (Amended January 1, 2010).

1.6.8 Claim Forms. Counsel shall submit a statement for services rendered in each appointed criminal or juvenile case on the form provided by the Court, in duplicate, within ten days after the case has been completed. The statements shall be submitted to the Superior Court Executive Office for re-computation. The Superior Court Executive Officer shall submit the statement to the trial judge with a recommendation. The trial judge shall endorse the fees and costs approved upon the form and return it to the Superior Court Executive Office for processing. After approval, one duplicate original shall be transmitted to the County Auditor and the other shall be placed in the case file. (Effective 7/1/08)

1.6.9 Appointed Counsel. In each case in which a person has been furnished services of appointed counsel, upon conclusion of the proceedings, the Court shall make a determination of the actual costs of providing such services. Counsel shall be prepared at that time to submit itemized information as to the time they have devoted to the case. (Effective 7/1/08)

1.6.10 Reimbursement Order. In the event any person may be required by law to reimburse the County for compensation of private counsel or costs of public defender services, the Court, after determining the amount thereof, shall make a determination of the present ability of such person to pay all or a portion of such amounts and shall make such reasonable order for payment as is authorized by law. This determination and the determinations required by Local Rules 1.6.8 and 1.6.9 above shall be made only after the Court has held a hearing. A person required by law to reimburse the County for compensation of private counsel or costs of public defender services shall be entitled to reasonable notice of the hearing, and may appear with counsel, and participate therein, including the presentation of evidence and the cross -examination of witnesses. (Effective 7/1/08)

1.6.11 Collection. The Court, in its discretion, may delegate to the County Auditor the authority to collect such reimbursement and to establish and modify arrangements for installment payments. In addition, to the extent authorized by law, it may delegate to the County Auditor authority to reduce or cancel unpaid repayment obligations upon a finding by that office that the person obligated no

longer has the ability to pay the amount ordered. These rules are not intended to apply to procedures under 1431 of the Probate Code. (Effective 7/1/08)

Chapter 7 Jury Venue

1.7.1 A jury in the County seat will be selected from a cross-section of the entire County unless the prospective juror elects to serve somewhere other than the County seat. (Effective 7/1/08)

1.7.2 When sessions of the Superior Court are held in a location other than the County seat, the names for master jury lists and qualified jury lists to serve in a session may be selected from the area in which the session is held pursuant to this local rule, provided that each prospective juror shall have the opportunity to elect to serve on a jury with respect to a trial held any where in the County. (Effective 7/1/08)

1.7.3 The Superior Court, in its discretion, may order countywide venue in the interest of justice. (Effective 7/1/08)

Chapter 8 Fees for Court Services

1.8.1 Responsibility for Fees.

(a) When an attorney orders services on behalf of a client, that attorney shall be responsible for securing payment for those services.

(b) Any attorney requesting services from the Court acknowledges that collection proceedings may proceed against the requesting attorney should the client fail to pay the requisite fees. (Effective 7/1/10)

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1.8.2 Withholding of Judgment for Non-Payment of Fees

Except where the interests of justice would require otherwise, the Court may refuse to enter judgment when any party to the case has failed to pay fees due and owing to the Court . (Effective 7/1/11).

Chapter 9 Fees for Preparation of Appellate Record

1.9.1 Copying Fees When the parties stipulate that the Court file shall be the record in the case, the Court shall charge a fee of $1.00 per page, to cover the cost of paper and labor, for copies of the record for transmission to the Court of Appeal or the Appellate Division of the Superior Court, for copies of the record for the Superior Court's own files, and for copies of the record for each of the parties. This fee shall be shared by the Appellant and Respondent. An Appellant or Respondent may apply to the appropriate court for relief from such fees. (Effective 7/1/11)

DIVISION 2 TRIAL COURT RULES

Chapter 1 General Filing Requirements.

2.1.1 Notice of Deposition. Notices of deposition will not be accepted for filing, as part of the case file except by court order. Any motions filed in connection with a deposition must contain a copy of the notice of deposition. (Effective 7/1/08)

Chapter 2 Designation of Record on Appeal.

2.2.1 Reporter's Transcript. All Designations of Record for matters on appeal shall specifically set forth the date of any and all hearings for which a reporter's transcript is requested. (Effective 7/1/08)

2.2.2 Clerk's Transcript. All Designations of Record for matters on appeal shall specifically include the date each designated paper was filed with the Superior Court and the nature of the paper. (Effective 7/1/08)

Chapter 3 Jury Instructions.

2.3.1 Types Used. In all jury trials it is the policy of the Court to use the instructions contained in BAJI, CACI, CALJIC and/or CALCRIM, as appropriate. All instructions are to be provided by counsel. All other instructions offered shall conform as nearly as possible to the form instructions contained in BAJI, CACI, CALJIC and/or CALCRIM, as appropriate. Instructions shall not indicate which party submitted the instructions except

in a code (prescribed by the Court) which does not readily disclose the identity of the submitting party. Any statement of the party offering an instruction, and citations of authority offered shall be on a separate sheet. An index or fact sheet setting forth the topic of each instruction or BAJI, CACI, CALJIC and/or CALCRIM number shall be attached to each set of proposed instructions. (Effective 7/1/08)

2.3.2 When Submitted. Counsel shall submit proposed jury instructions to the Court at the commencement of the trial unless otherwise authorized by the Judge. (Effective 7/1/08)

Chapter 4 Application for Ex Parte Orders.

2.4.0 General. Counsel are required to review the following provisions for ex parte applications. Any failure to follow the rules may be grounds for summary denial of the application. (Effective 7/1/08)

2.4.1 Fee. No application for an ex parte order, except for the appointment of a guardian ad litem or the approval of an undertaking or an attachment, shall be made until any required filing or other fee, if any, has been paid. (Effective 7/1/08)

2.4.2 Form. Every application for an ex parte order shall be accompanied by the original file of the action. (Effective 7/1/08)

2.4.3 Limitations on Granting. Except upon a stipulation, leave shall not be granted ex parte to stay execution after judgment, file a cross-complaint, amend or supplement a pleading, other than to strike out the name or substitute the true name of a fictitiously-named party. (Effective 7/1/08)

2.4.4 To Whom Presented in Particular. Except as otherwise specifically provided by these rules, an application for an ex parte order shall be presented as follows:

(a) Civil, Ex Parte and Writs. An application involving mandamus, review, prohibition, certiorari, receivers, and habeas corpus in a civil matter shall be presented to the civil law and motion judge to whom the case has been assigned.

(b) Criminal Ex Parte and Writs. An application involving a criminal matter shall be presented to the Judge to whom the case has been assigned. An application involving, mandamus, review, prohibition, certiorari, habeas corpus, and coram nobis in a criminal matter shall be presented to the Writ Judge handling criminal writs.

(c) Juvenile. An application involving a juvenile court matter shall be presented to the Presiding Judge of the juvenile court in cases in which that Judge is authorized to act. In all other cases it will be presented to the Presiding Judge.

(d) Family Law. Application involving an order to show cause in a domestic relations matter shall be presented to the Judge to whom the case has been assigned.

(e) Probate. An application, involving a probate matter shall be presented to the Judge to whom the case has been assigned.

(f) Mental Health. An application involving a mental health matter shall be presented to the Presiding Judge of the Probate-Civil Division (See Rule 1.3.2).

(Effective 7/1/08)

2.4.5 How Presented.

(a) Guardian Ad Litem. Every application for the appointment of a guardian ad litem shall be captioned as the proposed or pending action and be accompanied by the written consent of the person nominated and, if the ward is over fourteen years of age, of the one for whom the guardian is sought. If the latter is a defendant, the application shall state the date on which said defendant was served. No application shall be presented for the nomination of any person who has any interest adverse or which might be prejudicial to the ward or who is not able or disposed to counsel with the ward or to actively and competently prosecute or defend the interest of the ward in the action or proceeding.

(b) Application for Reduction of Undertaking. An application for a reduction in the amount stated by statute for an undertaking on an attachment shall be verified; shall

fully set forth facts in the personal knowledge of the affiant or the sources of information of facts averred on information and belief, which tend to show that a reduction would not prejudice the rights of the defendant; the facts purporting to justify the attachment, the amount of the demand; the nature; whether said property is in use and the nature thereof; if the property is a going business, the effect, if any, of the attachment thereof and if the attachment is to be on a sum of money, the date and result of all previous attachments.

(c) Shortening or Extending Time. An application for an order shortening, or extending, time for the service of a notice shall state any previous extension, any expiration date and the facts showing good cause for granting the application.

(d) Appointment of Counsel for Military Personnel. An application for the appointment of an attorney for a defendant in military service shall state the branch of such service, his or her service mailing address, when the time to answer or demur expired, whether any pleading has been filed on his or his behalf, and any other pertinent facts.

(e) Substitute Service -- Domestic. An application for an order authorizing service pursuant to Corporations Code 1702(a) shall be by affidavit or declaration averring that no designation of an agent for service of process is on file with the Secretary of State (or facts showing the failure to locate a designated agent) corroborated by letter from the Secretary of State and facts showing that service cannot be made upon any person authorized to receive service.

(f) Substitute Service -- Foreign. An application for an order authorizing service pursuant to Corporations Code 2111 (a) shall be by affidavit or declaration averring facts showing the doing of business by the corporation in California, the search made to find a person in the state authorized to receive service, no designation of an agent is on file with the Secretary of State (or the designated agent is no longer authorized to receive service) corroborated by a letter from the Secretary of State.

(g) Application for Money Deposited. An application for an order for the payment of money which has been deposited with the Clerk of the Court pursuant to California Code of Civil Procedure § 708.770 shall be verified by the applicant, state the amount of money and date it was deposited with the Clerk, any amount previously received by the applicant and whether any claim of exemption or motion to vacate the

judgment has been filed. The amount of money on deposit shall be endorsed on the application by the Clerk of the Court.

(h) Property Otherwise Deposited. An application to receive personal, property or money, other than that deposited under California Code of Civil Procedure § 708.770, shall be verified by the claimant and shall state when, why and by whom it was deposited; any term or condition of the deposit; the name and addresses of every person claiming any interest therein; and the reason the claimant is entitled to receive it. The amount of money or description of the property on deposit shall be endorsed on the application by the Clerk. The Court may require the applicant to proceed by motion on the notice to all interested persons.

(i) Execution on Installment Order of Judgment. An application for the issuance of a writ of execution as to an order or judgment for the payment of money installments shall be verified by the judgment creditor, and shall set out the pertinent provisions of the order of judgment, the total amount which has been paid, the amount of principal due, and the particulars as to any interest claimed. The application shall set forth also the assignment and the date service or notice thereof to the judgment debtor.

(Effective 7/1/08)

2.4.6 Notice to Opposition. Ex parte applications and orders ordinarily will not be granted unless:

(a) The applicant shows, to the satisfaction of the Court, that reasonable formal or informal notice was given in sufficient time to permit the adverse party to make known to the Court any opposition to the application, except in extraordinary circumstances (see, e.g., part (b), below) such notice must be given to any adverse party (or any other party having an interest in the ex parte matter) by 10:00 a.m. the court day before the hearing, or the applicant made a reasonable good faith effort to notify the adverse party (or parties) and further efforts to give notice would probably be futile or unduly burdensome; or

(b) It clearly appears from specific facts set forth in an affidavit, declaration or verified pleading that giving notice to the adverse party would be likely to result in a frustration of the purpose of the proposed order or that the applicant would suffer immediate and irreparable injury before the adverse party could be heard in opposition;

or

(c) It clearly appears from specified facts set forth in an affidavit, declaration or verified pleading that no significant burden or inconvenience to the adverse party would be likely to result.

(Amended January 1, 2010)

2.4.7 Time for Application. All applications and requests for domestic relations ex parte applications in Superior Court are heard Monday through Friday, beginning at 8:00 a.m. in the designated department. The judicial officer hearing such matter may hear the matter at that time or defer the matter until the completion of the law and motion calendar or otherwise as the Court's calendar may allow. (Effective 7/1/08)

2.4.8 Time for Application in Department 8. Applications and requests for ex parte orders in Department 8 shall be heard Monday through Friday beginning at 9:00 a.m. (Amended January 1, 2010).

Chapter 5 Unlawful Detainer

2.5.1 Unlawful Detainer Proceedings. The following policy shall apply to all unlawful detainer proceedings.

(a) Where plaintiff seeks eviction, for failure to pay rent, a three-day notice to quit or pay rent clearly showing the amount presently owed must be served on the defendant at least three (3) days prior to the filing of the case. In the case of a 30-day notice of termination of tenancy, the notice must be served on the defendant at least 30 days prior to the filing of the case.

(b) The original or a copy of the three-day notice to quit or 30 day notice of termination of tenancy must be be served and filed in accordance with California Code of Civil Procedure § 1166.

(c) Service of the three-day notice or 30 day notice can be made by the plaintiff or by a person other than the plaintiff or by a person 18 years of age or older

acting as plaintiff's agent.

(d) Service by the sheriff can be made under the provisions of Code of Civil Procedure 1162(3), which provides for posting on the property and mailing of a copy to the defendant when defendant cannot be served personally. Plaintiff (or plaintiff's agent) must file a declaration which shows what efforts have been made to serve the defendant at his residence or place of business, or by substituted service, that the efforts were not successful, and why the defendant cannot be served at any other location or other means likely to give defendant actual notice.

(e) Setting Case for Trial. Upon the filing of defendant's Answer, the Division Clerk shall set the matter for trial pursuant to Rule 3.714, California Rules of Court, within the time period prescribed by Code of Civil Procedure 1170.5. Where a counter at-issue memorandum is filed, the provisions of 1013 of the Code of Civil Procedure shall be applied so as to deem the date of demand for trial five days after the date of mailing of the demand for trial for purposes of compliance with 1170.5.

(Effective 7/1/08, part (b) amended January 1, 2010).

Chapter 6 Small Claims Appeals.

2.6.1 Hearing Dates for Small Claims Appeals. Small claims appeals under Code of Civil Procedure 116.770 shall be treated as short cause trials.

Chapter 7 Telephone Hearings in Selected Departments Using CourtCall System.

