Local Rules of Court

Effective July 1, 2016

Monterey County Superior Court
240 Church Street
Salinas, California 93901
(831) 775-5400
www.monterey.courts.ca.gov

CHAPTER 1

DISTRIBUTION OF BUSINESS

1.01 PRESIDING JUDGE

The Presiding judge shall be chosen by a majority vote of the Judges of the Superior Court and shall hold office at their pleasure. He or she shall perform the duties prescribed by the California Rules of Court and by these Rules. The Presiding judge shall, when necessary, designate an acting Presiding judge. The Superior Court shall comply with the court's Governance and Administrative Policies Manual.

(Adopted October 1, 1998; Amended July 1, 2015)

1.02 CALENDAR ASSIGNMENTS

In December of each year, the presiding judge, or his or her delegee, shall designate judicial assignments for the coming year in accordance with the California Rules of Court, rule 10.603. This rule is not intended to limit the ability of the presiding judge, in her or his sound discretion, to make judicial assignments whenever circumstances warrant.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2012)

1.03 ~~MASTER AND~~ DIRECT CALENDAR

~~A. Master Calendar. All civil trials shall be assigned under the master calendar system. The master calendar in Monterey will be presided over by the Supervising Civil Judge, or his or her designee. The Presiding judge may, in consultation with the Executive Committee and Executive Management, change the calendar system. Any changes will be posted on the Court's website.~~

~~B.~~A. Direct Calendar. All misdemeanor, felony, family law, probate, civil, traffic ~~cases~~ and juvenile law ~~matter~~trials cases ~~are subject to the case management rules under California Rules of Court and~~ shall be assigned under the Direct Calendar system. The Presiding judge may, in consultation with the Executive Committee and Executive Management, change the calendar system. Any changes will be posted on the ~~Court's~~ court's website.

(Adopted October 1, 1998; Amended January 1, 2001; Amended January 1, 2004; Amended July 1, 2015; Amended July 1, 2016)

1.04 JUDICIAL ASSIGNMENTS

Current judicial assignments can be viewed on the court's website from the General Information tab at: https://www.monterey.courts.ca.gov/General_Information/Judges_Assignments.aspx

(Adopted October 1, 1998; Amended July 1, 1999; Amended October 12, 1999; Amended July 1, 2000; Amended January 1, 2001; Amended January 1, 2001; Amended January 1, 2002; Amended July 1, 2003; Amended January 1, 2004; Amended July 1, 2004; Amended January 1, 2005; Amended July 1, 2005; Amended July 1, 2006; Amended January 1, 2007; Amended July 1, 2007; Amended January 1, 2008; Amended July 1, 2008; Amended January 1, 2009; Amended July 1, 2010; Amended January 1, 2011; July 1, 2012)

1.05 COURT HOLIDAYS

A list of current court holidays can be viewed on the court's website from the General Information tab at: http://www.monterey.courts.ca.gov/General_Information/Court_Holidays.aspx

A holiday occurring on a Saturday is observed on the preceding Friday, and a holiday occurring on a Sunday is observed on the following Monday. (Cal. Rules of Court, rule 1.11.)

(Adopted October 1, 1998; Amended July 1, 1999; Amended January 1, 2000; Amended January 1, 2001; Amended January 1, 2002; Amended July 1, 2003; Amended January 1, 2004; Amended January 1, 2005; Amended January 1, 2007; Amended January 1, 2008; Amended January 1, 2009; Amended January 1, 2010; Amended January 1, 2011; Repealed July 1, 2012)

1.06 E-Filing of Documents

Beginning January 2, 2016, parties may file documents electronically in civil, family, probate, juvenile, and dependency case types. Electronic filing of documents in these case types will be mandatory as of July 1, 2016. Electronic filing will be permitted in criminal and appellate department cases at a date announced by the presiding judge.

A. Filing Service Provider

Electronic filing of documents shall occur through the court's electronic service provider(s). Electronic service provider information is available on the court's website at www.monterey.courts.ca.gov.

B. Exceptions to E-filing

The following items are not subject to mandatory e-filing under these rules (E-Filing of Documents):

1. Documents presented for filing by a self-represented party. Although e-filing is not mandatory for self-represented parties, they are encouraged to e-file documents.

2. Documents ordered by the court as exempt from e-filing. A party may seek a court-ordered exemption by ex parte application for reason of undue hardship, significant prejudice, or other good cause.

3. Documents and other materials that are not feasibly converted to electronic form by scanning, imaging, or other means.

4. Documents lodged with the court provisionally under seal pursuant to California Rules of Court, rule 2.551, or lodged with the court as confidential documents.

5. Documents with jurisdictional time limits, including notices of appeal, motions for new trial, motions for JNOV, motions to quash service for personal jurisdiction, and petitions for writs taken from local court determination. Although not required, e-filing of these documents is encouraged.

6. Original documents required for a proceeding, including bench warrants, subpoenaed documents, affidavits re real property of small value, bonds, undertakings, ~~abstracts,~~ financial documents submitted by a private professional conservator, letters (probate, guardianship, conservatorship), wills and codicils (for filing or safekeeping), and orders to deposit money and receipt of depository.

7. Challenges to judicial officers pursuant to Code of Civil Procedure section 170.1 et seq.

C. Effective Date and Time of E-Filing

Documents transmitted electronically are deemed filed only after accepted for filing by the clerk. Documents may be electronically transmitted to the court at any time of the day. For purposes of electronic filing, pursuant to California Rules of Court, rule 2.250(b)(10), the "close of business" is 5:00 p.m., Monday through Friday, excluding court holidays. Pursuant to California Rules of Court, rule 2.259(c), a document received electronically by the court after the close of business is deemed to have been filed on the next court day.

