



RULE AMENDMENTS PROPOSED FOR CIRCULATION

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Proposed to take effect January 1, 2011

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**LOCAL RULE OF COURT AMENDMENTS PROPOSED TO TAKE EFFECT
JANUARY 1, 2011**

CHAPTER 3

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JUVENILE DEPARTMENT

3.01 FILING OF JUVENILE PETITIONS

The deadline for filing W&I 602 Petitions with the Clerk's Office shall be no later than 2:00 pm on the day prior to the first/detention appearance hearing.

The deadline for filing W&I 601 Petitions with the Clerk's Office shall be no later than 2:00 pm on the Friday prior to Tuesday's hearings.

The deadline for filing W&I 300 ~~jurisdiction and disposition reports Petitions~~ with the Clerk's Office shall be no later than 2:00 pm on the ~~Wednesday-Thursday~~ prior to ~~the hearing, Friday's hearings.~~

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The deadline for filing W&I 300 Petitions with the Clerk's Office shall be no later than 2:00 pm on the day prior to the first detention hearing. (Adopted effective July 1, 2009; Amended effective January 1, 2011)

3.08 CALENDAR

~~See Chapter 3, Appendix—Juvenile Court Calendars~~ (Amended effective July 1, 2002; Amended effective July 1, 2005; Amended effective January 2, 2006; Amended effective January 1, 2008; Renumbered from 3.06 to 3.08 effective January 1, 2010; Repealed effective January 1, 2011)

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3.09 RELEASE OF JUVENILE CASE INFORMATION

~~Under the provisions of Welfare and Institutions Code 827 and the duty imposed upon the Court by the decision of the California Supreme Court in T.N.G. v. Superior Court (1971) 4 Cal. 3d 767, the Juvenile Court of this County makes the following order:~~

~~IT IS HEREBY ORDERED:~~

~~I. The Monterey County District Attorney's Office and County Counsel's Office, probation officers, Child Protective Services workers, adoption workers and law enforcement officials within Monterey County when the best interest of the child will be served, and for governmental purposes only, may release limited information in their possession as outlined in Section II of this order to the following:~~

- ~~a) The minor.~~
- ~~b) The minor's attorney.~~
- ~~c) Monterey County District Attorney's Office when directly involved in the case.~~

- d) ~~Any Monterey County law enforcement agency directly involved in the child abuse case.~~
- e) ~~Monterey County Probation Department, limited to W & I 300 and 600 matters, child custody matters upon order of the Superior Court, investigations of free from custody petitions and the probation officer for the offender.~~
- f) ~~All County public welfare agencies, child protective services units and County Adoption agencies on a need to know basis as determined by Monterey County Department of Social Services.~~
- g) ~~Any requesting public or private hospitals involved in the child abuse case.~~
- h) ~~Mental Health facilities and placement agencies that require the information for the placement, treatment or rehabilitation of the minor.~~
- i) ~~The California Department of Corrections on a need to know basis as determined by Monterey County Department of Social Services.~~
- j) ~~Any federal investigative and enforcement agency directly involved in the child abuse case.~~
- k) ~~Any out-of-state law enforcement agency directly involved in the child abuse case.~~
- l) ~~Child Custody Mediation Services of Superior Court.~~
- m) ~~Other persons as authorized by the Court.~~

II. ~~Such information shall be limited to the following:~~

- a) ~~The date and nature of the allegations of a referral, i.e., sexual abuse, physical abuse, neglect and by whom.~~
- b) ~~Whether referral was determined to be founded or unsubstantiated.~~
- e) ~~Whether there is an open CPS case or closed case. If closed case, whether family completed services or did not complete services.~~
- d) ~~The plan to file or not to file a petition and the charges alleged on the petition.~~
- e) ~~The order of the Court to detain or not detain.~~
- f) ~~The date and location of the hearing.~~
- g) ~~The identification of the judge who heard or will hear the matter.~~
- h) ~~The finding and disposition of the Court.~~

III. ~~The Department of Social Services may disclose any information pertaining to minors under the jurisdiction of the juvenile court, or pertaining to their parents or guardians, to any person who meets all of the following requirements:~~

- a) ~~the person provides diagnostic, assessment or treatment services to the parents or minors in furtherance of the service plan for the parents or minors,~~
- b) ~~the person, in the judgment of the social worker, needs to know the information to be disclosed in order to facilitate the provision of such services, and~~
- e) ~~the person is subject to statutory, contractual, or professional rules of confidentiality that would protect the information from further dissemination.~~

IV. ~~All information received by an authorized recipient listed in Section I as a result of this order must be kept confidential by that recipient and shall not be further released except to one or more of the other listed authorized recipients.~~

~~V. Requests by law enforcement agencies to disseminate information in its files to a person or agency not listed in Section I will be considered by the Juvenile Court on a case-by-case basis.~~

~~VI. Concurrently with the release of information by a law enforcement agency in this county to any recipient not listed above and authorized by Court order pursuant to Section V, the law enforcement agency is required to furnish the recipient with a copy of Section I and II of this order to preserve confidentiality.~~

~~VII. Social workers, district attorneys, probation officers, and law enforcement officials are authorized to release information to identifiable potential victims or their parents or guardians that a minor constitutes a serious danger to their person or property. They may release the names and descriptions of the minor, his or her whereabouts, and the nature of the threat toward the identifiable potential victim.~~

~~VIII. A copy of this order must be sent to the following:~~

- ~~a) All law enforcement agencies in this county.~~
- ~~b) The Monterey County District Attorney's Office and County Counsel's Office.~~
- ~~c) The Monterey County Social Services Agency (e.g., the Welfare Department).~~
- ~~d) The Monterey County Probation Department.~~
- ~~e) The California Bureau of Identification and Investigation.~~
- ~~f) Placement agencies that require the information for placement, treatment or rehabilitation; but only when these agencies are contacted for placement.~~
- ~~g) Monterey County Department of Mental Health~~

~~This Rule does not prohibit release of information by district attorneys, probation officers or law enforcement agencies about crimes or the contents of arrest reports except insofar as it discloses the minor's identity.~~ (Adopted effective October 1, 1998; Amended effective July 1, 1999; Re-numbered from 3.07 to 3.09 effective January 1, 2010; Repealed effective January 1, 2011)

3.10 COURT APPOINTED SPECIAL ADVOCATE PROGRAM

~~A. The Superior Court may appoint child advocates to represent and report to the court on 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, formed and operating under the guidelines established by the National Court Appointed Special Advocate Association. (W&I 1356.5), (W&I 100 -110; CRC, Rule 5.655)~~

The advocate program shall report regularly to the Presiding Judge of the Courts and Judges of the Juvenile Dependency and Juvenile Delinquency Courts 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. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective January 1, 2000; Amended effective July 1, 2002; Re-numbered from 3.08 to 3.10 effective January 1, 2010; Amended effective January 1, 2011)

3.11 CHILD ADVOCATES

A. ADVOCATES' 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 (probation officer/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; to report to the Juvenile Court concerning same; and, with the approval of the Court, offer his/her services on behalf of the child to such other courts or tribunals.
- 9) to be present in court for all hearings when the case is present in court.

B. CASA REPORTS

In any case in which the court has ordered the appointment of an advocate, such advocate shall file reports regarding their findings and recommendations for the child with the court at least two days before each of the following hearings: six-month review; twelve-month review; eighteen-month review; selection and implementation hearing (366.26 hearing); and post-permanency planning reviews. Copies of the report are to be provided by CASA to all parties or their counsel at least 2 court days before the scheduled hearing. (California Rules of Court, rule 5.655(k)(5)).

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B-C. 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/Referee/Commissioner before beginning his/her duties, and shall subscribe to the written oath set forth in the Appendix attached hereto. (Adopted effective October 1, 1998; Amended effective July 1, 2002; Renumbered from 3.09 to 3.11 effective January 1, 2010; Amended effective January 1, 2011)

3.12 APPOINTMENT OF ADVOCATE – SPECIFIC DUTIES

The Court shall, in its initial order of appointment, and thereafter subsequent order as appropriate, 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

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visitation right 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/her obligation to the child and the Court in accordance with the general duties set forth in ~~3-05-3.11~~ above. (Adopted effective October 1, 1998; Amended effective July 1, 2002; Renumbered from 3.10 to 3.12 effective January 1, 2010; Amended effective January 1, 2011)

APPENDIX

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY

OATH

Monterey County Court Appointed Special Advocate (CASA)

I, _____ do solemnly swear or affirm that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that in serving as an officer of the Court, I will follow the rules of Court and will maintain fairness, impartiality and integrity; that I am committing to a life-time of preserving the privacy of those for whom I am appointed and will only divulge confidential information to those entitled to receive it; and that I will always act for the best interest of the child(ren) I am assigned to help.