2.7.1 Establishment of CourtCall System. Departments 4, 5, and 8 of the Superior Court are equipped with speaker phones for telephonic hearings of law and motion matters. Counsel should confer with the clerks of other Departments to determine if CourtCall is available. (Effective 7/1/08)

2.7.2 Definitions. For the purposes of this chapter,

(a) "Law and Motion matters" shall be defined as those hearings on the civil or probate law and motion or case management calendar in which:

1. The length of the hearing will not exceed 15 minutes; and

2. No oral testimony will be introduced; and

3. The Court has not ordered the party or counsel to be present; and

4. No party will be requesting a transcript of the hearing in any circumstances.

The term “Law and motion matters” shall not mean any hearing on a criminal proceeding, any civil proceeding under Penal Code Sections 1368 or 1026, any hearing under Welfare and Institutions Code Sections 3051, et seq. or 6600, et seq., any adoption proceeding, any habeas corpus proceeding, or any proceeding under the Juvenile Court Law.

(b) “Participating department” shall include Department 4, 5 or 8 of the Superior Court, or a special department utilizing the facilities of a courtroom of Superior Court Departments 4, 5, or 8 under authorization of the Presiding Judge or the Court Executive Officer.

(c) “Program Administrator” means CourtCall™ LLC. All questions concerning participating courtrooms, toll free and access numbers, obtaining forms or general information shall be directed to CourtCall at 888-88COURT (888-882-6878).

(d) “Litigants” means all counsel or litigants representing themselves in a case.

(e) “Toll Free Number” means such toll-free telephone number assigned by the Program Administrator to the specific department for the purpose of calling in on case conference calls.

(f) “Toll Free Fax Number” means 888-88FAXIN.(888-883-2946) or such other or additional number assigned by the Program Administrator and/or such additional or other number assigned by the Program Administrator. This number shall be provided to all litigants.

(g) “Court Day” means a day on which judicial business may be transacted within the meaning of Article 6 (commencing with Section 133) of Chapter 3 of Title I of Part, I of the Code of Civil Procedure.

(h) "Form" means a form entitled "Request for CourtCall Telephonic Appearance" which on its face shall contain the caption of the case, the date, time, department and type of hearing, motion or other matter which is to be heard, and the words COURTCALL TELEPHONIC APPEARANCE in upper case bold print. This form will be provided by the Program Administrator on request of a litigant.

(i) Calling Procedures. Each participating department shall have a speaker phone which will use the toll-free telephone number described above and an identification number, which shall be used solely for the purpose of conducting hearings by conference call through the Program Administrator.

(Effective 7/1/08)

2.7.3 Telephone Hearing Calendars. The Calendar Clerk shall prepare a separate telephonic appearance calendar for each matter in which a telephonic appearance will be made. Telephonic hearings will be held during the law and motion calendar for each department which usually commences at 8:30 a.m. The Calendar Clerk shall segregate or distinctively identify each case which will be heard by telephonic hearing. (Effective 7/1/08)

2.7.4 Telephonic Appearance and Service of Form. Not less than five (5) court days before the hearing, a litigant desiring to appear by telephone shall complete the Form and serve copies on all other litigants. The original shall not be filed with the Court. Additionally, when the request is made at the same time as the filing of a motion or response with the Court, the words "COURTCALL™ TELEPHONE APPEARANCE. REQUESTED" should be printed below the date, department and time of the hearing on the first page of the papers which are filed with the Court. RETAIN THE ORIGINAL FORM IN YOUR FILE. DO NOT FILE IT WITH THE COURT. (Effective 7/1/08)

2.7.5 Notice by Fax to Program Administrator. Any litigant seeking a telephonic appearance must fax a copy of the first page of the Form to the Program Administrator not less than, five (5) court days prior to the hearing. Failure to advise the Program Administrator will result in the telephone appearance being dropped from the Telephone Appearance Calendar. (Effective 7/1/08)

2.7.6 Payment of Fee to Program Administrator. The litigant must accompany the

Form with payment of a non-refundable, non-waivable telephone appearance fee of thirty dollars ($30.00) for calls on the open court platform and thirty-five dollars ($35.00) on the privacy platform. This fee is paid to the Program Administrator and not to the Court. This fee covers all of the costs of litigants participation in the telephonic hearing and no other telephone or separate teleconference charge shall be assessed against the litigant. This payment is separate from, and in addition to, any filing fees which may be required to be paid to the Clerk of the Court in connection with the subject hearing or proceeding. (Effective 7/1/08)

2.7.7 Method of Payment and Confirmation. Payment to the Program Administrator may be made by credit card or check.

(a) Credit Card Payment. Litigants using credit card payments shall complete the credit card information on the copy of the Form which is faxed to the Program Administrator (and not on the copies faxed to other litigants). This information must include the signature of the person whose name is on the credit card.

(b) Payment by Check. Checks must be received by the Program Administrator not less than five (5) court days prior to the hearing. Late payments will be rejected by the Program Administrator and the request for telephonic hearing will be deemed denied.

(c) Proof of Payment/Calendar Confirmation. Upon receipt of payment a copy of the Form which has been stamped “Calendar Status Confirmed” will be faxed to the litigant not less than three (3) court days prior to the hearing. If the litigant does not receive a faxed calendar confirmation, it is the litigant’s responsibility to call the Program Administrator immediately to obtain such confirmation.

(Effective 7/1/08)

2.7.8 Conducting the Telephonic Hearing. For the five (5) minute period prior to the scheduled telephonic hearing (which means, in the usual course of events, by 8:25 a.m., Pacific Time), all litigants who have received a confirmation from the Program Administrator shall call the dedicated toll free number assigned to the particular court by the Program Administrator. The Court Clerk for the department shall join the conference call, and each, of the litigants shall, in an orderly fashion, check in with the Clerk by responding when the Clerk calls the name of his or her case, spelling his or her name,

the name of the law firm he or she represents and the name of the party or parties he or she is representing. A litigant calling in after check-in period has begun who does not hear his or her case shall wait until the check in calendar has been called, and shall then announce to the Clerk his or her appearance. Anyone failing to have called in during, the five (5) minute check-in period shall be deemed to have failed, timely to appear and that failure may be treated by the Court in the same manner as if that party had failed timely to make a personal appearance. Except as ordered by the Court, there shall be no "second call" in the administration of telephonic hearings. In the instance of a litigant who calls in "late" and interrupts a telephonic hearing in progress, the Court may issue such sanctions under Code of Civil Procedure Section 177.5 as the Court may deem appropriate. The Court expects that each litigant should have easy access to a phone in a timely manner. (Effective 7/1/08)

Chapter 8 Settlement Conferences.

2.8.1 Settlement Conference. The settlement conference calendar is designed to facilitate the settlement of cases, particularly personal injury cases, before trial. Therefore, all parties and attorneys participating therein will be expected to comply fully with the provisions of this Division. (Effective 7/1/08)

2.8.2 Types of Settlement Conferences.

(a) Voluntary Settlement Calendar. The Calendar Clerk shall set any long cause case on a Voluntary Settlement Calendar (Panel or Judge) at the request of any party or the Court's own motion. If any party objects to such setting, the objecting party shall file an objection to same within five (5) days of notice of same. Said objection will then be set for hearing before the civil law and motion judge on a date selected by the Clerk of the Court.

(b) Mandatory Settlement Calendar. The Calendar Clerk shall set a Mandatory Settlement Conference within the time frame of California Rule of Court 3.1380.

(Effective 7/1/08)

2.8.3 Persons Whose Presence is Required. Plaintiffs, trial counsel, insurance company representatives, defendants in cases other than personal injury cases where

there is insurance coverage must be present. In medical malpractice cases where doctor or hospital consent to settlement is required, those parties must also be present or have given their open consent to the insurance company for settlement. (Effective 7/1/08)

2.8.4 Settlement Conference Statement. No less than five (5) court days before the settlement conference, each party shall have delivered to the Calendar Clerk a settlement statement. The statements will be deemed confidential unless service on the other parties appears on the brief. The statements shall contain the information required by California Rule of Court 3.1380. The statements will be maintained in a confidential file for 180 days after the conference and will thereafter be destroyed without further notice unless counsel requests the return of his or her statement and supporting documents and provides an envelope or container with prepaid postage for this purpose. (Effective 7/1/08)

2.8.5 Discovery. Discovery should be completed by the time of the Settlement Conference. The Court recognizes that many times counsel will have reserved some discovery pending the outcome of the settlement conference. However, if the Court determines that discovery is not substantially completed, and this will have a significant influence on the settlement, the Settlement Calendar Judge may either take the case off calendar and strike the At Issue Memorandum, or refer the matter to the Presiding Judge for such action as he or she deems appropriate. (Effective 7/1/08)

2.8.6 Demands and Offers. Counsel and the interested parties shall be prepared to state their best demand and offer at the settlement conference. If the Court later determines that a significantly different demand or offer is made in the case that results in later settlement, the Court may assess sanctions against the offending party and/or counsel. (Effective 7/1/08)

2.8.7 Failure to Attend or be Prepared. Unexcused absence from the conference may result in sanctions and/or removal of the case from the active list and/or striking of pleadings, and/or default proceedings and/or dismissal of the case. Failure to be prepared may result in sanctions and/or removal of the case from the active list. (Effective 7/1/08)

2.8.8 Continuances. Continuances or further conference on a continued date may be granted or denied within the discretion of the particular Settlement Conference Judge. (Effective 7/1/08)

2.8.9 Notice of Settlement. As required by California Rule of Court 3.1385, plaintiff's counsel or plaintiff appearing in propria persona, must immediately file a written notice of the settlement or other disposition with the Court and otherwise comply with provisions of Rule 3.1385. The plaintiff must file a request for dismissal within 45 days after the date of settlement. If the plaintiff does not file the request for dismissal, the Court must dismiss the case 45 days after it receives notice of settlement unless good cause is shown why the case should not be

dismissed. (Effective 7/1/08)

2.8.10 Arbitration. The Court encourages arbitration. The Court provides such arbitration proceedings in accordance with the California Rules of Court. The Court can also arrange private arbitration or case determination through retired judges. (Effective 7/1/08)

2.8.11 Arbitration Administrator. The Presiding Judge shall appoint an Arbitration Administrator (presently the Judicial Secretary). The Arbitration Administrator's duties shall be to administer the arbitration procedure, select the arbitrators for the cases on the arbitration hearing list, and generally be responsible for operating the program including calendaring and establishing a filing system for all papers and records filed in arbitration matters. (Effective 7/1/08)

2.8.12 Arbitration Panel. The Arbitration Administrator shall maintain a panel of arbitrators which shall be composed of members of the State Bar of California and retired judges of courts of record. When a case is referred for arbitration, the Arbitration Administrator shall select from the panel not less than three (3) names and serve a copy of this list on each party or counsel appearing. Each party shall have the right to disqualify one arbitrator peremptorily. Any such disqualification shall be exercised not later than ten (10) days from the date the list was mailed to the parties or their counsel. Said disqualifications shall be filed with the Arbitration Administrator. Failure to exercise a disqualification within the time limit provided shall cause the right to disqualify to lapse. Additionally, an arbitrator may be disqualified for any reason for which a judge could be disqualified under Code of Civil Procedure 170. If any member of the arbitrator's law firm would be disqualified under Code of Civil Procedure 170.1(a)(2), the arbitrator shall be disqualified. (Effective 7/1/08)

2.8.13 Arbitration Fees. The parties shall equally share the cost of arbitration and submit their share of the cost at the conclusion of arbitration. (Effective 7/1/08)

Chapter 9 Settlement Conference Setting.

2.9.1 Pretrial Matters. All pretrial matters shall be set in the appropriate department by the Calendar Clerk at such time as may be directed by the Presiding Judge. (Effective 7/1/08)

2.9.2 Setting Procedure

(a) Short Cause. The Court may order, upon the stipulation of all parties or the Court's own motion, that a case is a short cause case exempted from the requirements of case management review and set the case for trial, in accordance with and subject to the provisions of Rule 3.735 of the California Rules of Court. A counsel who did not participate in the selection of a short cause trial date shall be entitled to one continuance of right, by stipulation or motion.

(b) Settlement Conference. The Court shall maintain a settlement conference calendar pursuant to Rule 3.1380 of the California Rules of Court. The Calendar Clerk shall send all parties to the case a notice to attend a settlement conference with the notice of trial.

(c) Setting Civil Matters for Trial. The Court shall maintain a case management conference calendar pursuant to Rule 3.722 of the California Rules of Court. Dates for trials shall be set forth in the Case Management Conference Order issued by the Court as set forth in Rule 3.728 and in Division 9 of these local rules of court.

(Effective 7/1/08)

2.9.3 Duty of Counsel as to Trial Date Assigned. After a trial date has been assigned, it shall be the duty of counsel to inform the Presiding Judge and all opposing counsel of any fact tending to indicate that the case may not proceed to trial on the date to which it has been assigned. In the event of settlement, counsel, or parties appearing in person, shall immediately notify the Court thereof. Failure to do so may be cause for imposition of sanctions. (Effective 7/1/08)

2.9.4 Uncontested Calendars. All uncontested matters such as adoptions, minor's compromise, dissolutions, nullities, and legal separations, etc., will be set by request made to the Clerk. (Effective 7/1/08)

Chapter 10 Continuance Policy.

2.10.1 Statement of Policy re Continuances. This Court practices a firm continuance policy. Counsel should be aware that the dates assigned for settlement conferences and trials are definite appointments with the Court. All continuances, contested or not, are to be applied for by noticed motion with supporting declarations. Continuances applied for in any other manner will be denied, except in emergencies. Motions for the continuance of the settlement conference and trial shall be made to the Department to which the case has been assigned for all purposes, or, if the case has not been assigned to a Department for all purposes, then to the Presiding Judge of the Probate - Civil Division. Motions

for the continuance of the mandatory settlement conference shall be made to the Judge to whom the mandatory settlement conference has been assigned and shall be granted only if the continuance would not delay the trial of the action nor disrupt the calendar of the Judge to whom the settlement conference has been assigned. The Court will grant continuances only upon an affirmative showing of good cause. Grounds which the Court will recognize as good cause for continuance will be:

(a) Death

(1) The death of the trial attorney or an essential witness where, because of the proximity of such death to the date of trial, it is not feasible to substitute another attorney or witness.

(2) The death of an expert witness where, because of the proximity of the death to the date of trial, there has been no reasonable opportunity for a substitute expert witness to become qualified to testify in the case.

(3) The death of any other witness only where it is not possible to obtain another witness to testify to the same facts or where, because of the proximity of the death to the date of trial, there has been no reasonable opportunity to obtain such a substitute witness.

(b) Illness. An illness (supported by an appropriate declaration of a medical doctor, stating the nature of the illness and the anticipated period of any incapacity).

(1) The illness of a party or essential witness, except that, when it is anticipated the incapacity of such party or witness will continue for an extended period, the continuance will be granted on condition of taking the deposition of the party or witness in order that the trial may proceed on the next date set.

(2) The illness of the trial attorney or of an expert witness, except that the substitution of another attorney or witness will be considered in lieu of a continuance depending on the proximity of the illness to the date of trial, the anticipated duration of the incapacity, the complexity of the case, and the availability of a substitute attorney or expert witness.

(3) The illness of any other witness only where it is not possible to obtain another witness to testify to the same facts or where, because of the proximity of the illness to trial, there has been no reasonable opportunity to obtain such a

substitute witness.

(c) Unavailability of trial attorney or witness.

(1) The unavailability of the trial attorney when he is engaged in the trial of another case if: (a) at the time such attorney accepted the trial date in this case the attorney could not have reasonably anticipated the conflict in trial date; and (b) the Court was informed and made a finding on motion made at least thirty (30) days before the date set for trial that the case was assigned for trial to this attorney within a particular law firm and that no other attorney in that firm was capable and available to try the case and was or could be prepared to do so.

(2) The unavailability of a witness is only where the witness has been subpoenaed, or is beyond the reach of subpoena and has agreed to be present, and his absence is due to an unavoidable emergency about which counsel did not know, and could not reasonably have known, at the time of the conference.

(d) Substitution of Trial Attorney. The substitution of the trial attorney only where there is an affirmative showing that the substitution is required in the interest of justice.

(e) Change in Status. A significant change in the status of the case where, because of a change in the parties or pleadings ordered by the Court, the case is not ready for trial.

(f) Continuation Fee. The Court, at its discretion, may impose a $20 continuance fee for the continuance of any matter on the Court's calendar. The feel shall be payable to the Court by the party upon whose behalf a continuance of the hearing date was requested. The fee shall be paid prior to the entry of judgment or dismissal of the matter.

(Effective 7/1/08)

2.10.2 Civil Cases-Further Statement of Policy. In order to effect and preserve the maximum efficiency of the Court in reducing congestion and delay in the trial of cases, the Court will enforce a strict policy of requiring mandatory settlement conferences, trial assignments, and trials to proceed as calendared in the absence of good cause shown for a continuance thereof. Any request for a continuance of settlement conference, trial assignment or trial date shall be made in the form of a noticed hearing before the Presiding Judge or such other Judge as he or she may designate. No stipulation for a continuance of such dates shall be accepted without

the express consent of the Presiding Judge or such other Judge as the Presiding Judge may from time to time designate. Any request for a continuance of a mandatory settlement conference shall be made to the Judge to whom the settlement conference has been assigned, and it shall be granted only if (a) the continuance would not delay the trial of the action, and (b) the continuance would not disrupt the calendar of the Judge to whom the settlement conference has been assigned. (Effective 7/1/08)

2.10.3 Civil Cases, Law and Motion and Voluntary Settlement Conference Policy. It is the policy of the Court to cooperate with counsel regarding continuances of law and motion matters and settlement conferences to the extent possible. This policy is necessarily limited by certain obvious practical considerations. For example, the Judges assigned to the law and motion calendars are provided with the file, including the points and authorities filed by the respective parties, and the research statement, well in advance of the date set for hearing, for the purpose of enabling them to familiarize themselves with the matters raised and the applicable law, and to conduct independent research well in advance of the hearing. The grant of a last-minute continuance is generally inappropriate in that it requires a duplication of effort on the part of the Judge and tends to deprive other litigants of timely access to the courts. Similarly, the Judges assigned to settlement conferences receive the files, including, all discovery theretofore filed with the Court. The Judges read and analyze the entire file and all discovery well in advance of the settlement conference date. (Effective 7/1/08)

2.10.4 Law and Motion and Voluntary Settlement Conference Continuances. Continuances may be granted in law and motion and voluntary settlement conference matters unless (a) such continuance would disrupt the calendar of the department to which such matter has been assigned, or (b) such continuance would tend to delay the trial of the action. (Effective 7/1/08)

2.10.5 Family Law Defaults, Orders to Show Cause, Change of Names and Adoption Continuances. The Calendar Clerk may grant continuances in the above types of proceedings as follows:

(a) Each party may obtain one continuance to a date within forty-five days of the original date set for hearing without the consent of the Court. Litigants requesting such continuances will have the responsibility to make such requests in writing and state their reasons.

(b) Continuances may also be granted on written stipulation of the parties. The counsel seeking the continuance or Calendar Clerk is responsible for providing all parties to the action with written notice of continuances.

(c) No request for continuance, except by stipulation, will be granted if not received in writing five calendar days prior to the date set for hearing.

(Effective 7/1/08)

Chapter 11 Fax Filing.

2.11.1 Payment of Fees. Fees for ~~fax~~papers delivered to the Court via facsimile filing shall be remitted within ~~ten (10~~three (3) days after the fax filing is completed by payment to the Clerk. If a party or counsel fails to pay the fee within the required time, the pleading shall be stricken on the Court's own motion after notice to the parties of record. (Effective 7/1/08, renumbered effective 1/1/10~~)~~, amended 7/1/11)

Chapter 12 Civil Active List and Conference Setting in Departments 5 and 8.

2.12.1 Setting Procedures. The Court shall maintain a case management conference calendar and follow the setting requirements set forth in Rules 3.721-3.735 of the California Rules of Court and Division 9 of the local rules. (Effective 7/1/08)

2.12.2 Short Cause. Each short cause shall be set for trial and be exempt from any requirement of a settlement conference. (Effective 7/1/08)

DIVISION 3 CIVIL RULES

Chapter 1 General Provisions.

3.1.1 Initial Filing. Except as otherwise prescribed by law or these rules, all notices of motion, demurrers and orders to show cause must be served and filed in accordance with Code of Civil Procedure Section 1005 unless an order shortening time has been granted by the Judge hearing the matter. Such order shortening time should be included in the order, setting the hearing. Proper returns and proofs of service for all notices of motion, demurrers, and orders to show cause must be filed with the Clerk not later than 4:00 p m. on the fourth court day preceding the scheduled hearing. (Effective 7/1/08)

3.1.2 Papers filed at or near Deadline. When papers are filed at or near the deadline, service on opposing counsel should be by personal delivery when feasible. Service of responsive papers should be by personal delivery whenever service by mail has not been effected more than seventy-two hours prior to the time of the hearing. (Effective 7/1/08)

3.1.3 Notice. When a shorter period of notice is required by Rules of Practice and Procedure as adopted by the Judicial Council and the Supreme Court, or otherwise provided by law, the opposition documents must be filed no later than one court day preceding the date of hearing. (Effective 7/1/08)

3.1.4 Accompanying Memoranda. All demurrers and motions must be accompanied by a memorandum of points and authorities. A mere citing of code sections which authorize the filing of a demurrer or motion will not be sufficient unless this section is waived by the law and motion judge. (Effective 7/1/08)

3.1.5 Filings in Unlimited Civil Cases

(a) Parties filing Memoranda of Points and Authorities in support of motions in unlimited civil cases must provide a courtesy copy of the Memorandum at the time of filing.

(b) Parties filing Opposition Points and Authorities in opposition to any motion in unlimited civil cases must provide a courtesy copy of the Memorandum at the time of filing.

(c) Parties filing either moving, opposition or reply Separate Statements in Summary Judgment Motions, Summary Adjudication Motions, or Motions to Compel Discovery in unlimited civil cases, must include a courtesy copy of such a Separate Statement at the time of filing.

(d) Parties who have obtained a fee waiver are exempt from this provision.

(e) The failure to comply with parts (a) – (c) of this section will not prevent the papers from being accepted for filing, but parties are required to comply with this section as soon thereafter as practical.

(f) The Court may, in its discretion, relieve a party from its duties under this section. (Added January 1, 2010)

3.1.6 Filing Form for Motions. All motions made in a law and motion department, except those for continuances made in open court, must be presented in writing. (Effective July 1, 2008; renumbered January 1, 2010)

3.1.7 Temporary Orders. All temporary orders shall be presented to the civil Clerk's office no later than 11:00 a.m. the day immediately proceeding the day of the hearing. Specific facts must be alleged in the requests, facts sufficient to justify the granting of such orders. If the party against whom such an order is sought has been represented in the action by counsel, such counsel shall be informed of the nature of the request and the time of such request in order to allow opposing counsel to appear and comment on the requested relief. Declarations for any type of relief must set forth facts, not conclusions, justifying the relief sought. Counsel has the additional duty to fully disclose those facts. (Effective 7/1/08, renumbered January 1, 2010)

Chapter 2 Calendaring Matters.

3.2.1 Motion Date. No motion shall be scheduled or noticed for hearing (except ex parte hearings) without first contacting the Calendar Clerk to request a date for hearing. (Effective 7/1/08)

3.2.2 Improper Calendaring. Should any matter be improperly noticed, the Clerk shall refer it to the civil law and motion judge for disposition or instructions. Such instructions may, in the discretion of the Judge, include returning the document without filing. (Effective 7/1/08)

3.2.3 Time. The calendar in the law and motion department shall be called at 8:30 a.m. each court day. This hour may be changed from time to time by the Judge hearing the law and motion matter, or the Presiding Judge. (Effective 7/1/08)

3.2.4 Continuances. In case any party intends to ask for a continuance or does not intend to proceed in any matter on the date set, that party shall so inform the Court Clerk and opposing counsel as soon as possible, and, in any event, no later than 4:30 p.m. of the second court day preceding hearing. The Judge hearing the matter shall have complete discretion to rule or to take the matter off calendar at any time despite the agreement of counsel to the contrary. (Effective 7/1/08)

3.2.5 Motion Removed from Calendar. A law and motion matter that has gone off calendar may be restored thereto only upon notice except in an extraordinary situation to be determined by the Court in its discretion. (Effective 7/1/08)

Chapter 3 Miscellaneous Law and Motion Department Matters.

3.3.1 Objections to Discovery. Objections to requests for admissions or to

interrogatories shall identify and quote the request for admission or the interrogatory immediately preceding the objection. (Effective 7/1/08)

3.3.2 Orders and Judgments.

(a) Minute Orders. Normally, the minute order granting, denying, sustaining, overruling, or ordering the motion off calendar, will be all that is required, and no signed order is necessary.

(b) Judgment Forms. Counsel must prepare, serve, and present to the court forms for all orders and judgments which require the Court's signature. If no objection is forthcoming within ten days, the order or judgment will be signed as presented.

(c) Failure to Object. Failure to serve and file written opposition may be deemed a waiver of any objections and an admission that the motion or demurrer is meritorious.

(d) Captions. Captions in orders, decrees, and judgments must refer to all matters covered by the order, decree or judgment, and shall affirmatively state the result or relief.

(e) Responsibility for Notice of Ruling. In addition to the requirements of California Code of Civil Procedure § 472(b), notice of the Court's ruling in all law and motion matters shall be deemed waived by all parties present unless a request is expressly made that notice be required or unless there are parties to the matter who are not present. In such instances, the prevailing party shall give notice unless otherwise ordered by the Court. Failure of the party so ordered to provide the notice of ruling to the Court for its signature within ten (10) court days of the ruling may be grounds for sanctions.

(Effective 7/1/08; parts (a) & (e) amended January 1, 2010).

3.3.3 Real Property Judgments. All judgments or decrees including judgments of dissolution which affect the transfer of real property or interest therein or change the recorded title thereof shall set forth the full legal description of the property together with the name and address of the transferee. Proposed forms of judgments or decrees which describe the real property by street number designation only or similar reference shall not be approved. (Effective 7/1/08)

3.3.4 Judicial Notice.

(a) Duty of Requesting Party. Whenever a party requests the Court to take judicial notice of any matter other than a record of the Madera County Superior Court, the requesting party shall provide the Court with sufficient information to enable it to take judicial notice.

(b) Superior Court Files. If such matter is contained in a file of the Madera County Superior Court, the party shall, at least five days prior to the hearing, by separate document filed directly in the department wherein the matter is noticed, request the Clerk of said department to order delivery of the file for the date of the hearing; and said document shall set forth the case name and number.

(c) Other Court Files. If such matter is contained in a file of any other court, such file shall be subpoenaed for the date of the hearing, or a certified copy of the record or so much thereof as the party wants judicially noticed, shall accompany and be attached to the moving papers.

(Effective 7/1/08)

3.3.~~4~~5 Class Actions. Where not inconsistent with California law, the California Rules of Court or these local rules, cases filed in this Court as representative or class actions under California Code of Civil Procedure § 382, shall be governed by, and comply with, Rule 23 of the Federal Rules of Civil Procedure. (Effective 7/1/08, renumbered, 7/1/11)

Chapter 4 Case Management - Scope, Purpose and Authority.

3.4.1 Scope. The provision of the case management rules contained in this Division of the Local Rules applies only to “general civil cases,” that is, all civil cases except probate, guardianship, conservatorship, family law (including child custody proceedings), juvenile proceedings and other civil proceedings. (Effective 7/1/08)

3.4.2 Definitions. “General civil proceedings” shall specifically include:

(a) Personal injury, death or property damage-motor vehicle cases;

(b) Personal injury, death or property damage-other cases;

(c) Eminent Domain proceedings;

(d) Other civil actions and proceedings including breach of contract, injunctions, petitions for receivers, extraordinary writs, and the like, where other statutory provisions or Rules of Court do not conflict with these rules.

(Effective 7/1/08)

3.4.3 Purpose. The purpose of this rule is to (a) expedite disposition of the case; (b) establish early and continuing control so that the case will not be protracted because of lack of management; (c) discourage wasteful pretrial activities (d) improve the quality of trials by encouraging thorough preparation; and (e) facilitate early settlement of each case. (Effective 7/1/08)

3.4.4 Authority. This Rule is adopted pursuant to the authority of Government Code 68070, and Standards 2 and 2.1 of the Standards of Judicial Administration. (Effective 7/1/08)

3.4.5 Case Disposition Standards.

(a) General Civil Cases. The Court adopts the disposition guidelines set forth in Standards 2 and 2.1 of the Standards of Judicial Administration, i.e., 90% of all general civil cases shall be disposed of within one (1) year of the filing of the complaint, 98% shall be disposed of within 18 months and 100% shall be disposed of within two (2) years. (Effective 7/1/08)

(b) Time Standards in Small Claims Cases. The goal of each division within this Court shall be: 90% disposal within 70 days of filing; 100% within 90 days of filing. (Effective 7/1/08)

(c) Time Standards for Unlawful Detainer Actions. The goal of each division within this Court shall be: 90% disposal within 30 days of filing; 100% disposal within 45 days of filing. (Effective 7/1/08)

3.4.6 Exemption for Complex Cases. Cases which the Court determines to be “complex” cases shall be governed by Standard 19 of the Standards of Judicial Administration and not by this Division. The Court may independently review the case file to determine if a case is a “complex” case at any time after the filing of a complaint or upon the suggestion of any party. (Effective 7/1/08; amended January

1, 2010).