I will truly and faithfully perform the duties of CASA according to the law; I will provide written reports of my findings and recommendations to the Court and will appear at all necessary hearings. I will explain Court proceedings to the child(ren) and inform the Court if services are not available or being used.

I take this obligation freely, without any mental reservation or purpose of evasion.

Date: _____
_____ Monterey County CASA Volunteer

Subscribed and sworn to before me on: _____.

Judge of the Superior Court

Executive Director, CASA of Monterey County

Revised 01/01/11

Rev. 01-01-00

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APPENDIX

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY
JUVENILE DIVISION**

Date: _____

**APPLICATION FOR
JUVENILE COURT RECORDS**

I am requesting access to _____ copies of the following record(s) held by the Court Clerk,
Juvenile Division:

Minor's Name: _____
Petition Number: _____
Other Identifying Information: _____

I am:

- _____ Parent/Guardian of the named juvenile.
- _____ Victim
- _____ Relative
- _____ Staff of Monterey County Victim-Witness Assistance Center
- _____ District Attorney
- _____ Sixth Appellate District Program Member
- _____ Victim-Offender-Mediation Program Member
- _____ Court-Appointed-Special-Advocate (CASA)
- _____ Other Specify: _____

Address: _____

I will use this information for the following purpose(s):

I understand these records are confidential and can be used only for the purposes stated herein.

Signed

If I do not pick up the requested copies personally, a self-addressed, stamped envelope is attached.

3.19 REPRESENTATION IN JUVENILE DEPENDENCY PROCEEDINGS
CALIFORNIA RULES OF COURT, RULE ~~1438(a)~~5.660

A. ATTORNEYS FOR CHILDREN

Appointment of counsel is required for a child who is the subject of a petition under Welfare and Institutions Code §300, and is unrepresented by counsel, unless the court finds the child would not benefit from the appointment of counsel.

- a) In order to find that a child would not benefit from the appointment of counsel, the court must find all of the following:
 - 1) The child understands the nature of the proceedings;
 - 2) The child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
 - 3) Under the circumstances of the case, the child would not gain any benefit by being represented by counsel.
- b) If the court finds that the child would not benefit from representation of counsel, the court must make a finding on the record as to each criteria in (a) and state the reasons for each finding.
- c) If the court finds that the child would not benefit from representation by counsel, the court must appoint a Court Appointed Special Advocate for the child, to serve as guardian ad litem as required in Welfare and Institutions Code §326.5.

B. GENERAL COMPETENCY REQUIREMENT

Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel. "Competent counsel" means an attorney who is a member of good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrates adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes, rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs.

All attorneys appearing in juvenile dependency proceedings must meet the minimum standards of competence set forth in these rules. These rules are applicable to attorneys representing public agencies, attorneys employed by public agencies, attorneys appointed by the Court to represent any party in a juvenile dependency proceeding and attorneys who are privately retained to represent a party to a juvenile dependency proceeding. (Adopted effective October 1, 1998; Amended effective July 1, 2002; Renumbered from 3.17 to 3.19 effective January 1, 2010; Amended effective January 1, 2011;)

3.20 SCREENING FOR COMPETENCY

- A. Effective July 1, 1996, all attorneys who represent parties in Juvenile Court proceedings shall meet the minimum standards of training and/or experience set forth in these rules. Any attorney appearing in a dependency matter for the first time

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shall complete and submit a Certification of Competency to the Court within 10 days of his or her first appearance in a dependency matter.

B. Attorneys who meet the minimum standards of training and/or experience as set forth in Rule ~~3.17~~3.21, as demonstrated by the information contained in the Certification of Competency submitted to the Court, shall be deemed competent to practice before the Juvenile Court in dependency cases except as provided in subdivision ~~(e)~~(B) of ~~such~~ this rule.

C. Any attorney appearing before the court in a dependency case who does not meet the minimum standards of training and/or experience must notify the court to that effect at his/her initial appearance. The clerk of the court must notify the represented party by first-class mail to the party's last known address and the attorney at least 10 days before the hearing date of the following: (1) a hearing date, time, and location; (2) that at that hearing the court will consider the issue of whether to relieve counsel for failing to complete the requisite training and to provide a Certification of Competency; and (3) that failure to appear for the hearing will be deemed a waiver of any objection and acquiescence to the relief of appointed counsel. At that hearing the court must relieve such appointed counsel and must appoint certified counsel for the party whose attorney failed to complete the required training. If the attorney relieved is a member of a public agency, the agency has the right to transfer the case to a certified attorney within that agency. In the case of retained counsel, the court must notify the party that his or her counsel has failed to meet the minimum standards required by these rules. The determination whether to waive certification or obtain substitute private counsel is solely within the discretion of the party so notified.

D. Upon submission of a Certification of Competency (which demonstrates that the attorney has met the minimum standards for training and/or experience), the Court may determine, based on conduct or performance of counsel before the Court in a dependency case within the six month period prior to the submission of the certification to the Court, that a particular attorney does not meet minimum competency standards. In such case, the Court shall proceed as set forth in Rule ~~3.17 (a)(1)(E) hereinafter~~3.21 (D).

E. In the case of an attorney who maintains his or her principal office outside of this county, proof of certification by the Juvenile Court of the California county in which the attorney maintains an office shall be sufficient evidence of competence to appear in a juvenile proceeding in this county. (Adopted effective October 1, 1998; Amended effective July 1, 2002; Renumbered from 3.18 to 3.20 effective January 1, 2010; Amended effective January 1, 2011)

3.21 MINIMUM STANDARDS OF EDUCATION, TRAINING AND EXPERIENCE

A. Effective July 1, 2001, only those attorneys who have completed a minimum of eight hours of training or education in the area of juvenile dependency, or who have sufficient recent experience in dependency proceedings in which the attorney has demonstrated competency, may be appointed to represent parties. Each attorney appearing in a dependency matter before the Juvenile Court shall not seek certification of competency and shall not be certified by the Court as competent until the attorney has completed the following minimum requirements:

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1) ~~Prior to certification, the attorney shall have either:~~

- a) Participated in at least eight hours of training or education in juvenile dependency law which in addition to a summary of dependency law and related statutes and cases, must include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation and reasonable efforts, or,
- b) At least six months of recent experience in dependency proceedings in which the attorney has demonstrated competence in the attorney's representation of his or her clients in said proceedings. In determining whether the attorney has demonstrated competence, the Court shall consider whether the attorney's performance has substantially complied with the requirements of these rules.

e) ~~B)~~ In order to retain his or her certification to practice before the Juvenile Court, each attorney who has been previously certified by the Court shall submit a new Certificate of Competency to the Court on or before ~~June 30th~~ ~~January 31st~~ of the third year after the year in which the attorney is first certified and then every third year thereafter. The attorney shall attach to the renewal Certification of Competency evidence that he or she has completed at least eight hours of continuing training or education directly related to dependency proceedings since the attorney was last certified. Evidence of completion of the required number of hours of training or education may include a copy of a certificate of attendance issued by a California MCLE provider; a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is a MCLE provider; a copy of the training or educational program schedule together with evidence of attendance at such program; or such other documentation as may reasonably be considered to demonstrate the attorney's attendance at such program. Attendance at a court sponsored or approved program will also fulfill this requirement.

e) ~~C)~~ The attorney's continuing training or education shall be in the areas set forth in subdivision (1)(A) of this rule, or in other areas related to juvenile dependency practice including, but not limited to, special education, mental health, health care, immigration issues, the rules of evidence, adoption practice and parentage issues, the Uniform Child Custody Jurisdiction Act, the Parental Kidnapping Prevention Act, state and federal public assistance programs, the Indian Child Welfare Act, client interviewing and counseling techniques, case investigation and settlement negotiations, mediation, basic motion practice and the rules of civil procedure.