Chapter 5 Case Management Conferences in Superior Court.

3.5.1 Calendaring The Case Management Conference. A Case Management Conference will be calendared no later than 180 days after the filing of the initial complaint, and notice of the case management conference shall be given to all parties no later than 45 days before the conference. If the Complaint has not been served in that time, the Plaintiff or Plaintiffs must still appear and request a continuance, subject to a good cause determination by the Court. The Case Management Conference shall be taken off calendar if a dismissal or judgment as to all parties has been entered, or if an at issue memorandum has been filed. (Effective 7/1/08)

3.5.2 Preparation for Case Management Conference. No later than 15 calendar days before the date set for the case management conference or review, each party must file a case management statement and serve it on all other parties in the case. The parties must use the mandatory *Case Management Statement*, Judicial Council Form CM-110. All applicable items on the form must be completed. In lieu of each party filing a separate case management statement, any two or more parties may file a joint statement. (Effective 7/1/08)

3.5.3 Continuances of Case Management Conference. A noticed conference may be continued by stipulation of the parties for a period not to exceed 15 days from the original date set for the hearing. The Court may continue the Case Management Conference for the convenience of the Court's calendar, including informal coordination of related cases, consolidation of hearings on other pending motions, or other good cause. The Court may, in its discretion, impose a $20 continuance fee if the circumstance causing the continuance is caused by one or more of the parties. The fee must be paid prior to the entry of judgment or dismissal. (Effective 7/1/08; amended January 1, 2010)

3.5.4 Time and Department for Case Management Conferences. Conferences shall be held in the department to which civil matters are assigned or as directed by the Presiding Judge. The first conference shall ordinarily be heard as calendared by the Judicial Secretary and thereafter conferences shall be held as ordered by the Court. Telephone conferences shall be governed by Local Rule 3.5.7. (Effective 7/1/08)

3.5.5 Case Management Settlement Conference Statement. The Case Management Settlement Conference Statement shall be submitted to the Court no

later than five court days before the date set for the settlement conference as set forth in Rule 3.1380(c) of the California Rules of Court. (Effective 7/1/08; amended January 1, 2010).

3.5.6 Service of Parties. Plaintiffs shall have served the summons and complaint on all defendants and shall have filed the proofs of service by the date of the first Case Management Conference. Alternatively, plaintiff may submit an application and order for publication of summons within this period. Parties shall not submit applications for extension of time for service of summons. Requests for additional time to serve summons will be considered at the Case Management Conference. (Effective 7/1/08)

3.5.7 [Deleted January 1, 2010]

3.5.8 [Deleted January 1, 2010]

3.5.9 Uninsured Motorist Cases. To allow for arbitration of the plaintiffs' claim, the rules in this Division shall not apply to a case designated by the Court as "uninsured motorist" until 180 days after the designation. With the filing of the complaint or within 10 days after discovery that the case is an "uninsured motorist" case, plaintiff shall file an ex parte application for designation as "uninsured motorist." If the case is not dismissed 180 days after the designation, the Court shall issue an order to show cause why the case should not be dismissed. (Effective 7/1/08)

3.5.10 Reporting of Case Management Conference. Case Management Conferences are not reported unless otherwise directed by the Court. (Effective 7/1/08; amended January 1, 2010)

3.5.11 Referral to Arbitration. If plaintiff designates the case as eligible for judicial arbitration under Code of Civil Procedure § 1141.11, and defendant's response indicates that the case is otherwise, eligible, the Court may, on its own motion, vacate the Case Management Conference and refer the matter to judicial arbitration. If the parties fail to designate that the case is or is not suitable for arbitration, the Delay Reduction Coordinator may inquire from the parties whether the case is suitable for arbitration, and if the parties all agree to arbitration, the Court may order the matter so referred and vacate the Case Management Conference. (Effective 7/1/08; amended January 1, 2010).

Chapter 6 Case Management Conference Orders.

3.6.1 Type of Order Judge May Enter. Following any case management conference conducted pursuant to this Division, the Judge conducting the conference may enter orders as may be necessary for the conduct of the conference, including continuance of the conference or discovery matters. (Effective 7/1/08)

3.6.2 Order Governs Further Proceedings. Any such Order shall, until modified, govern all further proceedings in the case. (Effective 7/1/08)

3.6.3 Failure to Comply May Result in OSC re: Sanctions. Failure to comply with the orders of the Court in any Case Management Conference may result in the Court imposing monetary sanctions under Code of Civil Procedure § 177.5, or other sanctions under Government Code § 68608(b), including dismissing actions or striking pleadings, if it appears that less severe sanctions would not be effective after taking into account the effect of previous orders or previous lack of compliance in the case. (Effective 7/1/08; amended January 1, 2010).

Chapter 7 Case Management - Dismissal Calendar.

3.7.1 Definition. The Court periodically shall hear a dismissal calendar for cases which are eligible for dismissal under the provisions of Part 2, Title 8, Chapter 1.5 (commencing with 583.110) of the Code of Civil Procedure. (Effective 7/1/08)

3.7.2 Setting. Cases shall be placed on this calendar on motion of the Court. Parties shall be given 20 days' notice, unless longer notice is required by statute or by the California Rules of Court. (Effective 7/1/08)

3.7.3 Opposition. A party desiring to oppose a motion to dismiss must file a written objection not less than 5 days before the date calendared for hearing the motion. Such an objection shall state concisely the grounds for opposition to any such motion, and if opposition is based on a stay of proceedings issued by another Court a copy of the document on which the party relies for asserting such a stay exists, and a brief statement outlining the status of the matter creating such a stay. (Effective 7/1/08)

3.7.4 Dismissal. When no opposition is filed in accordance with these rules, the matter shall be summarily dismissed on the date calendared for hearing, notwithstanding any later appearance or opposition. (Effective 7/1/08)

Chapter 8 Miscellaneous Provisions

3.8.1 Delegation. The Presiding Judge may delegate the functions of the Court Clerk set forth in this Division in setting, continuing or vacating Case Management Conferences to a designated Court employee who shall be called the Civil Delay Reduction Coordinator. (Effective 7/1/08)

DIVISION 4 CRIMINAL LAW MATTERS

Chapter 1 General Matters.

4.1.1 Continuances in Criminal Cases. The continuance policy of this Court relating to any state of a criminal proceeding is necessarily governed by the provision of the Penal Code. It is the stated policy of this Court that all felony cases shall be brought to trial within sixty (60) days of the finding of the indictment or the filing of the information. Time waivers are discouraged and shall not be accepted except in unusual and extreme circumstances. (Effective 7/1/08)

4.1.2 Criminal Discovery Motions. All discovery in criminal cases shall be governed by Part 2, Title 6, Chapter 102, commencing with Penal Code 1054. (Effective 7/1/08)

4.1.3. Moving Parties for Motions under Penal Code § 995. Documents accompanying such motions shall include the following:

(a) A brief statement in summary form of the facts as set forth in the transcript;

(b) A statement of the issues specifically identifying in what regard the People's case is defective;

(c) References to testimony in the transcript that the moving party intends to rely upon must be set forth specifying page and line number;

(d) A statement of authorities upon which the moving party relies.

(Effective 7/1/08; amended January 1, 2010)

4.1.4 Motion under Penal Code 1538.5 to Suppress Evidence.

(a) Moving papers accompanying such motions shall include a brief statement in summary form of the facts upon which the moving party relies in support of the motion. Moving papers accompanying such motions shall include a complete specification of the exact matters and things the defendant wants to be suppressed or which the District Attorney wants to have admitted.

CAVEAT: “All the evidence seized on..., etc.” is not a proper specification.

(b) The moving papers designating a motion to suppress pursuant to Penal Code 1538.5 shall specifically describe and list the evidence which is the subject of the motion to suppress, and shall specifically state the theory or theories which shall be relied upon and urged for the suppression of evidence, and cite the specific authority or authorities which will be offered in support of the theory or theories upon which suppression of the evidence is urged.

(c) If the moving party intends to rely upon some testimony in the transcript, the moving papers shall contain references to such testimony specifying the page and line number of the transcript.

(d) If the moving party intends to present testimony, the following must be done:

(1) The first page of the moving papers shall so state and shall further set forth an estimate of the time required for such testimony.

(2) Notice of such intent must be given to the Court and opposing counsel not less than ten days in advance.

(3) The moving party shall be responsible for assuring the presence of the witnesses he or she intends to call.

(4) Points and Authorities in support of and in opposition to the motion shall be filed and served on the opposing party. The absence of such a memorandum may be construed by the Court as an admission that the motion is not meritorious and cause for its denial.

(Effective 7/1/08)

4.1.5 Forfeiture and Reinstatement of Bail; Resumption of Liability on Bail Bonds

. The general procedure for a motion to vacate forfeiture of bond is as follows:

(a) All motions to vacate forfeiture and exonerate or reinstate bonds in the Superior Court shall be filed in the criminal case.

(b) A notice of motion shall be filed setting forth the date and time of the hearing. A supporting declaration stating the specific grounds upon which the motion is based and, unless there is a statement that the surety, or his agent, has surrendered the defendant, also indicating non-collusion of the surety.

(c) Pursuant to Penal Code § 1306(b), if the Court grants relief from forfeiture, the Court will impose a fee reflecting the actual costs of returning a defendant to custody, except in cases where the Court determines that in the best interest of justice no costs shall be imposed. Where the fee is levied, it shall be no less than $150.00, reflecting the minimum cost incurred by the Court and the People as found by this Court.

(Effective 7/1/08, amended 7/1/11)

4.1.6 Preliminary Criminal Matters. Any party to a criminal action intending to raise preliminary matters before the trial court should orally specify the matters to be raised and the reasons therefor at the trial confirmation. These include:

(a) A detailed specification of the preliminary matters to be brought before the trial court and the reasons therefor shall be included in the written motion and papers submitted to the Court.

(b) Preliminary matters include, but are not limited to, motions in limine, motions to exclude confessions or admissions, motions to suppress where permitted to be raised in the trial court, and motions to strike prior convictions.

(c) An estimate of the time required for the preliminary matters to be heard.

(Effective 7/1/08)

4.1.7 Mental Capacity Issues and Pleas.

(a) It is the policy of the Court that requests for psychiatric examination and pleas of “not guilty by reason of insanity” are brought before the Court at the earliest possible time and as far in advance of the trial date as practicable.

(b) If a “not guilty by reason of insanity” plea is reserved pending a psychiatric examination pursuant to Evidence Code § 1017, a “not guilty by reason of insanity plea” shall be entered within five court days following the receipt of such report.

(Effective 7/1/08)

4.1.8 Evidentiary Hearings. Formal evidentiary hearings on a probation officer’s report and pronouncement shall only be set and heard upon the filing of a declaration by the defendant and/or his or her attorney. The declaration shall set forth the reasons and need for such a hearing. Said declaration shall be filed four (4) court days before the matter is set for hearing or sentencing and shall include proof of service of a copy on the attorney for the plaintiff. (Effective 7/1/08)

4.1.9 Disposition of Exhibits. Pursuant to Penal Code § 1417.2, any exhibits offered by the state or defendant shall be returned to the party offering them, by order of the Court, where the exhibit poses a security, storage, safety, or health problem. A photographic record shall be substituted for said exhibit. Exhibits which are within this category are:

(1) Any type of explosive powder

(2) Any explosive chemical such as toluene, ethane, etc.

(3) Any explosive devise (i.e. pipe, bomb, grenade)

(4) Any container which contains a flammable liquid

(5) Any canister containing tear gas or mace

(6) Any rags soaked with any flammable liquid

(7) Phencyclidine, methamphetamine, corrosive liquid pyrrolodine, morpholine, or piperidine in liquid form

(8) Samples of blood, urine, human or animal tissue or other items requiring refrigeration and/or humidity-controlled storage

(9) Any controlled substance that requires special destruction under the State of California as being a hazardous material, which would include any cocaine, methamphetamine or heroin.

All such substances will be returned to the district attorney’s office or the agency that confiscated the controlled substance and who has presented it as evidence in court in a criminal action or proceeding. It shall be returned by stipulation of Counsel as provided in Penal Code § 1417.2.

If exhibits or evidence are presented by either party which are deemed by the Court, in its discretion, as a health or safety hazard, or which may otherwise interfere with the Court’s orderly business, the Trial Judge may direct such exhibits or evidence to be placed in storage containers or such applicable containers so as to minimize the intrusiveness or safety concerns of such exhibits or evidence.

Counsel are also specifically directed to place evidence or exhibits with a pungent odor into plastic containers wherever practicable when they are brought into Court.

(Effective 7/1/08, amended 7/1/11)

4.1.10 Reporter's Notes of Capital Cases. So as to comply with the Supreme Court Order of November, 1989, all records in capital cases, including court reporter's notes, shall be turned in to the Clerk's Office upon completion of the case. Completion means when the transcript is completed and filed. The Clerk shall maintain all death penalty records in a designated place in each District until ordered destroyed by the Supreme Court. (Effective 7/1/08)

4.1.11 Sound Recordings Offered at Trial. Any party intending to offer any sound recording in evidence at trial shall prepare a transcript of the sound recording at least fourteen (14) days before trial and serve such transcript and copy of the recording on all other parties. Any party disputing the accuracy of the transcript shall prepare his own transcript of the sound recording identifying the disputed portions and serve that transcript on all other parties no later than three (3) days before trial. When disputed, the parties shall meet and confer in a good faith effort to resolve their differences.

a. In the event that the differing versions cannot be resolved by the parties, they shall alert the Trial Judge at the final trial confirmation.

b. Each transcript shall be certified by the person preparing it. In the event the sound recording is in a language other than English, the certification shall also include a certification by the person translating the sound recording.

c. The propounding party shall prepare a sufficient number of copies of the transcript for distribution as ordered by the Court.

(Effective 7/1/08)

4.1.12 In the event that the differing versions cannot be resolved by the parties, they shall alert the trial Judge at the trial readiness hearing to reserve an appropriate amount of time in the assigned trial court to settle the dispute before summoning a jury panel. (Effective 7/1/08)

4.1.13 Nothing herein is intended to contravene the applicable rules of discovery or valid claims of confidentiality provided by law. If a party is entitled to maintain the confidentiality of a sound recording and chooses to do so until trial, a proposed settled transcript shall be lodged with the Court when the sound recording is marked for identification. The opposing party shall be allowed a reasonable opportunity to listen to the sound recording, prepare a proposed transcript and lodge objections before the sound recording is received as evidence. (Effective 7/1/08)

4.2.1 Trial by Written Declaration. Any defendant, regardless of where he or she resides, may elect to have a trial by written declaration for traffic violations described in Vehicle Code § 40902. A trial by declaration shall be processed and determined in accordance with Vehicle Code § 40902. A request for trial de novo pursuant to Vehicle Code § 40902 shall be filed within 20 days after mailing of the notice. (Effective 7/1/08, amended 7/1/10).

4.2.2 Dismissal of Correctable Traffic Offenses. With respect to violations specified in Vehicle Code § 40303.3, the Clerk shall enter an order of dismissal pursuant to Vehicle Code § 40522 on timely presentation of proof of correction and payment of the required fee. (Effective 7/1/08)

4.2.3 Policies for Attendance at Traffic Violator School.

a. The following shall apply to all applications for Traffic Violator School:

1. Fine and fee is payable at the branch court according to branch policy
2. Any speed violation must be less than 26 miles per hour over the applicable limit;
3. The alleged violator shall have no prior traffic school in last 18 months (from violation date to violation date);
4. The time to complete school is 90 days from receipt of payment.
5. Defendant must request traffic school on or before the due date on the citation or any court-granted extension to the due date.

b. However, it is the procedure of this Court that persons with the following situations must appear in court to request traffic school:

1. Defendant did not request traffic school prior to the due date on the citation or any court-granted extension to the due date;
2. A speeding violation is in excess of 25 miles per hour over the applicable speed limit;
3. More than one point for a moving violation appears on the defendant's DMV record in the last 18 months (from violation date to violation date).

(Effective 7/1/08; amended January 1, 2010, July 1, 2010).

4.2.4 Each person permitted or ordered to attend traffic violator school shall pay a fee equal to the bail for the offense for which he or she was cited. In addition each person shall also pay administrative fees in the total amount of $69.00. Payment for both such fees shall be made to the Division which permitted or ordered the traffic violator school attendance. (Effective 7/1/08, amended 7/1/10)

4.2.5 Transcripts. Where a party or attorney has been found to have repeatedly ordered transcripts of hearings or trials in preparation for appeal, but continually failed to file such an appeal, the Traffic Court judge has the discretion to deny the request pending the filing of an affidavit by the party or attorney that the he or she has a good faith and reasonable suspicion that appealable error occurred at the hearing or trial. (Effective 7/1/10).

DIVISION 5 DOMESTIC RELATIONS AND JUVENILE MATTERS

Chapter 1 General

5.1.1 Domestic Relations Forms. All applications in matters coming under the Divisions 6 through 12, inclusive, of the Family Code, and related papers, shall be prepared so far as possible on forms approved by the Judicial Council. The Clerks office has approved Judicial Council forms available for counsel and parties. (Effective 7/1/08)

5.1.2 Marvin Cases. Matters involving issues coming within the *Marvin v. Marvin* (1976) 18 Cal.3d 660, case shall be governed by the statutes, cases, and rules applying to non-family law civil cases except that:

(a) A form pursuant to Family Code § 3409 shall accompany the petition if minor children are involved;

(b) An Order to Show Cause may be issued;

(c) An Income and Expense Declaration shall be required in accordance with Rule 5.118(b) of the California Rules of Court.

(Effective 7/1/08)

5.1.3 Timely Filing of Papers. All orders to show cause, notices of motion, income and expense declarations, and proofs of service must be filed in the office of the Clerk not later than 5:00 p.m. three (3) court days preceding the day said order or motion is to be heard. An order to show cause or motion will not be placed on the

calendar for hearing unless the order to show cause or notice of motion, together with proof of service, is filed in the office of the Clerk in compliance with the preceding sentence. (Effective 7/1/08)

5.1.4 Orders Shortening Time. An Order for Shortening Time of Notice, or an Order to Show Cause or Notice of Motion shall be made only after the filing of an affidavit or declaration showing an urgent need for said order, or showing that an irreparable injury may result unless the time is shortened. In such emergency cases, the Clerk shall place the order to show cause or notice of motion on the calendar upon the filing of said papers, together with the Order Shortening Time of Notice and proof of service, which said papers shall be filed with the Clerk not later than 8:30 a.m. on the day of the hearing. (Effective 7/1/08)

5.1.5 OSC Re Support or Fees. All Orders to Show Cause re payment of spousal support, child support, and attorney's fees shall be supported by an appropriate declaration together with a complete income and expense declaration on forms provided by the Clerk's Office. (Effective 7/1/08)

5.1.6 Moving Papers Accompanied by Blank Forms. The moving parties' supporting declaration and income and expense declaration shall be served with the Order to Show Cause, which shall be accompanied at the time of service by two blank forms of the petitioner's/respondent's income and expense declaration. (Effective 7/1/08; amended January 1, 2010).

5.1.7 Responding Party to Complete Forms. The party, upon being served, shall complete said income and expense declaration, in duplicate, and serve the moving party's attorney with one and file the other completed income and expense declaration with the Clerk three court days prior to the hearing. In the discretion of the Court, a respondent who appears in pro per may be allowed to file his or her income and expense declaration at anytime prior to actual hearing upon the Order to Show Cause. (Effective 7/1/08)

5.1.8 Fees. The required filing fee shall be waived if the party has submitted a petition to proceed in forma pauperis and it reasonably appears that such person could not otherwise proceed without using the funds required for the necessities of life. (Effective 7/1/08)

5.1.9 Setting Order to Show Cause in Family Law Matters. The Calendar Clerk shall set all Orders to Show Cause in family law matters to be heard in the family law department to which such case is assigned. (Effective 7/1/08; amended January 1, 2010)

5.1.10 Assignment for Trial Setting. Upon filing an at-issue memorandum, the matter shall be assigned for trial setting to the family law department to which such case is assigned. (Effective 7/1/08; amended January 1, 2010)

5.1.11 [Deleted January 1, 2010]

5.1.12 [Deleted January 1, 2010]

5.1.13 Non-Appearance of Counsel. When a matter comes on calendar and there is no appearance by counsel, the matter will be ordered stricken from the calendar unless:

(a) The return of service of the copy of the order to show cause theretofore issued by the Court is on file or the Clerk has been advised that such service has been effected, and,

(b) The Clerk has been notified to request the Court for a continuance of said matter.

(Effective 7/1/08)

5.1.14 Counsel's Duty. If an attorney is unable to be present at the time of the call of the case on calendar he or she must, prior to the call, inform the courtroom Clerk of that department of the reason for and extent of such delay. Failure to appear or furnish such information shall be deemed sufficient cause for placing such matter off the calendar or for proceeding to hear the matter in the absence of counsel as the Court in its discretion may determine. (Effective 7/1/08)

5.1.15 Restoration to Calendar. In the extraordinary situation where there is good cause therefor, the Court may order a matter stricken from the calendar to be restored to the calendar upon such conditions as the Court shall deem necessary or desirable. (Effective 7/1/08)

5.1.16 Restraining and Temporary Orders. All orders restraining either party from annoying, harassing, or molesting the other, and from disposing of property except in the ordinary course of business or for the necessities of life, shall be presented to the civil clerk's office no later than 11:00 a.m. the day immediately preceding the day of the hearing. Specific facts must be alleged in the requests for other than standard restraining orders; facts sufficient to justify the granting of such orders. If the party against whom such an order is sought has been represented in the action by counsel, such counsel shall be informed of the nature of the request and the time of such request in order to allow opposing counsel to appear and comment on

the requested relief. If physical abuse is alleged, the supporting declaration must be specific and contain the dates and details. Declarations for any type of relief must set forth facts, not conclusions, justifying the relief sought. Counsel has the additional duty to fully disclose those facts. (Effective 7/1/08)

5.1.17 Hearing Order to Show Cause. All Orders to Show Cause shall be heard before the law and motion judge at the time and the days as the Presiding Judge and/or Calendar Clerk may from time to time designate. In custody matters, the Court may contact the mediator for intake evaluation. If it appears that a report from the mediator is appropriate, a stipulation on a form provided shall be signed. All stipulations must be reduced to writing and signed by the parties and their counsel. Whether payments are to be made by one party on community obligations prior to trial, or whether those payments shall be reimbursable to that party prior to an equal division of the community property at trial, or whether such payments shall be considered as support shall be set out in the stipulation. In cases in which it is anticipated that custody and division of assets will be contested, counsel are requested to seek a bifurcation of those issues for trial.

Caveat: Counsel should always bear in mind that what is in the best interests of the children is of paramount importance and that there is a substantial risk of doing irreparable harm to the children if the matter of the children's custody is litigated in the same proceeding as the division of property.

(Effective 7/1/08)

5.1.18 Mandatory Settlement and Conference. All cases involving a trial estimate of one day or more shall be set for settlement conference. Settlement conference shall be held in accordance with the Court policy regarding family law matters and counsel shall comply with such policy. In the event of a failure to comply therewith, the Court may impose appropriate sanctions. The parties shall be present at the settlement conference, and if a settlement is effected, a judgment may be obtained. All judgments shall be approved as to the content by opposing counsel prior to submission to the Judge for signature. In the event settlement is not achieved, cases taking one day or less shall be set on Friday on the Short Cause Calendar for assignment. At the trial, the parties shall be restricted to those issues set out in the minute order prepared following the settlement conference. (Effective 7/1/08)

5.1.19 Appraisal. In cases in which the value of assets is in dispute, the parties must be prepared to introduce legally sufficient evidence to establish value. Counsel are urged to consider stipulating that a single appraiser may make an appraisal and that the results of such appraisal shall be admissible in written form thereby waiving the right of cross examination. The Court may on its own motion appoint an appraiser at the expense of the parties, to assist in determining value.

(Effective 7/1/08)

5.1.20 Default Hearings. Default hearings shall be set by the Calendar Clerk for 8:30 a.m., Monday through Friday. Party/Counsel shall submit with the request for setting a proposed judgment and notice of judgment prepared for signature and filing at the time of the hearing. If a party is receiving public assistance, a waiver of spousal support should not be permitted. Unless special circumstances exist, if the children of the parties are receiving public assistance, child support should be paid through and enforced by the District Attorney. (Effective 7/1/08)

5.1.21 Family Law Default. The Clerk shall not set any Family Law Default for hearing until the party or counsel requesting such setting has provided to the Clerk the following:

(a) A fully completed current income and expense declaration in the form prescribed by California Rules of Court, Rules 5.122 and 5.124(a); or,

(b) A proposed judgment, and Judicial Council Form 1285.27 has been fully completed and signed by each party; or,

(c) A declaration under penalty of perjury on a form to be provided by the Clerk declaring there are no minor children, there are no requests for child or spousal support, there is no property subject to the jurisdiction of the Court, there is no request for attorney fees, and there is no request for the Court to reserve jurisdiction over any of the above issues.

(Effective 7/1/08)

5.1.22 Family Law and Motion Matters. All family law and motion matters shall be set in the civil law and motion department at 8:30 a.m. on Monday through Friday of each week. (Effective 7/1/08)

5.1.23 Child and Spousal Support. The Court complies with Family Code § 4055 in setting child support. The Court uses CFLR Dissomaster software as a basis for determining temporary spousal support. Each party and/or the party's attorney shall provide to the Court at the time of hearing his calculations as to the amount of support to be paid. (Effective 7/1/08)

5.1.24 Counsel may submit printouts from CFLR Dissomaster or other computer software which have been approved pursuant to Family Code § 3830 as the basis for counsel's calculation of child or spousal support without submitting expert testimony or evidence as to the accuracy of such a program. (Effective 7/1/08)

5.1.25 Charges for Child Custody Mediation and Investigation. The Court

determines that child custody mediation is “visitation work,” for which the costs may be charged under Family Code § 3112. (Effective 7/1/08)

5.1.26 Mediation Charge. There shall be no charge for the initial mediation orientation or initial mediation appointment. Subject to the review of the Court, Family Court Services may charge $200.00 to a party who failed to attend a scheduled orientation or mediation session without notifying the Family Court Services office personnel no less than 24 hours in advance. For each subsequent mediation, the Family Court Services division of the Court shall collect a charge of $100.00 per parent. This charge may increase from time to time by Policy Memorandum. (Effective 7/1/08)

5.1.27 Investigation Charge. For each matter referred by the Court for an investigation or evaluation, Family Court Services shall collect a charge of $600.00 per parent. This charge may be increased from time to time by Policy Memorandum. (Effective 7/1/08)

5.1.28 Ability to Pay. If a party believes that he or she does not have the ability to pay the cost of the mediation investigation, the party seeking relief shall file a written request for relief (on a form specified by the Court) from the charge and a complete and current Judicial Council Income and Expense Declaration Form with the Clerk setting forth, assets, all income and expenses, including copies of pay stubs for the previous month or a statement by the applicant’s employer of wages earned in the last 30 days. The request and Income and Expense Declaration shall be filed not less than twenty (20) days before either the scheduled mediation or the first interview on the investigation or evaluation. The Court shall review the application, and grant or deny the application within five (5) days of the filing of the request. Failure to file a complete Income and Expense Declaration shall be sufficient grounds for denial of the application. The Court may grant the application as to part of the charge, or all of the charge. (Effective 7/1/08)

5.1.29. Waivers of Court Charges and Costs. Parties who have filed an Application for Waiver of Court Fees and Costs who seek to have the charge imposed for mediation waived must submit a supplemental application under California Rules of Court 3.62. Applicants for waiver of charges will be considered, on the same basis as waiver of filing fees. (Effective 7/1/08)

5.1.30 Stipulation for Private Mediation or Dispute Resolution. Upon the stipulation of the parties, and upon the Court’s finding that such an appointment is in the best interests of the minor child or children, the Court may appoint an arbitrator, appraiser, mediator, custody investigator, psychologist, psychiatrist, social worker, or family counselor to assist the Court in resolving custody, visitation or property

disputes between the parties. The parties stipulating to such an appointment shall be entirely responsible for compensation of such an appointed person. The Court may apportion the payment of costs of such a private mediator or other individual between the parties. With respect to all custody and visitation matters, the Court shall reserve jurisdiction to enter orders enforcing or modifying any resolutions reached through private mediation. (Effective 7/1/08)

5.1.31 Disqualification of Mediator Evaluator or Mental Health Professional. Court employees or individuals (including mental health professionals) appointed by the Court to conduct mediations pursuant to Family Code § 3170, to conduct investigations pursuant to Family Code Section § 3110, or appointed pursuant to Evidence Code § 730, shall not be subject to a peremptory disqualification by any party to the proceeding. Any objection to mediation or investigation by a specific individual shall be made by noticed motion to the Court, except that any objections within Family Court Services should be made, in the first instance, to the director of Family Court Services. Further, objections to mediation or investigation by a specific individual may be made on ex parte notice upon an appropriate showing of need. (Effective 7/1/08)

5.1.32 Contact between Court Investigator/Mediator and Minor Children. In conducting an interview with minor children pursuant to a court investigation under Family Code § 3110 or pursuant to court order under Evidence Code § 730, the investigator, mediator, or other mental health professional shall be governed by the following guidelines:

(a) The investigator, mediator, or other mental health professional should inform the minor that his or her parents may read the report;

(b) The investigator, mediator, or other mental health professional who sees the child with one parent should see the child with the other parent unless there are serious and substantiated allegations of abuse or criminal conduct between the parent and the child and the investigator, mediator, or other mental health professional determines that such an interview would not be in the child's best interests;

(c) Interviews with siblings may be together or separate in the discretion of the investigator, mediator, or other mental health professional conducting the investigation or evaluation;

(d) Mediations, investigations or evaluations should be based whenever possible on interviews with both parents. In circumstances where one parent is unavailable for interview, the mediator, evaluator or investigator may conduct an interview with one parent alone, and may make a recommendation based on all of the information available to the mediator, evaluator or investigator.