E) ~~D)~~ When a certified attorney fails to submit evidence that he or she has completed at least the minimum required training and education to the Court by the due date, the Court shall notify the attorney that he or she will be decertified. That attorney shall have 20 days from the date of the mailing of the notice to submit evidence of his or her completion of the required training or education. If the attorney fails to submit the required evidence or fails to complete the required minimum hours of continuing training or education, the Court shall order, except in cases where a party is represented by retained counsel, that certified counsel be substituted for the attorney who fails to complete the required training. In the case of retained counsel, the Court shall notify the party that his or her counsel has failed to meet the minimum standards required by these rules. The determination whether to waive certification or obtain substitute private counsel shall be solely within the discretion of the party so notified. (Adopted effective

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October 1, 1998; Amended effective July 1, 2002; Renumbered from 3.19 to 3.21 effective January 1, 2010; Amended effective January 1, 2011)

3.22 STANDARDS OF REPRESENTATION

All attorneys appearing in dependency proceedings shall meet the following minimum standard of representation:

- a) Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child's legal representation. (Adopted effective July 1, 2002)
- b) The attorney shall thoroughly and completely investigate the accuracy of the allegations of the petition or other moving papers and the Court reports filed in support thereof. This shall include conducting a comprehensive interview with the client to ascertain his or her knowledge of and/or involvement in the matters alleged or reported: contacting social workers and other professionals associated with the case to ascertain if the allegations and/or reports are supported by accurate evidence and reliable information; consulting with and, if necessary, seeking the appointment of experts to advise the attorney or the Court with respect to matters which are beyond the expertise of the attorney and/or the Court; and obtaining such other facts, evidence or information as may be necessary to effectively present the client's position to the Court.
- c) The attorney shall determine the client's interests and the position the client wishes to take in the matter. Except in those cases in which the client's whereabouts is unknown, this shall include a comprehensive interview with the client. If the client is a minor child who is placed out of home, in addition to interviewing the child, the attorney shall also interview with the child's caretaker. The attorney or the attorney's agent shall make at least one visit to the child at the child's placement prior to the jurisdiction hearing. Thereafter, the attorney or the attorney's agent should make at least one visit to the child at the child's placement prior to each review hearing.
- d) The attorney shall advise the client of the possible courses of action and of the risks and benefits of each. This shall include advising the client of the risks and benefits of resolving disputed matters without the necessity for a hearing and of the necessity for adhering to court mandated time limits.
- e) The attorney shall vigorously represent the client within applicable legal and ethical boundaries. This shall include the duty to work cooperatively with other counsel and the Court, to explore ways to resolve disputed matters without hearing if it is possible to do so in a way which is consistent with the client's interests, and to comply with local rules and procedures as well as with statutorily mandated timelines. (Adopted effective

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October 1, 1998; Amended effective July 1, 2002; Renumbered from 3.20 to 3.22 effective January 1, 2010)

3.23 PROCEDURES FOR REVIEWING AND RESOLVING COMPLAINTS

A. Any party to a Juvenile Court proceeding may lodge a written complaint with the Court concerning the performance of his or her appointed attorney in a Juvenile Court proceeding. In the case of a complaint concerning the performance of an attorney appointed to represent a minor, the complaint may be lodged on the child's behalf by the social worker, a caretaker relative or a foster parent.

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B. Each appointed attorney must ~~provide inform by~~ written notice to his or her adult client of the procedure for lodging complaints with the Court concerning the performance of an appointed attorney. The notice shall be given to the client within 10 days of the attorney's appointment to represent that client. Evidence that a copy of said notice was given or mailed to the client shall be provided to the Court within 10 days of a request therefore from the Court. In the case of a minor client, the notice shall be mailed or given to the current caretaker of the child. If the minor is 12 years of age or older, a copy of the notice shall also be sent or given to the minor.

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C. The Court shall review a complaint within 10 days of receipt. If the Court determines that the complaint presents reasonable cause to believe that the attorney may have failed to act competently or has violated local rules, the Court shall notify the attorney in question of the complaint, shall provide the attorney with a copy of the complaint and shall give the attorney twenty days from the date of the notice to respond to the complaint in writing.

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D. After a response has been filed by the attorney or the time for submission of a response has passed, the Court shall review the complaint and the response if any to determine whether the attorney acted contrary to local rules or has acted incompetently. The Court may ask the complainant or the attorney for additional information prior to making a determination on the complaint.

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E. If, after reviewing the complaint, the response and any additional information, the Court finds that the attorney acted improperly or contrary to the rules or policies of the Court, the Court may reprove the attorney, either privately or publicly, and may, in cases of willful or egregious violations of local rules, issue such reasonable monetary sanctions against the attorney as the Court may deem appropriate.

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F. If, after reviewing the complaint, the response and any additional information, the Court finds that the attorney acted incompetently, the Court may order that the attorney practice under the supervision of a mentor attorney for a period of at least six months, that the attorney complete a specified number of hours of training or education in the area in which the attorney was found to have been incompetent, or both. In cases in which the attorney's conduct caused actual harm to his or her client, the Court shall order that competent counsel be substituted for the attorney found to have been incompetent and may, in the Court's discretion, refer the matter to the State Bar of California for further action.

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G. The Court shall notify the attorney and the complaining party in writing of its determination of the complaint. If the Court makes a finding under subdivisions (Ee)

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or (E~~f~~), the attorney shall have 10 days after the date of the notice to request a hearing before the Court concerning the Court's proposed action. If the attorney does not request a hearing within that period of time, the Court's determination shall become final.

H. If the attorney requests a hearing, the attorney shall serve a copy of the request on the complaining party. The hearing shall be held as soon as practicable after the attorney's request therefore, but in no case shall it be held more than 30 days after it has been requested except by stipulation of the parties. The complainant and the attorney shall each be given at least 10 days notice of the hearing. The hearing may be held in chambers. The hearing shall not be open to the public. The Court may designate a commissioner, referee, judge pro tempore, or any qualified member of the bar to act as hearing officer.

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I. At the hearing, each party shall have the right to present arguments to the hearing officer with respect to the court's determination. Such arguments shall be based on the evidence before the Court at the time the determination was made. No new evidence may be presented unless the party offering such evidence can show that it was not reasonably available to the party at the time that the Court made its initial determination with respect to the complaint. Within 10 days after the hearing, the Court or hearing officer shall issue a written determination upholding, reversing or amending the Court's original determination. The hearing decision shall be the final determination of the Court with respect to the matter. A copy of the hearing decision shall be provided to both the complainant and the attorney. (Adopted effective October 1, 1998; Amended effective July 1, 2002; Renumbered from 3.21 to 3.23 effective January 1, 2010)

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3.24 COURT APPOINTED SPECIAL ADVOCATE AS GUARDIAN AD LITEM

If the court makes the findings as outlined in ~~3-153.19(A)~~, and does not appoint an attorney to represent a child, the court must appoint a Court Appointed Special Advocate (CASA) as guardian ad litem for the child.

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- a) The required training of a CASA volunteers is set forth in California Rules of Court ~~14245.655~~.
- b) The caseload of a CASA volunteer acting as a guardian ad litem must be limited to 10 cases. A case may include siblings, absent a conflict.
- c) CASA volunteers must not assume the responsibilities of attorneys for children.
- d) The appointment of an attorney to represent a child does not prevent the appointment of a CASA volunteer for that child. (Adopted effective July 1, 2002; Renumbered from 3.22 to 3.24 effective January 1, 2010; Amended effective January 1, 2011)

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3.25 PROCEDURES FOR INFORMING THE COURT OF THE INTERESTS OF A DEPENDENT CHILD

- A) At any time following the filing of a petition under Welfare and Institutions Code §300 and until juvenile court jurisdiction is terminated, any interested person may advise the Court of information regarding an interest or right of the child which needs to be protected or pursued in other judicial or administrative forums. If the attorney for the child, or a Court Appointed Special Advocate (CASA) acting as a guardian ad litem

Proposed Amendments - Local Rules of Court effective January 1, 2011

learns of any such interest or right, the attorney or CASA must notify the Court immediately and seek instructions from the court as to any appropriate procedures to follow.