(Effective 7/1/08)

5.1.33 Custody Recommendations by Family Court Services to Court. Madera County is a "recommending county". In all mediations by a mediator appointed by the Court or in any mediation through Family Court Services, the mediator shall submit a report and recommendation to the Court. The recommendation shall contain any agreement between the parties, together with the recommendation of the mediator on any custody or visitation issues between the parties upon which the parties have not agreed. Copies of this report shall be provided to parties (or their counsel where parties are represented by counsel). The report shall be filed and shall be considered by the Court as evidence without further stipulation of the parties. (Effective 7/1/08)

5.1.34 Examination of the Mediator.

(a) In the event that any party shall desire to examine the mediator concerning any report prepared by the mediator, said party shall subpoena the mediator as required by Government Code § 68097.2. Except where the report is not filed ten business days before the hearing, the subpoena and the required deposit under Government Code § 68097.2 shall be delivered to the office of Family Court Services not less than ten (10) business days before the date of attendance.

(b) The party subpoenaing the mediator to appear at a hearing is required to pay the fees incurred for a full day of testimony, even if the hearing is continued or if the mediator is not called as a witness, subject to the mandates and limitations of Government Code § 68097.2, unless the subpoenaing party gives the mediator written notice three court days in advance of the hearing or the Court directs otherwise for good cause shown.

PLEASE NOTE: Time reasonably spent preparing for any hearing will be charged as expenses pursuant to Government Code § 68097.2.

(Effective 7/1/08; amended January 1, 2010.)

5.1.35 Documents To Be Delivered. In any action referred by the Court for mediation, or investigation, the party filing any of the documents described below is to deliver a copy to the office of Family Court Services:

1) A conformed copy of the Petition, or initial pleading

2) A conformed copy of the Response

3) A "Proof of Service" for each document, and

4) An Order After Hearing following adjudication of the pending matters

(Effective 7/1/08)

Chapter 2 Juvenile Dependency Cases -Appointment of Counsel

5.2.1 Timeliness. Attorneys for parties are required to adhere to the statutory

timelines for all hearings. Time waivers will be accepted and continuances granted only on a showing of exceptional circumstances. Timelines for hearings are as follows:

(a) Detention Hearings. Detention hearings shall be heard no later than the end of the next court day after a petition has been filed. (Welfare & Inst. Code § 315; CRC 5.666)

(b) Contested Jurisdiction Hearing. If the child is not detained, the hearing on the petition shall begin within 30 calendar days from the date the petition was filed. If the child is detained, the hearing on the petition shall begin within 15 court days from the date of the detention order. (Welfare & Inst. Code § 334; CRC 5.680)

(c) Disposition Hearing. If the child is detained, the hearing on disposition must begin within 10 court days from the date the petition was sustained. If the child is not detained, the disposition hearing shall begin no later than 30 calendar days after jurisdiction is found; (Welfare & Inst. Code § 358; CRC 5.686)

(d) Six Month Review Hearing. The Court is required to review the status of every dependent child within six months of the declaration of dependency and at least every six months thereafter; (Welfare & Inst. Code §§ 364, 366, 366.21; CRC 5.710)

(f) Twelve Month Review. The Court is required to review the status of every child who has been removed from the custody of a parent or guardian within twelve months of the declaration of dependency; (Welfare & Inst. Code § 366.21; CRC 5.715)

(g) Eighteen Month Review. If the child is not returned at the twelve month review, the Court shall conduct a review no later than eighteen months from the date of the original detention; (Welfare & Inst. Code §§ 366.21, 355.22; CRC 5.720)

(h) Notice of Intent to File Writ Petition. A notice of intent to file a petition for extraordinary writ shall be filed within 7 days of the date of the order setting a hearing under Welfare & Inst. Code § 366.26, with an extension of 5 days if the party received notice of the order only by mail; (CRC 8.842)

(i) Petition for Writ. A petition seeking writ review of orders setting a hearing under Welfare & Inst. Code 366.26 shall be served and filed within 10 days after the filing of the record in the reviewing court; (CRC 8.482)

(j) Response to Writ Petition. Any response to a writ petition shall be served and filed within 10 days after the filing of the writ petition or within 10 days of receiving a request for a response from the reviewing court; (CRC 8.482)

(k) Selection Hearing. A selection hearing for Permanent Plan shall begin within 120 days of the review at which reunification services are terminated and a hearing under Welfare & Inst. Code 366.26 ordered; (Welfare & Inst. Code §§ 366.31, 399.22; CRC 5.710, 5.715, 5.720)

(l) Notice of Appeal. Notice of Appeal shall be filed within 60 days after the rendition of the judgment

(Effective 7/1/08)

5.2.2 Experience, Training, Education, Standards of Representation. Every party in a dependency hearing who is represented by an attorney shall be entitled to competent counsel as defined in California Rule of Court 5.660(b). The law firm designated by the Court for appointment as counsel in dependency proceedings shall be responsible for the following:

(a) The establishment of written procedures for screening applicants seeking to represent parties, including but not limited to (1) instructions as to whom application shall be made, (2) the information required for application, and (3) the process for reviewing applications and interviewing applicants.

(b) The establishment of written requirements and procedures for qualification of attorneys to be included in the list of those to be appointed to represent parties, including but not limited to those requirements described in CRC 5.660(d). For example: (1) demonstrated familiarity with relevant statutes and rules of court; (2) knowledge of court procedures and forms, including restraining and custody orders, transfers out, Welfare & Inst. Code § 388 motions, placement, requirements, de facto parents, and participation by interested persons, including relatives and confidentiality.

(c) The establishment of written minimum standards of representation including, but not limited to, those described in CRC 5.660(d)(4). For example: (1) requirements for frequency and extent of client contact, (2) duties to assist with resolution of the case, e.g., mediation, settlement, conferences, etc., (3) duties after disposition and on-going representation, and (4) filing of Notices of Appeal, Notices of Intent to File Writ Petition, and Writ Petitions.

(d) The establishment of minimum and maximum caseloads for attorneys representing parties in dependency proceedings.

(e) Copies of the procedures and standards described in rule 5.2.2 shall be lodged with the Court and made available to all juvenile and court judicial officers.

(Effective 7/1/08)

5.2.3 Appointment of Counsel for Parents or Guardians. In the absence of a known conflict of interest, the Court shall appoint the law firm of Ciummo and Associates to represent the mother and the law firm of Madera Alternate Defense to represent the father.

(a) If the parent or guardian is known and said parent or guardian lives within Madera County, counsel shall automatically be appointed. Other parents or guardians may be appointed counsel at the Court's discretion upon their request and showing of need for appointed counsel.

(b) Notification of the appointment shall be communicated as follows: The Clerk shall send written copy of notice of appointment to the appointed attorney and the

petitioner. Petitioner shall notify the parents of any appointment of counsel.

(c) Parents may be billed for the cost of counsel by the Revenue Services Division of the County Auditor-Controller in accordance with that office's procedure.

(d) The assigned law firm shall be responsible for assigning particular attorneys to each case.

(Effective 7/1/08)

5.2.4 Appointment of Counsel for Children. The Court shall appoint a wheel attorney from the conflict panel to represent those children the Court determines would benefit from the appointment of counsel.

(a) Counsel for all children shall automatically be appointed.

(b) Notification of the appointment shall be communicated as follows: Notice of appointment shall be sent to the appointed attorney and to the petitioner.

(c) Procedures for billing a parent or guardian for the cost of the child's appointed counsel shall be established by the Revenue Services Division of the County Auditor-Controller.

(d) The law firm appointed shall be responsible for assigning particular attorneys to each case.

(Effective 7/1/08)

5.2.5 Conflicts. In the event of a conflict, the Court shall appoint a wheel attorney. (Effective 7/1/08)

5.2.6 Client Complaints. Complaints or questions by a party regarding representation shall be addressed as follows:

(a) Complaints or questions shall initially be referred to any agency or law firm appointed to represent the client.

(b) If the issue remains unresolved, or if there is no designated agency or law firm, the party may submit the complaint to the Court in writing. The Court may conduct its own review of the complaint or question and take appropriate action if required.

(Effective 7/1/08)

5.2.7 Attorney for the Child. Counsel for the child in a dependency proceeding is charged with representation of the child's interests, including causes of action and other interests to be advanced or protected by administrative or judicial

proceeding.

(a) Absent exceptional circumstances, the attorney for the child shall have personal contact with the child regardless of age, and shall interview any child four years or older so the attorney may effectively represent to the Court how the child's wishes and interests may best be addressed.

(b) The attorney for the child shall investigate any interests of the child beyond the scope of the dependency proceeding and shall immediately advise the juvenile Court of information regarding any interest or right of the child to be protected or pursued in other judicial or administrative forums.

(c) Upon receipt of the request by counsel for instructions from the Court, the Court shall do one or all of the following:

A. Refer the matter to the appropriate agency for further investigation, and require a report to the Court and counsel within a reasonable time;

B. Authorize and direct the child's attorney to initiate and pursue appropriate action;

C. Appoint a guardian ad litem for the child if one is required to initiate and pursue appropriate action;

D. Take any other action to protect the interests and rights of child.

(Effective 7/1/08)

5.2.8 Information Received by Court Concerning the Child. If the Court receives information regarding an interest or right of the child from a person other than the attorney for the child, the Court may inform the attorney of record for the child of the information and ask the attorney to further investigate the matter. (Effective 7/1/08)

Chapter 3 Court Appointed Special Advocates (CASA).

5.3.1 The Child Advocate Program. The Superior Court may appoint child advocates to represent the interests of dependent children. In order to qualify for appointment, the child advocate must be trained by and function under the auspices of a Court Appointed Special Advocate Program (CASA), formed and operating under the guidelines set forth in California Rules of Court, Rule 5.655 and Welfare & Institutions Code § 356.5.

The CASA program shall report regularly to the Presiding Judge of the Juvenile Court with evidence that it is operating under the guidelines established by the National Court Appointed Special Advocate Association and the California State Guidelines for Child Advocates.

(Effective 7/1/08)

5.3.2 Child Advocates.

(a) Advocate's Functions. Advocates serve at the pleasure of the Court having jurisdiction over the proceeding in which the advocate has been appointed. In general, an advocate's functions are as follows:

1. To support the child throughout the court proceedings;

2. To establish a relationship with the child to better understand his or her particular needs and desires;

3. To communicate the child's needs and desires to the Court in written reports and recommendations;

4. To identify and explore potential resources which will facilitate early family reunification or alternative permanency planning;

5. To provide continuous attention to the child's situation to ensure that the Court's plans for the child are being implemented;

6. To the fullest extent possible, to communicate and coordinate efforts with the case manager/social worker;

7. To the fullest extent possible, to communicate and coordinate efforts with the child's attorneys; and

8. To investigate the interests of the child in other judicial or administrative proceedings outside Juvenile Court; report to the Juvenile Court concerning same; and, with the approval of the Court, offer his or her services on behalf of the child to such other courts or tribunals.

(b) Sworn Officer of the Court. An advocate is an officer of the Court and is bound by these rules. Each advocate shall be sworn in by a Superior Court Judge before beginning his or her duties, and shall subscribe the written oath describing the duties and responsibilities of the advocate.

(c) Specific Duties. The Court shall, in its initial order of appointment, and thereafter in any subsequent order, specifically delineate the advocate's duties in each case, which may include independent investigation of the circumstances of the case, interviewing and observing the child and other appropriate individuals, reviewing appropriate records and reports, consideration of visitation rights for the child's grandparents and other relatives, and reporting back directly to the Court as indicated. If no specific duties are outlined by court order, the advocate shall discharge his or her obligation to the child and the Court in accordance with the general duties set forth in subsection (a) above.

(Effective 7/1/08)

5.3.3 Release of Information to Advocate.

(a) Court Authorization. To accomplish the appointment of an advocate, the Judge making the appointment shall sign an order granting the advocate the authority to review specific relevant documents and interview parties involved in the case, as well as other persons having significant information relating to the child, to the same extent as any other officer appointed to investigate proceedings on behalf of the Court.

(b) Access to Records. An advocate shall have the same legal right to records relating to the child he or she is appointed to represent as any case manager/social worker with regard to records pertaining to the child held by an agency, school, organization, division or department of the State, physician, surgeon, nurse, other health care provider, psychologist, psychiatrist, mental health provider or law enforcement agency. The advocate shall present his or her identification as a Court-appointed advocate to any such record holder in support of his or her request for access to specific records. No consent from the parent or guardian is necessary for the advocate to have access to any records relating to the child.

(c) Report of Child Abuse. An advocate is a mandated child abuse reporter with respect to the case to which the advocate is appointed.

(d) Communication with Others. There shall be ongoing, regular communication concerning the child's best interests, current status, and significant case developments, maintained among the advocate, Department of Social Services (DSS), case manager, child's attorney, attorneys for parents, relatives, foster parents and any therapist for the child.

(Effective 7/1/08)

5.3.4 Advocate's Right to Timely Notice. In any motion concerning the child for whom the advocate has been appointed, the moving party shall provide the advocate timely notice. (Effective 7/1/08)

5.3.5 Calendar Priority for Advocates. In light of the fact that advocates are rendering a voluntary service to children and the Court, matters on which they appear should be granted priority on the Court's calendar, whenever possible. (Effective 7/1/08)

5.3.6 Advocate's Visitation Throughout Dependency. An advocate shall visit the child regularly until the child is secure in a permanent placement. Thereafter, the advocate shall monitor the case as appropriate until dependency is dismissed or the advocate is relieved from appointment. (Effective 7/1/08)

5.3.7 Family Law Advocacy. Should the Juvenile Court dismiss dependency and create a family law order pursuant to Welfare & Institutions Code § 362.4, the advocate's appointment may be continued in the family law proceeding, in which case the Juvenile Court order shall set forth the nature, extent and duration of the advocate's duties in the family law proceeding. (Effective 7/1/08)

5.3.8 Advocate's Right to Appear. An advocate shall have the right to be present and be heard at all court hearings, and shall not be subject to exclusion by virtue of the fact that the advocate may be called to testify at some point in the proceedings. The Court, in its discretion, shall have the authority to grant the advocate amicus curiae status, which includes the right to appear with counsel. (Effective 7/1/08)

5.3.9 Appearance by Consular Representative. In cases where a parent or minor is a citizen of a foreign nation, the Consul and/or an attorney or representative of the Consul of that nation shall have the right to appear and participate in the Court proceedings to the extent such is provided for by international agreement to which the United States is a signatory. (Effective 7/1/08)

DIVISION 6 [Reserved]

DIVISION 7 PROBATE, ADOPTION AND RELATED MATTERS

Chapter 1 Probate Filings and Orders.

7.1.1 Additional Notice Requirements. A copy of the petition shall be served with each notice of hearing when served on a person requesting special notice or where the petition is the accounting of a testamentary trustee. Where the fiduciary or attorney is requesting fees or commissions other than those computed by Probate Code §§ 10800 et seq., the notice of hearing and a copy of the petition shall be served on all interested parties. The proof of service shall show service of the copy of the petition as well as the notice of hearing. (Effective 7/1/08)

7.1.2 Notice by Clerk. The moving party shall prepare and submit to the Clerk as many copies of notices to be posted, published or mailed by the Clerk as the Clerk is required to post, publish or mail. Where the notice is to be mailed the moving party shall furnish to the Clerk envelopes addressed to those required to receive notice, with postage prepaid, and with the Clerk's address as the return address. (Effective 7/1/08)

7.1.3 Notice Required for Special or Temporary Letters. The party seeking special letters of administration, or temporary letters of guardianship or conservatorship shall give notice of the application to the surviving spouse, proposed ward or proposed conservatee, other persons who might be expected to seek letters and any other person who appears to be equitably entitled to notice. Unless otherwise ordered, the notice given shall be the notice required for ex parte orders in generic civil matters. When a petition for special or temporary letters has been filed, there must appear in the petition for special or temporary letters a showing of good cause why a petition for permanent letters has not also been filed. (Effective 7/1/08)

7.1.4 Heirs without Known Addresses. Where notice is mailed to an heir, devisee, or legatee at the County seat, an affidavit or declaration shall be filed with the proof of mailing showing due diligence made to locate that person. (Effective 7/1/08)

7.1.5 Copies of Handwritten Wills and Codicils; Translation of Foreign Wills. A typewritten copy of the will or codicil shall accompany the petition for probate if the document is handwritten. If the document is in a foreign language, it shall be accompanied by a translation, signed by the translator, together with an affidavit or declaration under penalty of perjury showing the qualifications of the translator. (Effective 7/1/08)

7.1.6 Wording of Probate Orders. Probate orders shall be worded so that their general effect may be determined without reference to the petition on which they are based. (Effective 7/1/08)

7.1.7 Time for Submitting Papers and Orders. All papers relating to a probate hearing, including the proposed order prepared by the moving party, shall be filed or lodged with the Clerk at least four (4) court days before the date of hearing. (Effective 7/1/08)

7.1.8 Uncontested Matters.

(a) Appearance of Counsel. Except as otherwise provided by law, all verified petitions in probate matters shall be deemed submitted without an appearance, except that the attorney shall appear on a petition for confirmation of sale of (1) real property or (2) personal property valued in excess of $100. The petitioner and the petitioner's attorney shall appear on all petitions for appointment of a guardian or conservator. As used in this rule, "verified" means verified by the petitioner. Before denying any petition where there is no appearance under this rule, the Court will continue the matter one week or until the next succeeding calendar day, whichever is later, to give the petitioner or petitioner's attorney an opportunity to appear. If there is no appearance or other response by the petitioner or petitioner's

attorney at the continued hearing, the Court may drop the matter from the calendar.

(b) Proposed Order in Matters Submitted Without an Appearance. In matters submitted without an appearance by a party or the party's attorney pursuant to Rule 7.1.8(a), an original and one copy of a proposed order bearing the date of submission shall be delivered to the Clerk for presentation, together with the case file, to the Judge at least two court days before the hearing.

Comment: It is the responsibility of the attorney to determine whether the matter has been approved or continued.

(Effective 7/1/08)

7.1.9 Orders for Family Allowance. The duration of an order for family allowance is limited to six months if no inventory and appraisement has been filed and to one year if an inventory and appraisement has been filed.

Comment: The Court discourages requests for retroactive (*nunc pro tunc*) payment of family allowance. Requests for a family allowance should be made in a timely fashion.

(Effective 7/1/08)

Chapter 2 Fees and Commissions.

7.2.1 Fees and Commissions in General. Assignments of property to attorneys or personal representatives in place of fees or commissions will not ordinarily be approved. All attorney's fees or personal representative's commissions shall be set forth as such and approved by the Court. All attorney's fees and personal representative's commissions shall be stated, along with an explanation of how the fees or commissions were calculated, even if an accounting is waived. (Effective 7/1/08)

7.2.2 Fees and Commissions in Advance.

(a) Decedents Estates. There is no authority for the payment of any fees or commissions in decedents estate in advance of a court order authorizing the same, unless the written consent of the residuary beneficiaries is filed with the Court and the amounts paid are reasonable and proper or unless it can be shown that payment of such fees was to the benefit of the estate.

(b) Trusts. Fees or commissions shall be paid only after the services to which they relate have been performed. The payment shall be in conformity with

the compensation provided in the trust instrument, if any, or otherwise be reasonable in amount.

(c) Guardianships and Conservatorships. Periodic payment of fees or commissions may be made with prior court authority pursuant to Probate Code § 2643. Without such prior authority, the Court will apply the same rule as in decedent's estates. The Court prefers that requests for fees for ordinary services be deferred until the first account.

(Effective 7/1/08)

7.2.3 Fees or Commissions Based on Fluctuating Values. In all accountings wherein fees or commissions are requested by the accounting party or his attorney based upon the fluctuating values of items constituting capital assets of the estate or trust, rather than the original or appraised values, the papers shall contain the following:

(a) A detailed statement, setting forth the original or appraised value of each item;

(b) A statement, showing the value of each item used as a basis for the request for fees or commissions, together with the date of valuation of the item; and,

(c) Proof by declaration or affidavit of service by mail at least ten days before the hearing of said petition of a notice of the date of hearing and a copy of the accounting on all persons having a beneficial interest in the trust.

(Effective 7/1/08)

7.2.4 Allowance on Account of Fees and Commissions. Allowances on account of statutory fees or commissions will be granted by the Court only in proportion to the work actually completed. Moreover, the last twenty-five percent (25%) of statutory fees or commissions will not be allowed before the approval of the final account and the decree of distribution, unless it can be shown that payment of a greater amount will benefit the estate. Until the final account is settled, the Court is unable to fix the total amount of statutory fees or commissions. Any allowance made before that time shall be low enough to avoid the possibility of overpayment. (Effective 7/1/08)

7.2.5 Determination of Statutory Fees and Commissions. If an accounting is waived, the statutory fee is to be based upon only the stated inventory. In such cases, no fees are to be paid on gains on sales or on receipts by the estate. (Effective 7/1/08)

7.2.6 Determination of Extraordinary Fees and Commissions. No appearance by the attorney or the parties will normally be requested where such petition is verified by the party and the fee does not exceed $750. However, all fees requested for extraordinary services shall be supported by a detailed description of such services. Each item that constitutes an extraordinary service shall be individually stated in the petition with a specific fee request for such service. The description shall indicate criteria that the Court may consider in awarding fees, such as complexity, size of the estate, result obtained, particular expertise brought to bear on the problem, time involved, and novelty of the issues. (Effective 7/1/08)

7.2.7 In proceedings under Probate Code 13650, for confirmation of community property to surviving spouse, all services shall be treated as extraordinary and described in detail. (Effective 7/1/08)

Chapter 3 Claims and Sales.

7.3.1 Creditor's Claims by Personal Representative. A noticed motion for approval of a creditor's claim filed by the personal representative, with service of the notice of motion on the heirs, is required unless:

(a) The claim is for reimbursement of funeral and last illness expenses and proof of payment is attached to the claim;

(b) The claim, together with all other claims of the personal representative except for reimbursement of funeral and last illness expenses, is less than $1,000; and,

(c) All persons beneficially interested in the estate approve the claim in writing.

(Effective 7/1/08)

7.3.2 Sale or Encumbrance of Estate Property. All petitions for the sale or encumbrance of estate property must be accompanied by a declaration under oath that the property sought to be sold is not specifically devised or bequeathed real or personal property. No specifically devised or bequeathed real or personal property shall be encumbered or offered for sale unless first approved by the Court on seven court days' notice to the specific devisee or legatee. (Effective 7/1/08)

Chapter 4 Accounts and Distribution.

7.4.1 Required Matters in a Petition for Final Distribution. In addition to items otherwise required by law, a petition for final distribution shall contain the following matters, unless set forth in the account and report:

(a) A full and complete description of all assets on hand.

(b) Facts specifically showing the entitlement of each heir to the portion of the estate to be distributed to that heir, including any information concerning predeceased children.

(c) A computation of the attorney fees and representative commissions requested.

(d) An accounting if assets are to be distributed to a trustee, conservator or guardian.

(e) An agreement to the distribution signed by each heir with each signature acknowledged if distribution of assets is to be made in kind and all persons will not share equally in each asset.

(f) A schedule of names showing the name of the claimant, amount claimed, date presented, date allowed, and if paid, the date of payment. As to any claims rejected, the date of rejection must be set forth and the original of the notice of rejection with an affidavit of mailing to the creditor must, be filed.

(g) The terms of any testamentary trust must be set out in full in the petition and order and not merely incorporated by reference.

(h) An itemization of costs for which counsel is seeking reimbursement. Ordinary overhead items, including but not limited to costs of duplication of documents, telephone calls, and automobile mileage are not proper cost items.

(i) A schedule showing the proration of taxes, fees, and costs.

(j) A statement of what property is separate and what is community.

(k) If distribution is to be made pursuant to an assignment of interest, the assignment shall be filed and acknowledged and the details of the consideration set forth.

(l) If distribution is to be made to a trust, either an acknowledged statement by the trustee accepting the property under the terms of the trust or a petition by the executor or administrator for the designation of a substitute trustee.

(m) If distribution is to be made to a minor or an incompetent, either facts showing compliance with Probate Code 3300 et seq. or current certified copies of letters of conservatorship or guardianship shall be filed.

(Effective 7/1/08)

7.4.2 Required Form of Accounts. All accounts filed in probate proceedings, including guardianships, conservatorships and trust accounts, shall contain a summary or recapitulation showing:

(a) Amount of inventory and appraisement, if first account, or amount chargeable from prior account.

(b) Amount of receipts excluding capital items.

(c) Gain on sales or other disposition of assets.

(d) Amount of disbursement.

(e) Loss on sales or other disposition of assets.

(f) Amount of property on hand.

(Effective 7/1/08)

7.4.3 A suggested form of summary is as follows:

SUMMARY OF ACCOUNT

The petitioner is chargeable, and is entitled to the credits, respectively as set forth in this summary of account. The attached supporting schedules are hereby incorporated herein by reference:

CHARGES	
Amount of Inventory and Appraisement	
(OR, If subsequent account, amount	
chargeable from prior account)	$_____
Receipts during Account Period	
(Schedule “A”)	$_____
Gain on Sales (Schedule ”B”)	$_____
TOTAL CHARGES	$_____
CREDITS	
Disbursements during Account Period	
(Schedule “C”)	$_____
Loss on Sales (Schedule “D”)	$_____
Other Credits:	
(Property distributed, Homestead or other	
property set apart-Schedule “E”)	$_____
Property on Hand (Schedule “F”)	$_____
TOTAL CREDITS	$_____

The summary should be supported by detailed schedules. The schedules of receipts and disbursements should show the nature or purpose of each item and date thereof. The schedule of property on hand should describe each item and

indicate the appraised value.

(Effective 7/1/08)

Chapter 5 Disposition Without Administration.

7.5.1 Required Allegations in Support of Claimed Property as Community. The Court may require any person submitting a petition to determine and/or to confirm community property to provide to the Court, the following information in addition to that required by law. Counsel should be prepared to provide such information, if it is requested, at the first hearing on the petition in a form which would be admissible as evidence at an uncontested hearing.

(a) Date and place of marriage;

(b) Decedents occupation at time of marriage;

(c) Whether decedent owned any real or personal property on date of marriage and, if so, its description and approximate value at the time of marriage and whether it is still a part of the estate;

(d) Decedent's net worth at time of marriage;

(e) Whether decedent ever received any property after the date of marriage by gift, bequest, devise, descent, proceeds of life insurance or joint tenancy survivorship and, if so, its description, approximate value, dates of receipt, and whether it is still a part of the estate;

(f) A copy of any document on which the claim is based;

(g) The date decedent first came to California;

(h) Any additional facts upon which claim of community property is based.

(Effective 7/1/08)

7.5.2 Notice in Proceedings to Set Aside Community Property. Prior to the hearing on a petition to determine and/or confirm community property, the petitioner shall file a declaration showing compliance with the notice requirements of Probate Code § 13655. (Effective 7/1/08)

7.5.3 Petition to Establish Fact of Death. A petition to establish the fact of death (terminate a joint tenancy or life estate) shall be verified and shall have attached as exhibits:

(a) A copy of any instrument relating to any interest in the property, and

(b) A copy of the death certificate.