- B) Notice to the Court may be given by the filing of Judicial Council forms *Juvenile Dependency Petition (Version One) (JV-100)* ~~JV-100~~ or ~~Modification Petition Attachment Request To Change Court Order (JV-180)~~ ~~JV-180~~ or by the filing of a declaration. The person giving notice shall set forth the nature of the interest or right which needs to be protected or pursued, the name and address, if known, of the administrative agency or judicial forum in which the right or interest may be affected and the nature of the proceedings being contemplated or conducted there.
- C) If the person filing the notice is the counsel for the minor, the motion shall state what action on the child's behalf the attorney believes is necessary, whether the attorney is willing or able to pursue the matter on the child's behalf, whether the association of counsel specializing in practice before that agency or court may be necessary or appropriate, whether the appointment of a guardian *ad litem* may be necessary to initiate or pursue the proposed action, whether joinder of an administrative agency to the Juvenile Court proceedings pursuant to Welfare and Institutions Code section 362 may be appropriate or necessary to protect or pursue the child's interests and whether further investigation may be necessary.
- D) If the person filing the notice is not the attorney for the child, a copy of the notice shall be served on the attorney for the child, or, if the child is unrepresented, the notice shall so state.
- E) The Court may set a hearing on the notice if the Court deems it necessary in order to determine the nature of the child's right or interest or whether said interest should be protected or pursued.
- F) If the Court determines that further action on behalf of the child is required to protect or pursue any interests or rights, the Court must appoint an attorney for the child if the child is not already represented by counsel, and do one or all of the following:
- 1) Refer the matter to the appropriate agency for further investigation, and require a report to the court within a reasonable time;
 - 2) Authorize and direct the child's attorney to initiate and pursue appropriate action;
 - 3) Appoint a guardian *ad litem* for the child, who may be the CASA already appointed as guardian *ad litem* or a person who will act only if required for to initiate and pursue appropriate action ; or
 - 4) Take any other action the Court may deem necessary or appropriate to protect or pursue the welfare, interests and rights of the child. (Adopted effective October 1, 1998; Amended effective July 1, 2002; Renumbered from 3.23 to 3.25 effective January 1, 2010; Amended effective January 1, 2011)

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3.26 DISCOVERY IN JUVENILE DELINQUENCY PROCEEDINGS

A. PURPOSES OF THIS RULE

This rule shall be interpreted to give effect to all of the following purposes:

Proposed Amendments - Local Rules of Court effective January 1, 2011

- ~~1. To promote the ascertainment of truth in juvenile delinquency proceedings by requiring timely discovery prior to the jurisdictional hearing.~~
- ~~2. To save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested.~~
- ~~3. To save court time in juvenile delinquency proceedings and avoid the necessity for frequent interruptions and postponements.~~
- ~~4. To protect victims and witnesses from danger, harassment, and undue delay of the proceedings.~~
- ~~5. To provide that no discovery shall occur in juvenile delinquency proceedings except as provided by this rule, other express statutory provisions, or as mandated by the Constitution of the United States.~~

~~B. INFORMATION TO BE DISCLOSED BY PROSECUTION~~

~~The prosecuting attorney shall disclose to the minor or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:~~

- ~~1. The names and addresses of persons the prosecutor intends to call as witnesses at the jurisdictional hearing.~~
- ~~2. Statements of the minor.~~
- ~~3. All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.~~
- ~~4. The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the jurisdictional hearing.~~
- ~~5. Any exculpatory evidence.~~
- ~~6. Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the jurisdictional hearing, including any reports or statements or experts made in conjunction with the case, including the results of physical or mental examinations, scientific test, experiments, or comparisons which the prosecutor intends to offer in evidence at the jurisdictional hearing.~~
- ~~7. Any additional discovery as set forth in California Rules of Court, Rule 1420.~~

~~C. DISCLOSURE OF ADDRESS OR TELEPHONE NUMBER OF VICTIM OR WITNESS TO MINOR~~

- ~~1. Except as provided in paragraph 2, no attorney may disclose or permit to be disclosed to a minor, members of the minor's family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Penal code Section 1054.1 and California Rules of Court, Rule 1420~~

~~unless specifically permitted to do so by the court after a hearing and a showing of good cause.~~

- ~~2. Notwithstanding paragraph 1) an attorney may disclose or permit to be disclosed the address or telephone number of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a minor's case if that disclosure is required for that preparation. Persons provided this information by an attorney shall be informed by the attorney that further dissemination of the information, except as provided by this section, is prohibited.~~
- ~~3. Willful violation of this subdivision by an attorney, persons employed by the attorney, or persons appointed by the court may be punishable as contempt.~~

~~D. INFORMATION TO BE DISCLOSED BY MINOR~~

~~The minor and his or her attorney shall disclose to the prosecuting attorney:~~

- ~~1. The names and addresses of persons, other than the minor, he or she intends to call as witnesses at the jurisdictional hearing, together with any relevant written or recorded statements of those persons, or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the jurisdictional hearing.~~
- ~~2. Any real evidence which the minor intends to offer in evidence at the jurisdictional hearing.~~
- ~~3. Any Additional discovery as set forth in California Rules of Court, Rule 1420.~~

~~E. OBTAINING OF NONTESTIMONIAL EVIDENCE BY PROSECUTION~~

~~Nothing in this rule shall be construed as limiting any law enforcement or prosecuting agency from obtaining non-testimonial evidence to the extent permitted by law on the effective date of this section.~~

~~F. EXCLUSIVENESS OF PROVISIONS; PROCEDURE PRIOR TO OBTAINING ORDER; ORDER PROHIBITING TESTIMONY OF WITNESS~~

- ~~1. No order requiring discovery shall be made in juvenile delinquency proceedings except as provided in this rule. This rule shall be the only means by which the minor may compel the disclosure or production of information from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the minor, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties.~~
- ~~2. Before a party may seek court enforcement of any of the disclosures required by this chapter, the party shall make an informal request of opposing counsel for the desired materials and information. If within 7 calendar days the opposing counsel fails to provide the materials and information requested, the party may seek a court order compelling disclosure.~~

~~Upon a showing that a party has not complied with Rule 3.22 B or D and that the moving party complied with the informal discovery procedure provided in this rule, a court may make any order necessary to enforce the provisions of this rule, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order or sanction. Further, the court may consider any failure or refusal to disclose and of untimely disclosure in assessing the credibility of the evidence offered by the party not in compliance with this rule.~~

- ~~3. The court may also apply any sanction for failure to comply as set forth in California Rules of Court, Rule 1420 (j).~~

~~G. DISCLOSURE OF WORK PRODUCT OR PRIVILEGED INFORMATION~~

~~Neither the minor nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (c) of Section 2018 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision, or are privileged as provided by the Constitution of the United States.~~

~~H. TIME FOR DISCLOSURES; MOTION FOR DENIAL OR REGULATION OF DISCLOSURES~~

- ~~1. The disclosures required under this chapter shall be made at least 7 calendar days prior to the jurisdictional hearing, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 7 days of the jurisdictional hearing, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.~~
- ~~2. Upon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera. A verbatim record shall be made of any such proceeding. If the court enters an order granting relief following a showing in camera, the entire record of the showing shall be sealed and preserved in the records of the court, and shall be made available to an appellate court in the event of an appeal or writ. In its discretion, the juvenile court may after jurisdictional hearing unseal any previously sealed matter for appeal or writ review.~~

~~I. REQUIRED IDENTIFICATION FOR INTERVIEW~~

- ~~1. No prosecuting attorney, attorney for the minor, or investigator for either the prosecution or the minor shall interview, question, or speak to a victim or witness whose name has been disclosed by the opposing party pursuant to Section B or D without first clearly identifying himself or herself, identifying the full name of the agency by whom he or she is employed, and identifying whether he or she represents, or has been retained by, the prosecution or the minor. If the interview takes place in person, the party shall also show the victim or witness a business card, official badge, or other form of official identification before commencing the interview or questioning.~~

~~2. Upon a showing that a person has failed to comply with this section, a court may issue any order authorized by Section F.~~

~~J. CHILD PORNOGRAPHY EVIDENCE~~

~~1. Except as provided in paragraph 2 below, no attorney may disclose or permit to be disclosed to a minor, members of the minor's family, or anyone else copies of child pornography evidence, unless specifically permitted to do so by the court after a hearing and a showing of good cause.~~

~~Notwithstanding paragraph 1 above, an attorney may disclose or permit to be disclosed copies of child pornography evidence to persons employed by the attorney.~~ (Adopted effective July 1, 2004; Amended effective July 1, 2007; Renumbered from 3.24 to 3.26 effective January 1, 2010; Repealed effective January 1, 2011)

APPENDIX

For Court Use Only.

/ _____

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY
JUVENILE DIVISION

CERTIFICATION OF COMPETENCY OF COUNSEL C.R.C. 5.660

Name: _____
State _____ Bar Number: _____

Office Address: _____

Telephone: _____

I am an attorney at law licensed to practice in the State of California. I hereby certify that I meet the minimum standards for practice before a Juvenile Court set forth in California Rules of Court, rule ~~1438(a)~~ 5.660, and Monterey County Superior Court local rule, and I have completed the minimum requirements for training, education and/or experience as set forth below.

Training and Education: (Attach copies of MCLE certificates or other documentation of attendance.)

Court Title	Date Completed	Hours / Provider
_____	_____	_____
_____	_____	_____

Juvenile Dependency Experience: (Attach additional pages if necessary.)

Case #	# Contested Hearings	Date of Last Appearance	Party Represented
_____	_____	_____	_____
_____	_____	_____	_____

Date: _____

Signature

APPENDIX

3.08—CALENDAR

JUVENILE DELINQUENCY:

a) Welfare and Institutions Code, section 602:

First appearances.....	Monday through Friday	8:30 a.m.
Motions.....	Monday through Friday	8:30 a.m.
Dispositions & Other Short Matters.....	Monday through Friday	9:00 a.m.

b) Jurisdictional hearings

602 cases.....	Monday through Friday	1:30 p.m.
Penal Code 1538.5.....	Monday through Friday	8:30 a.m.
Dennis H. hearings.....	Monday through Friday	10:30 & 11 a.m.

c) Detention first appearance hearings... Monday through Friday 8:30 a.m.

JUVENILE DEPENDENCY:

All Welfare and Institutions Code Section 300 proceedings:

Initial Detention Hearings.....	Monday through Thursday	1:30 p.m.
	& Friday	9:30 a.m.
Further Detention Hearings.....	Friday	9:30 a.m.
Readiness Conferences for Contested Hearings.....	Friday	11:00 a.m.
Contested Hearings.....	Friday	1:45 p.m.
All Other Hearings.....	Friday	9:00 a.m.,
	Friday	10:00 a.m. &
		10:30 a.m.

(Revised 1-1-10)

CHAPTER 4

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PROBATE DEPARTMENT

4.06 APPLICATIONS FOR EX PARTE ORDERS, CONTENT OF ORDER

~~Applications for ex parte orders must be accompanied by a separate order, complete in itself. It is not sufficient for such an order to provide merely that the application has been granted.~~

~~Since no testimony is taken in connection with ex parte petitions, the application must contain sufficient facts to support granting the prayer.~~

~~Please contact the Superior Court Clerk's office to determine whether an appearance is required to present an ex parte petition and order for a judge's signature. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Rule 4.05 Renumbered as 4.06 effective January 1, 2009; Repealed effective January 1, 2011.)~~

CHAPTER 5

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CONSERVATORSHIPS AND GUARDIANSHIPS

5.01 FILINGS

- a) With the exception of Judicial Council Forms, all separately filed Pleadings must include in the caption, the date, time, and place of hearing.
- b) In all case types, Petitioners must provide information related to their personal residential address, home telephone number, work address, work telephone number, and cell phone number, if any. This information may be filed as a confidential document.
- c) A copy of all documents filed in a conservatorship proceeding must be served on the Court Investigator at the Monterey Branch of the Superior Court located at 1200 Aguajito Road, Monterey, CA 93940. Service may not be made to the Court investigator via facsimile without prior authorization from the Investigator's assistant. Service on the Investigator shall be reflected on the appropriate Proof of Service or Notice of Hearing filed with the Court.
- d) In accordance with the Information Practices Act of 1977 (Civil Codes sections 1798-1798.97), all files that contain any "personal information" identifying or describing an individual by means of those which include, but are not limited to, social security number, home address or telephone number, financial matters, maiden name, medical or employment records, drivers license, or statements made by, or attributed to, the individual, shall be filed with the Court as confidential documents. The information contained in these files shall only be disclosed where and how the Information Practices Act of 1977 permits.

e) The filing of original bank statements is required where necessary. The submitting party may, however, file photocopies of the original bank statements if the submitting party verifies that the photocopies are true and correct copies of the original bank statements and have been personally reviewed by counsel. The last four (4) digits of all bank accounts shall be redacted.

f) The Court Investigator fee ~~for the initial filing and the first court review after six months~~ must be paid at the time the petition is filed in the following instances: Petition for Appointment of Probate Conservator, Petition for Appointment of Temporary Conservator, Conservator's Accountings when heard in conjunction with a Court Review, and/or Petition to Change Conservatee's Residence. If the Conservator believes the fees should be deferred or waived due to hardship, the subject petition shall include a request for deferral or waiver and shall set forth facts to establish a hardship. The Court will not hear any petitions for the payment of fees to either the conservator or the attorney for the conservator unless all Court Investigator Fees have been paid, deferred or waived. (Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2004; Amended effective January 1, 2007; Amended effective January 1, 2010; Rule 5.27(f) Renumbered and Relettered as 5.01(f), Amended effective July 1, 2010; Amended effective January 1, 2011)

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5.02 EX PARTE PETITIONS

a) The Court in its discretion may require any ex parte petition to be noticed for hearing.

b) ~~Prior to presentation of an ex parte application, twenty-four (24) hours~~ Twenty-four (24) hours prior to presentation of an ex parte application oral notice of the time, place and nature of the application, followed by written notice, shall be given to the Court Investigator. Similar oral notice must also be given to any person whom petitioner has reason to believe may object to the petition. A copy of the petition shall accompany the written notice to the Court Investigator.

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c) The following petitions, powers, orders or authority require a noticed hearing and will not be granted ex parte. If an urgency or emergency exists, the remedy is to request an order shortening time with service on the Court Investigator.

1. Powers relating to medical consent under Probate Code sections 2355, 2357 and 3200.
2. Independent Powers under Probate Code sections 2590 and 2591 relating to real property or transfers of personal property.
3. Petitions authorizing sales, transfers or encumbrances of personal property in an amount exceeding \$5,000 in the aggregate annually. (Probate Code section 2545(b))
4. Proposed action to exercise Substituted Judgment. (Probate Code section 2580)
5. Authorization for gifts from excess income. (Probate Code section 2423.)

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6. Authorization to purchase real property.
7. Petitions for approval of a compromised claim.
8. Petitions for fees.
(Adopted effective October 1, 1998; Amended effective January 1, 2008;
Amended effective January 1, 2011)

5.23 ACCOUNTS AND ACCOUNTING

COURT REVIEWS, ACCOUNTS AND STATUS REPORTS

- a) A court review, as described in Probate Code section 1850 and 1851, is required one (1) year after appointment, not date of issuance of Letters, and annually thereafter. However, if the Court determines at the initial review or any subsequent review that the conservator is acting in the best interests of the conservatee, the Court may require a court review biennially from the anniversary date of appointment.

Conservator's "Account" and "Status Report" shall be filed in conjunction with each "Court Review".

- b) All Conservators who have not obtained a copy of the "Handbook for Conservators" or who have not viewed the video "With Heart - Understanding Conservatorship", must do so prior to the time of the Court Review. The accounting will not be approved by the Court until this requirement has been complied with.
- c) A "Confidential Status Report," as formerly required by Probate Code section 2620.1, shall be filed by the conservator at each Court Review. The "Confidential Status Report" shall be a separate document from the petition and account and shall be confidential. This document is required of a conservator and is also required with any petition to waive the account.

The "Confidential Status Report" shall address the current physical/medical condition of the conservatee; the current level of care; any anticipated changes in residence and/or level of care, and reason(s) for change; any involvement of family and friends of the conservatee; and any unusual circumstances related to conservatee and/or conservatorship of the estate. (Amended effective January 1, 2007.)

- d) The supporting documentation required by Probate Code Section 2620 shall be "lodged" with the Court pending approval of the Conservator/Guardian's accounting. Lodged documents shall be submitted with a Financial Documents Caption Sheet (Clerk's Form {form to be determined} and a pre-addressed, postage paid envelope for return of the lodged documents. Upon approval of the accounting, the lodged documents shall be returned to the submitting party and retained by the attorney for the Conservator/Guardian, until the Conservator/Guardian has been discharged. In cases where the Conservator/ Guardian is acting in propria persona, the Conservator/Guardian's supporting documentation shall be filed and retained in the Court's file.