Comment: There is no statutory provision for the determination by a court of

attorney fees in proceedings for termination of joint tenancy or a life estate. No request for fees for service of this character should be made.

(Effective 7/1/08)

Chapter 6 Adoptions

7.6.1 Stepparent Adoption under Family Code §§ 9000, et seq.

(a) If a petition for adoption is filed under Family Code § 9000 without first having had a petition and order under Family Code §§ 7800 *et seq.*, there shall be a special hearing entitled "necessity of consent" hearing.

(b) The Clerk shall immediately notify Family Court Services Division of the Court of the filing of the petition and the Family Court Services investigator shall report in the same manner as provided in Family Code § 7850.

(c) A citation in the form provided by Family Code § 7880 shall be issued on the filing of the petition and shall be served on the persons and in the manner described in Family Code §§ 7881 and 7882. The citation shall require the persons served to show cause, if any, why the minor shall not be found to be abandoned and the consent of the named parent to the adoption is unnecessary.

(d) The hearing date shall be on the regular adoptions calendar and the date selected shall be within sixty calendar days of the filing of the petition.

(e) The proceeding under this rule is in addition to that required by Family Code § 9000.

(Effective 7/1/08)

7.6.2 Adoption where Natural Father not Found. If it is claimed that an alleged natural father cannot be found, or is unidentifiable, the petitioner shall file a petition under Family Code § 7664 and the Clerk shall set a hearing on the regular adoptions calendar, to be scheduled within sixty calendar days of the filing of the adoption petition, to determine whether notice to any alleged natural father may be dispensed with and if the father is unidentifiable. The petitioner shall appear and present evidence at the hearing. (Effective 7/1/08)

7.6.3 Military Affidavit. An affidavit under the Soldiers and Sailors Civil Relief Act is required in all adoption and abandonment proceedings where citations have been issued and the parties served have not appeared in the proceedings. If the petitioner or someone on his behalf is unable to make an affidavit that the parent served is not in the military service, the Court will accept the certificate alluded to in Section 601 of said Act. (Effective 7/1/08)

7.6.4 Charges for Investigations in Stepparent Adoptions. There shall be a charge of $300 for each investigation conducted by the Family Court Services Division of this Court or by any court-appointed investigator for a stepparent adoption pursuant to Family Code § 9000, et seq. [formerly Civil Code § 227.10, et seq.]. This charge may increase from time to time by Policy Memorandum. (Effective 7/1/08)

Chapter 7 Orders for Withdrawal of Funds.

7.7.1 Application. When application is made for the withdrawal of funds on deposit under Probate Code § 1510, a deputy clerk shall submit the original court file together with the application for withdrawal of funds to the Judge who approved the compromise. If the Judge is not available, the application shall be submitted to any available Judge of this Court. (Effective 7/1/08)

Chapter 8 Guardianship & Conservatorship Investigations.

7.8.1 Investigation of Proposed Guardian. In conducting the investigation required under Probate Code § 1513, the Court investigator in his/her discretion may require the proposed guardian or guardians to submit a fingerprint card, and/or consent to a criminal, record history check. The results of this check may be included in the investigator's report to the Court. (Effective 7/1/08)

7.8.2 Charges for Guardianship Investigations. There shall be a charge of $600.00 for each investigation conducted pursuant to Probate Code § 1513 charged to the petitioner. This charge shall be paid to the Family Court Services Division at the time an appointment is made for an interview. This charge may increase from time to time by Policy Memorandum. (Effective 7/1/08)

7.8.3 Preparation and Filing of Order Appointing Guardianship Investigator. In each guardianship case where the petition seeks the appointment of a guardian of the person, the petitioner shall prepare, an Order Appointing Guardianship Investigator, and serve a copy on the office of Family Court Services. (Effective 7/1/08)

7.8.4 Charges for Conservatorship Investigation. There shall be a charge of $400 for each conservatorship investigation conducted pursuant to Probate Code §§ 1826 or 1851. This charge shall be paid by the petitioner. Upon granting the petition, the conservator may apply ex parte for reimbursement of this charge from the conservatorship estate after filing the inventory and appraisement required

under Probate Code § 2610. (Effective 7/1/08)

7.8.5 Ability to Pay. If a party required to pay an investigation charge under Local Rule 7.8.2 or 7.8.4 believes that neither the party nor the estate has the ability to pay the cost of the investigation, the party requesting relief shall submit a request for relief in compliance with Local Rule 5.1.2. (Effective 7/1/08)

7.8.6 Required Orientation by Proposed Probate Conservators. All persons who are proposed conservators of either the person or the estate of a proposed conservatee shall attend and view an orientation videotape at the office of the Family Court Services. The proposed conservator will be required to purchase the Judicial Council publication from the Civil Division entitled, "Handbook for Conservators." Pursuant to Probate Code § 1835(f), the charge for this handbook is $20.00. (Effective 7/1/08)

DIVISION 8 APPELLATE DEPARTMENT

8.1.1 Briefs. Briefs shall be prepared and filed as provided by California Rule of Court 8.706. In addition thereto, counsel shall deposit with the Clerk of the Court, when filing the original brief, three legible copies of the original brief for the assistance of the members of the Court. (Effective 7/1/08)

8.1.2 Calendaring. The Court, after the filing of an appeal, will set a briefing schedule and set a date for oral argument on the third Friday of the month at 8:00 a.m. (Effective 7/1/08)

8.1.3 Oral Argument. Unless otherwise ordered, counsel for each party shall be allowed fifteen minutes for oral argument. The appellant or the moving party shall have the right to open and close. (Effective 7/1/08)

8.1.4 Motions. All motions shall be heard at regular sessions in the department of the Presiding Judge unless a different time or place for the hearing of a particular motion is designated by the Presiding Judge. (Effective 7/1/08; amended January 1, 2010)

DIVISION 9 COURT PERSONNEL

Chapter 1 General Provisions.

9.1.1 Definition. All persons appearing on the payroll of the Superior Court as permanent, full-time employees and any additional full-time employees assigned to the Superior Court, but appearing on the payroll of a separate budget unit, shall be considered Superior Court personnel. (Effective 7/1/08)

9.1.2 Judicial Officers. A person elected or appointed to the office of Judge of the Superior Court or a person appointed as Court Commissioner shall be considered judicial personnel. (Effective 7/1/08)

9.1.3 Officers. The Court Executive Officer, the Staff Attorney, the Facilitator and the Director of Family Court Services are officers of the Court. (Effective 7/1/08)

9.1.4 Employees. All Superior Court personnel who are neither Judges nor Court Officers and who are not employed by contract (which includes per diem interpreters and per diem reporters not permanently appointed by a Judge of the Court) shall be considered Court employees. (Effective 7/1/08)

9.1.5 Assigned Court Personnel. Personnel assigned to the Court by other agencies (i.e. bailiffs) are Superior Court Personnel. Such persons shall be assigned to any such departments as may be designated by the Presiding Judge. Nothing contained herein shall be construed as in any way affecting the power of the employing agency to transfer such personnel away from the Superior Court. (Effective 7/1/08)

Chapter 2 Court Executive Officer.

9.2.1 Appointments. The Presiding Judge shall appoint a Court Executive Officer who shall serve at the pleasure of a majority of the Judges of the Court. (Effective 7/1/08)

9.2.2 Functions. The Court Executive Officer shall organize and administer the non-judicial activities of the Court. Subject to the supervision and direction of the Presiding Judge, the Court Executive Officer shall:

(a) Supervise and assign work to the staff that serves the Judges in the execution of the Court's business.

(b) Provide necessary administrative direction in the dispatch of judicial business, particularly in calendar management.

(c) Manage all personnel functions for non-judicial employees.

(d) Manage facilities and procurement functions.

(e) Prepare and administer the Court's budget.

(f) Direct statistical data analysis and prepare special statistical special studies.

(g) Direct the development, implementation, and maintenance of data processing efforts.

(h) Monitor the performance of the organization and take actions necessary to ensure that the operations are conducted according to the plans.

(i) Act as the Clerk of the Court, and serve as a liaison for the Court with the Judicial Council, Board of Supervisors, and the County Administrative Officer.

(j) Develop and recommend innovations, modify non-judicial and administrative policies and procedures, and propose modifications to court rules.

(k) Provide administrative support to the Grand Jury in budgeting, supervising staff support, and managing facilities, procurement, and office operations.

(l) Select, qualify, and summon jurors for all jury trials in the Court.

(m) Supervise and direct all jury system staff and activities.

(n) Provide all management services for the jury system.

(o) Perform other tasks as directed by the Court.

(Effective 7/1/08)

Chapter 3 Chief Probation Officer.

9.3.1 Selection. The Chief Probation Officer shall be appointed as provided by the applicable statutes and County ordinances. The Judges of the Superior Court shall assist in the selection process. The Chief Probation Officer shall serve at the pleasure of the Court. (Effective 7/1/08)

9.3.2 Functions. The Chief Probation Officer shall:

(a) Formulate departmental policy.

(b) Direct the probation services provided by the department including but not limited to juvenile intake and detention control, adult and juvenile investigation, reports and supervision, special court services, and related programs.

(c) Direct the fiscal, personnel, budget and other administrative functions of the department.

(d) Direct the development and use of professional skills in probation casework provided to adults and juveniles and in the maintenance of adequate standards of

service.

(e) Direct the development and administration of the department's detention and treatment facilities for the custody, care and rehabilitation of juveniles.

(f) Direct the medical, psychiatric, dental and nursing care programs provided to juveniles placed in detention facilities and foster homes.

(g) Direct the research activities of the department.

(h) Coordinate the work of the Probation Department with various segments of the justice system including, but not limited to Police Departments, the Sheriff's Office, Public Defender, District Attorney, and the Court.

(i) Maintain public relations with other County departments, other jurisdictions, social welfare agencies, civic groups and the public, and interpret the objectives and progress of the department.

(j) Work with the Juvenile Justice and Delinquency Prevention Commission in establishing and coordinating services provided to juveniles.

(k) Recommend the adoption, enactment, and amendment of County ordinances, resolutions, regulations and state statutes to promote the effective, efficient and economical administration of the department.

(l) Direct the development of changes in organization, staffing, work processing, and management information systems to increase effectiveness and efficiency, and to reduce administrative costs.

(m) Make periodic reports to the Court and to the Board of Supervisors regarding the accomplishments of the department.

(n) The Chief Probation Officer shall serve, when appropriate and pursuant to court order, as guardian or conservator of wards of the Court.

(Effective 7/1/08)

Chapter 4 Senior Court Investigator/Mediator and Facilitator

9.4.1 Appointment. The Judges shall appoint the Senior Court Investigator/Mediator and Facilitator. (Effective 7/1/08)

9.4.2 Functions-Mediator. The duties of the Conservatorship/Guardianship Court Investigator and Court Mediator shall include, but are not limited to:

(a) Conducting mediation and investigating all family law matters referred by the Court.

(b) Conducting interviews with the conservatees/wards and advising them of the legal consequences of a conservatorship/guardianship.

(c) Investigating and evaluating, the performance of the conservators/guardians

and explaining fiduciary obligations.

(d) Interviewing and consulting both professional and non-professional personnel concerning the conservatee's/ward's living arrangements and financial affairs.

(e) Investigating and evaluating medical reports, financial records, and other data pertaining to the welfare of the conservatee/ward.

(f) Submitting reports to the Court which reflect the results of the investigation or mediation.

(Effective 7/1/08)

9.4.3 No mediator/investigator may accept ex parte communication from counsel or any party. No mediator/investigator may contact an attorney or party unless in the presence of the opposing counsel or party or in writing. All writings provided to the custody mediator/investigator by one attorney or party shall be provided to the opposing counsel or party in a timely fashion. (Effective 7/1/08)

9.4.4 No mediator/investigator may provide information regarding final recommendations prior to the release of the final report. No custody mediator/investigator will divulge final recommendations to either party or his or her attorney, separately. Final recommendations will be made available in written form to all parties and their attorneys simultaneously. (Effective 7/1/08)

9.4.5 Functions - Facilitator. The office of the Family Law Facilitator shall provide the following services:

(a) Distributing family law/family support, and probate Guardianship of the Person and civil harassment judicial council forms.

(b) Distributing and reviewing judicial council forms for completeness.

(c) Preparing support scheduled based upon statutory guidelines.

(d) Providing educational materials to parties concerning the Court's process for establishing parentage, and establishing, modifying, and enforcing child and spousal support in the courts.

(e) Providing referrals to the Family Court Services Division of the Court and other community agencies which provide services for parents and children.

(Effective 7/1/08)

9.4.6 Grievance Procedure Relating to Court Mediator/Investigator and Facilitator. The following procedure shall be observed with regard to complaints about the Court Mediator/Investigator or Facilitator:

(a) A complaint received on the conduct of the Court Investigator/Mediator or Facilitator shall be directed to the Presiding Judge or to a person designated by the Presiding Judge for the purposes of handling such complaints. When a complaint is not in writing, the Presiding Judge may require that the complainant reduce the complaint to writing, or may direct a written memorandum be made of the complaint.

(b) The Presiding Judge or such person as the Presiding Judge may appoint shall investigate the complaint. If the complaint is frivolous or unfounded on its face, the complaint may be disposed of without further action.

(c) If the Presiding Judge, or the Presiding Judge's designee, determines the complaint has possible validity, the matter shall be reviewed promptly. A copy of the complaint shall be provided to the Court Mediator/Investigator or Facilitator, who shall be allowed an opportunity to respond. A preliminary inquiry may be terminated if the complaint is found to be lacking in merit or if an acceptable explanation is offered.

(d) When the preliminary inquiry indicates that the complaint is not minor in nature and appears to have validity, or there is good cause (including other complaints), the Presiding Judge shall appoint, or the Presiding Judge's designee shall recommend that the Presiding Judge appoint, a committee of Judges to conduct further investigation. The Court Mediator/Investigator or Facilitator shall be presented with a written statement of allegations and provided an opportunity to respond either orally or in writing.

(e) At the conclusion of the investigation, the committee shall make such report and recommendations as it deems fit for action by the Court.

(f) The Court shall inform the complainant of the disposition of the complaint.

(Effective 7/1/08)

9.4.7. All communications and reports made pursuant to Rule 9.4.6 shall be deemed confidential, except communications under 9.4.6(f). (Effective 7/1/08)

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