- b) Each "Account," whether filed annually or biennially shall cover the period ending on the anniversary date of appointment of the permanent conservator or successor. The anniversary date shall be the date of the hearing appointing conservator.
1. The Petition and "Account" shall be filed no later than sixty (60) days after the anniversary date and shall be noticed for hearing forty-five (45) days after its filing in a year when a Court Review is due and at least fifteen (15) days after filing in a year when no Court Review is due.
 2. The Court Investigator is required to personally visit the conservatee, review the "Account" and "Status Report", and file a written report fifteen (15) days prior to the hearing. (Probate Code section 1851.)
- c) In years when a Court Review is required, a "Notice of Court Review" will be filed by the Court Investigator and copies shall be served by mail on conservator(s), attorney for conservator(s) and attorney for conservatee.
1. The "Notice of Court Review" shall be filed and mailed thirty (30) days prior to the anniversary date of appointment of conservator, or successor conservator;
 2. The "Notice of Court Review" will require the upcoming "Account" and "Status Report" to cover the period through, and end on, the anniversary date of appointment;
 3. The "Notice of Court Review" shall state the date by which the "Account" and "Status Report" must be filed, which shall be no later than sixty (60) days following the anniversary date;
 4. The "Notice of Court Review" shall state the date of hearing on the petition for approval of "Account" and "Court Review"; and
 5. If the "Account" and "Status Report" are not filed and no appearance is made at the hearing noticed for "Court Review", the Court shall issue an Order to Show Cause citing the Conservator(s) and Conservator(s)' attorney.
- d) Findings of the Court Investigator pursuant to Probate Code section 1851, shall be submitted to the Court in writing not less than 15 days prior to the hearing on the "Court Review" and "Account". A copy of the report shall also be mailed by the Court Investigator to the conservator(s) and to the attorney of record for the conservator and conservatee. This report and its contents shall be kept confidential. (Adopted effective October 1, 1998; Amended effective January 1, 2007; Amended effective January 1, 2008; Rule 5.17 Renumbered and Re-lettered as 5.23; subd. (d) added, Amended effective January 1, 2009; Amended effective January 1, 2011)

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name and Address</i>)	TELEPHONE NO.	FOR COURT USE ONLY
ATTORNEY FOR (<i>Name</i>)		
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF: DEFENDANT:		
FINANCIAL DOCUMENTS CAPTION SHEET (Private Professional Conservator/Guardians)		CASE NUMBER:

Hearing Date: _____
Time: _____
Department: _____

This form is required to be used when submitting Financial Documents in compliance with Probate Code §2620(c).

Documents are to be loosely bound and not stapled (i.e., binder or clip) and must be accompanied by a self-addressed postage-prepaid envelope, or written instructions or authorization for pick-up by the attorney for conservator/guardian or his/her designee.

Name, Address and Telephone Number of the Private Professional Conservator/Guardian:

The number of pages (not sides) including this caption _____

I declare under penalty of perjury, under the laws of the State of California that the documents lodged with this cover sheet are the originals, except where after diligent search, the originals are not available.

Date: _____
_____ Conservator/Guardian

To be completed by Clerk only after approval of the accounting for which these documents were submitted.

The documents are returned this date by: _____ Mail _____ Pick-up, per instructions

Dated: _____
_____ Deputy Clerk

5.25 ACCOUNT - SUPPORTING DOCUMENTS REQUIRED

The following must be filed with each accounting:

1. The "Account" of a conservator of the estate who is also the conservator of the person must be accompanied by a "Confidential Status Report" (Probate Code section 2620.1). If the conservator of the estate is not the conservator of the person, the conservator of the person must file the status report in conjunction with the accounting filed by the conservator of the estate. Failure to comply with this rule may result in suspension or removal.
2. "Notice of Hearing"
3. ~~"Notice to Court of Addresses" (Clerk's Form 212, rev. 1987) reflecting names, addresses and telephone numbers of conservatee, conservator, attorney for conservator and attorney for conservatee. "Referral to Court Investigator" (Clerk's Form 212, rev. 1987 2008) reflecting names, addresses and telephone numbers of conservatee, conservator, attorney for conservator, and attorney for conservatee, and names, addresses and contact information for conservatee's relatives and/or friends.~~
4. "Order Appointing Court Investigator" executed to "Monterey County Court Investigator", unless ongoing authority has been provided for in the initial "Order Appointing Court Investigator". (Local Rule 16.02(d)(7).) (Adopted effective October 1, 1998; Rule 5.19 Renumbered as 5.25 effective January 1, 2009; Amended effective January 1, 2011)

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5.28 SMALL ESTATES: PUBLIC BENEFITS (Probate Code section 2628)

- a) If a conservatorship estate qualifies under Probate Code section 2628, the Court may grant an ex parte petition to dispense with the filing of an account.
- b) The petition shall state:
 1. The value of the estate at the beginning and end of the account period, exclusive of conservatee's residence. It is not sufficient to allege that the total net value, exclusive of the residence, is less than ~~\$5,000, \$15,000.~~ A copy of financial statements showing the ending balances shall be filed with the petition.
 - ~~1.2~~ 2. The amount and nature of the "public benefit payments". It is not sufficient to allege that monthly payments, exclusive of public benefit payments, were less than ~~\$750~~\$2,000.
 3. A description of any other monthly income for each month of the accounting period, excluding wages and salaries of conservatee, demonstrating that the estate meets the requirements of Probate Code section 2628.
- c) The petition shall be presented each time an "Account" would otherwise be due. This assures the Court that the estate continues to qualify. A "Status Report" as required by Probate Code section 2620.1 is also required.

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- d) Veteran's Benefits are not "public benefit payments".
- e) The Order waiving an accounting must be served on the Court Investigator at least thirty (30) days prior to the hearing on the Court Review. (Adopted effective October 1, 1998; Rule 5.22 Renumbered as 5.28 effective January 1, 2009; Amended effective January 1, 2011)

MINOR OR INCOMPETENT'S CLAIM

5.42 PROCEEDING TO COMPROMISE MINOR'S OR INCOMPETENT'S CLAIM (Probate Code sections 3500 - 3612)

- a) Petition. A petition to compromise the claim of a minor or incompetent must be filed as a civil proceeding, not a probate proceeding. The petition must set forth jurisdictional facts and state the amount to be paid, by whom, and what disbursement for costs and/or fees is requested. The petition must also request the deposit of the balance of the proceeds in a blocked account in a federally insured bank, credit union or savings and loan association in the manner provided by law, with receipts filed. Although filed at the Civil proceeding, hearing shall be held in the Probate department.
- b) Order. The order shall provide for the person or entity holding funds to make a check payable to the person or persons entitled to costs and fees and shall provide for the issuance of a check for the remaining funds made payable to the proposed trustee AND the bank, credit union or savings and loan association.
- c) Duty of Attorney. The attorney for the petitioner is responsible for assuring that the funds are deposited in accordance with the order and receipts filed.
- d) ~~Attorney's Fees.—Pursuant to California Rules of Court 7.955, in all cases under Code of Civil Procedure 372 or Probate Code sections 3600-3601, the Court shall use a reasonable fee standard when approving and allowing the amount of attorney fees payable from money or property paid or to be paid for the benefit of a minor or incompetent person.—Such fees, however, shall not exceed 25 percent of the recovery, except for good cause shown.—The Court may approve and allow attorney fees under a contingency fee agreement made in accordance with law, provided that the amount of fees is reasonable under all the facts and circumstances.~~ (Adopted effective October 1, 1998; Amended effective January 1, 2004; Amended effective January 1, 2007; Rule 5.35 Renumbered to 5.42 and Amended effective January 1, 2009; Amended, effective January 1, 2011)

CHAPTER 6

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CIVIL DEPARTMENT

6.02 JURISDICTION AND LOCATION

- a) Jurisdiction. The Civil Division shall have jurisdiction over all civil cases, regardless of jurisdictional amount, to include: civil jury and court trials, unlawful detainer, small claims, small claims appeals, creditors examinations, minor's compromises, probate matters, civil settlement conferences, civil writs, civil case and trial management, and law and motion.
- b) Location. The Civil Division shall be located in the Monterey Branch Courthouse at 1200 Aguajito Road, Monterey, California. All civil cases shall be processed and tried by the Civil Division except as otherwise authorized by these rules, specially assigned, or as directed by the Presiding Judge.
- c) All Temporary Restraining Orders brought on behalf or against an elder person, as defined by Probate Code Section 2952(b), shall be initially heard in the Probate Department. (Adopted effective October 1, 1998, Amended effective January 1, 2006; Subd.(c) added and Rule Amended effective January 1, 2009; Amended effective January 1, 2011)

6.03 CALENDARS

- ~~a) Civil Jury Trials and Long Cause Court Trials: Calendar call on Monday at 8:30 a.m. to be assigned by the Civil Supervising Judge.~~
- ~~b) Short Cause Trials: Tuesday and Wednesday, at 8:30 a.m. as assigned by the Civil Supervising Judge.~~
- ~~c) Creditor's Examinations and Prove-up Default hearings: Monday, Tuesday, and Wednesday, 8:30 a.m., as assigned by the Civil Supervising Judge.~~
- ~~d) Adoptions are heard on Wednesday at 8:30 a.m. in the Family Law Court.~~
- ~~e) Civil Harassment matters are heard Monday at 2:00 p.m. as assigned; and Civil Domestic Violence matters are heard Thursday at 8:30 a.m. in the Family Law Court.~~
- ~~f) Law & Motion and Case Management Conference.
 - ~~1. Time: Friday, 9:00 a.m.~~
 - ~~2. Department: Except when sufficient judges are not available, Law & Motion and Case Management Conferences shall be divided and heard in two departments. The Court shall assign the appropriate department.~~~~
- ~~g) Probate Hearings: Friday, 10:00 a.m.~~
- ~~h) Minor's Compromise hearings: Friday, 11:00 a.m.~~

~~i) Unlawful Detainer Trials: Monday, Tuesday, and Wednesday at 8:30 a.m. as assigned by the Court.~~

~~j) Settlement Conferences: Friday 1:30 p.m.; and as specially set.~~

~~k) Small claims appeals: Tuesday and Wednesday at 8:30 a.m. as assigned by the Court.~~

~~l) Small Claims and Vehicle Forfeiture Law & Motion: Monday at 8:30 a.m.~~

~~m) Small Claims Trials: Monday at 8:30 a.m. and 1:30 p.m.~~

(Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2003; Amended effective July 1, 2003; Amended effective July 1, 2004; Amended effective July 1, 2005; Amended effective July 1, 2007; Amended effective January 1, 2009; Amended effective July 1, 2009; Subd. (f) Repealed, Rule Relettered Amended effective July 1, 2010; Repealed effective January 1, 2011)

CHAPTER 7

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LAW AND MOTION

7.08 OBTAINING AN EXPEDITED ORDER AFTER HEARING OR STIPULATION

~~If the attorneys or self-represented parties settle a matter at the time of the hearing or the judge makes a ruling, the parties may use the form entitled, "Stipulation and Order" to obtain an expedited Order After Hearing. The parties shall complete the form, sign it, and submit it to the Judge for signature. The clerk will file it and return the copies to the parties at the time of the hearing. This form is optional. The form is available either at the Clerk's office, Court's website or in the courtroom where the hearing is held. Child support orders must be accompanied by a Child Support Registry Form.~~

(Adopted effective January 1, 2004; Repealed effective January 1, 2011)

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7.11 EX PARTE APPLICATIONS

~~Ex Parte applications in civil cases shall be filed pursuant to California Rules of Court Sections 3.1200 through 3.1207, with the court clerk, directed to the attention of the Supervising Judge, Civil Division. (It is suggested that the moving party telephonically notify the clerk of the Supervising Judge of the filing, to facilitate tracking.)~~

~~Ex Parte hearing shall be calendared daily at 1:30 p.m.~~

~~Except as otherwise specifically provided by these rules, requests for ex parte relief in civil cases shall be presented in conformance with California Rules of Court Sections 3.1200 through 3.1207 and directed to the attention of the Supervising Judge, Civil Division.~~

~~When the required written documents for ex parte relief set forth in Rule 3.1201 have been filed with the court AND delivered to all opposing parties (OR delivery has been excused for exceptional circumstances), the "presentation" of the ex parte application within the meaning Proposed Amendments - Local Rules of Court effective January 1, 2011~~

of Rule 3.1204(a)(1) shall be deemed complete. When the required written documents for ex parte relief set forth in Rule 3.1201 have been filed with the court BUT delivery of the written documents has not occurred and has not been excused, the "presentation" of the ex parte application within the meaning of Rule 3.1204(a)(1) shall be deemed incomplete.

Completed presentations of ex parte applications shall be set for personal appearance within the time frames of Rule 3.1203. Incomplete presentations of ex parte applications shall be presented to the appropriate judicial officer for consideration for setting of appearance pursuant to Rule 3.1205.

Ex Parte appearances are calendared on Wednesdays at 1:30 p.m., except when exceptional circumstances are presented in the application for an appearance on a different day and/or time. An ex parte application will be considered without a personal appearance in the cases set forth in CRC section 3.1207 and in those cases where the parties have stipulated that the ex parte application and any opposition may be determined without a personal appearance. (Adopted effective January 1, 2004; Amended effective January 1, 2005; Amended effective July 1, 2010; Amended effective January 1, 2011)

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CHAPTER 9

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APPELLATE DEPARTMENT

9.02 JUDICIAL ASSIGNMENT AND SESSIONS

The Presiding Judge of the Appellate Department shall supervise the business of the department. All motions, including ex parte applications for orders, shall be presented to the Presiding Appellate Judge. The Presiding Appellate Judge may act on routine matters, or may schedule a motion or other matter for hearing before the panel at his or her discretion.

The panel is composed of three judges, including the Presiding Appellate Judge. A fourth judge is assigned as an alternate appellate panel member.

Traffic infraction appeals shall be (1) set for hearing every fourth Thursday and (2) heard and decided by the Presiding Judge of the Appellate Department or his or her designee from the appellate panel.

Limited civil and misdemeanor appeals shall be (1) set for hearing every fourth-third Wednesday and (2) heard and decided by the appellate panel. (Adopted effective October 1, 1998; Amended effective January 1, 2006; Amended effective January 1, 2010; Amended effective January 1, 2011)

9.03 RECORD ON APPEAL

A. The court elects to use the original trial court file in lieu of a clerk's transcript. (California Rules of Court, rules 8.833, 8.863, 8.914.)

B. Limited civil, misdemeanor and infraction matters.

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The trial court judge shall not order that a transcript be prepared as the record of oral proceedings in lieu of correcting a proposed statement on appeal. (California Rules of Court, rules 8.837(d)(6)(B), 8.869(d)(6)(B); 8.916(d)(6)(B).)

C. Misdemeanor and infraction matters.

Where appellant elects to use a reporter's transcript or a transcript of the official electronic recording of the proceedings as the oral record on appeal, and the appellant is the People or was represented by appointed counsel in the trial court or the Trial Court has determined that the defendant is indigent and orders that the defendant receive the transcript without cost, prior to the preparation of such transcript, a determination shall be made by the Trial Court as to what portion of the oral record is required for proper determination of the appeal. Except in appeals covered by CRC, rules 8.867 or 8.920, the oral record shall include the following items unless the parties have filed a stipulation under CRC, rules 8.860(b) or 8.910(b), or the Trial Court has ordered that any of these items is not required for proper determination of the appeal:

- (1) The oral proceedings on the entry of any plea other than a not guilty plea;
- (2) The oral proceedings on any motion in limine;
- (3) The oral proceedings at trial, but excluding the voir dire examination of jurors and any opening statement;
- (4) Any jury instructions given orally (misdemeanors only);
- (5) Any oral communication between the court and the jury or any individual juror (misdemeanors only);
- (6) Any oral opinion of the court;
- (7) The oral proceedings on any motion for new trial;
- (8) The oral proceedings at sentencing, granting or denying probation, or other dispositional hearing;
- (9) If the appellant is the defendant, the reporter's transcript must also contain:
 - (A) The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge;
 - (B) Any closing arguments; and
 - (C) Any comment on the evidence by the court to the jury (misdemeanors only).

(California Rules of Court, rules 8.865, 8.866, 8.918 and 8.919) (Adopted effective October 1, 1998; Amended effective January 1, 2006; Amended effective January 1, 2007; Amended effective January 1, 2010; Amended effective July 1, 2010; Amended effective January 1, 2011)

CHAPTER 10

FAMILY LAW DEPARTMENT

10.01 LAW AND MOTION

A. LAW AND MOTION CALENDAR

1. Family Law and Motion and Pro Per Calendars. There shall be a Family Law and Motion Calendar and a Pro Per Calendar which shall be heard at the time and place set by the Court.

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2. Meet and Confer. The moving party and the responding party, or his/her attorney if represented, shall each contact the other and attempt to resolve the issues raised in the moving papers prior to the date set for hearing, unless to do so would violate a restraining order then in effect.
3. Continuances. It is the policy of the Court not to continue law and motion matters without good cause. Either party may, with good cause, stipulate once to a continuance for a reasonable amount of time not to exceed 30 days. Any subsequent requests for continuances are subject to approval by the Family Court Judge. All requests must be submitted to the research attorney for the Family Court at least a full 48 hours prior to the date of hearing. The request must indicate good cause for the continuance and state the position of the opposing party regarding the continuance as well as the requested date.

B. TIMELY FILING OF PAPERS

1. General Rules. California Rules of Court, Rule 3.1300, require at least 16 court days notice (16 court days plus an additional 5 calendar days if by mail, motions only) on all motions or Orders to Show Cause without Temporary Orders. Hearings shall be calendared in order that such notice is received unless an Order Shortening Time has been obtained. (Amended effective January 1, 2006; Amended effective January 1, 2007)

Orders to Show Cause which include Temporary Orders or Temporary Restraining Orders (CLETS) must be set no later than 20 calendar days from the date issued. For good cause, which shall be stated by declaration, this period can be extended to up to 25 days. Family Code section 242.

If an order shortening time is obtained but there is not sufficient time prior to the hearing to allow adequate preparation, the Court may make temporary orders at the initial hearing and continue the matter for further hearing. (Adopted effective October 1, 1998).

2. Orders Shortening Time. Orders Shortening Time should not be requested unless there is a hardship or emergency requiring prompt action. All requests must be accompanied by a written declaration establishing GOOD CAUSE. Notice of the request must be given to opposing counsel, if any, within 24 hours, except for good cause. A declaration must be submitted stating the fact of notice or good cause for its absence.
3. Responsive and Reply Documents. Responsive and Reply documents must be filed and served as follows:
 - a. Motions and Orders to Show Cause without Temporary Orders Attached - at least 9 court days prior to the hearing for Responsive Declarations and 5 court days prior to the hearing for Reply Documents. (Amended effective January 1, 2006).

- b. Orders to Show Cause with Temporary Orders Attached - 5 court days prior to the hearing for Responsive Declarations and 2 court days prior to hearing for Reply Declarations.
- c. Orders Shortening Time - The Responsive and Reply Declarations must be filed and served as set forth in the order.

At the time of the hearing, the court may refuse to consider Responsive or Reply documents which are not filed and served within the time frames specified in this rule.

C. EX-PARTE ORDERS

1. All applications for ex parte orders in Family Law matters shall be made to the Family Law Judge, or, in his or her absence, to the ~~Presiding Judge~~ Civil Supervising Judge or his or her designee.
2. Absent a written declaration establishing good cause, 24 hours prior notice of the ex parte request must be given to opposing party. The fact of notice and/or reasons for the failure to give notice to the opposing party should be stated in the declaration in the application for an ex parte order.
3. The application, proposed orders and any supporting documents should be submitted to the Family Law Judge for review prior to the time set for the ex parte hearing.
4. Declarations requesting a party to be excluded from the family home must include the factual basis establishing actual violence or a real threat of violence. Conclusionary allegations are not sufficient. Declarations requesting temporary custody orders must establish good cause for the order.
5. If the Declarations in Support of the Ex Parte Order are false or intentionally misleading, attorneys fees or sanctions may be awarded pursuant to California Rules of Court, Rule ~~230~~ 2.30, and Code of Civil Procedure section 575.2.

D. SPECIAL SETTINGS

All matters requiring more than 20 minutes must be specially set. Calendaring of special sets shall be done by a family law bench officer. A request for a special set hearing must be calendared by motion or, if a matter is already set on the Law and Motion Calendar, the request should be made at the time already scheduled for hearing. Advance notice should be given to the Court that a special set will be requested by written declaration if possible. Requests for special sets should not be made unless the matter is ready to be heard and should include a time estimate regarding the length of hearing requested. Continuances of special settings will not be granted except upon exceptional good cause.

E. USE OF DECLARATIONS

1. Declarations in lieu of Testimony. In all law and motion matters, declarations shall be submitted in lieu of testimony pursuant to California Rules of Court, Rule 3.1306.

Testimony shall be received only upon a showing of good cause. (Amended effective January 1, 2007)

2. Evidence, Arguments or Comments. Evidence, argument or comments will not be heard unless clearly raised in timely filed pleadings. Argument, if requested by the Court at the time of hearing, shall only address points of law. Timely filed declarations shall be considered the evidence submitted.
3. Review Hearing Declarations/Supplemental Declarations.
 - a. If a matter is set for a review hearing, a declaration describing the current status of the matter should be submitted by each party as set forth in the next paragraph. If no declaration is filed, the matter may be dropped at the discretion of the court.
 - b. Supplemental Declarations/Declarations for review hearings must be filed and received by the opposing party at least five (5) court days prior to the date set for review or hearing. Any reply to such declarations must be filed and received by the opposing party no later than two (2) court days prior to the date of the hearing or review.
 - c. The court may not consider declarations or reply declarations which are not filed and received within the time frame specified in this rule.

F. ATTORNEY FEES AND EXPERT WITNESS FEES

Orders for attorney fees, costs or expert witness fees by one party from the other will not be deferred until the time of trial except upon agreement or a showing of GOOD CAUSE. It is the policy of the Court to support each party's right to be adequately represented pending trial. No temporary award of attorney fees or costs shall be made without a showing of need and ability to pay, and until sufficient proof of each party's income has been filed with the Court. (Adopted effective October 1, 1998; Amended effective July 1, 2000; Amended effective January 1, 2004; Amended effective January 1, 2007; Amended effective January 1, 2008; Rule 10.01.B4 and B5 Repealed, Amended effective January 1, 2009; Amended effective January 1, 2011)

CHAPTER 12

SETTING OF CONTESTED FAMILY LAW, PROBATE, ADOPTION AND UNLAWFUL DETAINER ACTIONS

12.01 CONTESTED FAMILY LAW, PROBATE, AND ADOPTION

Contested Family Law, Probate, and Adoption, ~~and Unlawful Detainer~~ Actions will be set for trial only upon the filing of an At-Issue Memorandum. (Adopted effective October 1, 1998; Amended effective January 1, 2011)

12.02 AT-ISSUE MEMORANDUM

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The setting of cases for trial shall be in accordance with Rules 10.901 of the California Rules of Court and these rules.

- a) Any At-Issue Memorandum filed shall be on the form provided by the Clerk of the court.
- b) Approximately fifteen (15) days after the filing of an At-Issue Memorandum the Court shall set the case for trial without a trial setting conference. ~~Unlawful detainer matters shall be set six (6) days after the filing of an At-Issue Memorandum.~~ (Adopted effective October 1, 1998; Amended effective January 1, 2007; Amended effective January 1, 2008; Amended effective January 1, 2011)

12.07 UNLAWFUL DETAINER ACTIONS

~~Unlawful detainer actions will be set for trial no later than 20 days from the date the Request to Set Case For Trial (UD-150) is filed pursuant to Code of Civil Procedure § 1170.5(a).~~ (Adopted effective January 1, 2011)

12.08 CONTESTED PROBATE

~~Objections/Opposition to matters set for hearing shall be filed at least fifteen (15) days before the scheduled hearing date. Responses/Replies shall be filed at least seven (7) days before the scheduled hearing. The Court may, in its discretion, consider documents filed outside of these guidelines.~~ (Adopted effective January 1, 2011)

CHAPTER 14

CRIMINAL DEPARTMENT

14.11 APPEALS IN MISDEMEANOR CASES THAT WERE ELECTRONICALLY RECORDED

~~The provisions of Rule 8.789, California Rules of Court, apply to appeals in misdemeanor matters in which the proceedings were electronically recorded on the Court's equipment, and which were not taken by a court reporter.~~ (Adopted effective October 1, 1998; Amended effective January 1, 2007; Rule 14.10 Renumbered as 14.08 effective January 1, 2009; Repealed effective January 1, 2011)

CHAPTER 19

MISCELLANEOUS RULES

19.06 USE OF CORRECTION FLUID OR TAPE ON DOCUMENTS AND PAPERS

Correction fluid or tape shall not be used to correct errors in dates, monetary amounts, signatures, names of parties, or legal descriptions on any documents or papers, of any nature, presented for filing as part of the official court file. Documents or papers presented for filing with such errors corrected with correction fluid or tape shall be refused for filing by the Clerk of the Court, unless otherwise ordered by the Court. The purpose of this rule is to ensure the long-

Proposed Amendments - Local Rules of Court effective January 1, 2011

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term integrity of court documents which might otherwise be compromised by the decomposition of masking materials; nothing in this rule is intended to constrain the form or format of documents presented for filing, as alternative methods of document correction are available. (Adopted effective October 1, 1998; Amended effective January 1, 2002; Amended effective July 1, 2007; Amended effective January 1, 2011)