Nothing in this section shall limit the clerk's ability to reject filings.

The court will issue a confirmation that the document has been received and filed in accordance with California Rules of Court, rule 2.259. The confirmation shall serve as proof that the document has been filed.

D. Format of E-Filed Materials

1. All documents filed electronically must be in electronic text-searchable PDF (portable document format).

2. Pagination. Document pages must be consecutively numbered using only the arabic numbering system (such as 1, 2, 3), beginning with the number 1 on the first page of the document. When a document, transcript, or record is served in both paper format and electronic format, the pagination must be consistent for both versions.

3. If a party or attorney elects to include hyperlinks in a filing, the hyperlink may be active and should be formatted to standard citation format as provided in California Rules of Court, rule 1.200.

4. Filings that contain multiple documents must be linked together.

5. Exhibits. Electronic exhibits must include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit. Electronic exhibits not so bookmarked are subject to rejection.

E. Courtesy Copy

A judge may order a ~~paper~~ courtesy copy at any time, either printed or through electronic delivery.

F. E-File Version Follow Up to Hand-Served Documents

Documents served by hand, in court, or otherwise permissively, must then be e-filed unless the court specifically provides otherwise. Such e-filing must take place before the close of business on the court day following service by hand in open court. In addition, the Proof of Service must reference the date the document was originally served in open court.

G. Errors are the Responsibility of the Filer

The confirmation of filing of the document and verification of the accuracy of the document shall be the sole responsibility of the filer. The court shall not be responsible for errors or malfunction occurring in the electronic transmission of a document to the court for filing.

H. Redaction of Confidential Information is the Filer's Responsibility

The responsibility for redacting personal identifiers and privileged or confidential information rests solely with counsel and the parties. The clerk will not review pleadings or other documents for compliance with the law. The court may impose sanctions for violation of these requirements.

I. Fees and Fee Waiver

Electronic filing service providers may charge reasonable fees in addition to any filing fees required by the court. A party who has received a fee waiver from the court, or who has otherwise obtained an order of the court waiving such fees, is exempt from the fees and costs associated with electronic filing.

(Adopted January 1, 2016; Amended July 1, 2016)

CHAPTER 2

MONTEREY DIVISION

2.01 REPEALED

(*Adopted October 1, 1998; Daily Monterey Session – Repealed July 1, 2012)*

2.02 VENUE - MONTEREY DIVISION

The following actions or proceedings shall be commenced in the Monterey Division:

A. All proceedings for probate of an estate, termination of a life estate or joint tenancy, guardianship, and conservatorship;

B. All civil proceedings, including:
- Family law proceedings;
- Civil domestic violence proceedings;
- Harassment proceedings;
- Department of Child Support Services;
- Paternity proceedings;
- Adoption proceedings;
- Small claims proceedings; and
- Vehicle forfeiture proceedings.

(Adopted October 1, 1998; Amended January 1, 2001; Amended January 1, 2004; Amended July 1, 2005; Amended January 1, 2008)

2.03 REPEALED

(Adopted October 1, 1998; Amended (renumbered) January 1, 2001; Transfer to or from Monterey Sessions - Repealed July 1, 2012)

2.04 COURT CALENDAR

The Supervising Civil Judge at the Monterey Division shall ~~set and~~ supervise calendars for all matters pending in said court. The Supervising Family Law Judge at the Monterey Division shall ~~set and~~ supervise calendars for all matters pending in said court. All such calendars shall, under such supervision, be maintained by the clerk.

(Adopted October 1, 1998; Amended (renumbered) January 1, 2001; Amended July 1, 2015; Amended July 1, 2016)

2.05 REPEALED

(Adopted January 1, 2009; Court Drop Box - Repealed January 1, 2010)

CHAPTER 3

JUVENILE DEPARTMENT

DEPENDENCY AND DELINQUENCY

3.01 FILING OF JUVENILE PETITIONS

The deadline for filing Welfare and Institutions Code section 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 Welfare and Instutions Code section 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 Welfare and Institutions Code section 300 jurisdiction and disposition reports with the clerk's office shall be no later than 2:00 pm on the Thursday prior to the hearing.

The deadline for filing Welfare and Institutions Code section 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 July 1, 2009; Amended January 1, 2011)

3.02 ADDING CASES TO JUVENILE CALENDAR

Any application or memorandum for setting a juvenile matter on calendar shall be submitted to the clerk's office no later than two (2) court days (excluding weekends and holidays) before the requested hearing date. Any exceptions to this rule must be approved by the judge hearing the case.

(Adopted July 1, 2009)

3.03 DESIGNATION OF PRESIDING JUVENILE JUDGES

The presiding judge may designate all judges of the superior court as judges of the juvenile court. All business of the juvenile delinquency department shall be conducted by the presiding judge of the juvenile delinquency department. All business of the juvenile dependency department shall be conducted by the presiding judge of the juvenile dependency department. If the presiding judge of either the juvenile delinquency or juvenile dependency department is not available, the presiding judge of the court shall designate another judge to manage the assignments.

(Adopted October 1, 1998; Amended January 1, 2004)

3.04 SESSIONS

A. JUVENILE DELINQUENCY

Juvenile delinquency court sessions are held in the Monterey County Superior Court, Juvenile Division, located at the Probation Department Building, 1422 Natividad Road, Salinas, California 93906.

(Adopted October 1, 1998; Amended July 1, 2002)

B. JUVENILE DEPENDENCY

Juvenile dependency court sessions are held at the Salinas ~~courthouse, 240 Church sTREEt~~court annex, 118 W. Gabilan, Salinas, California 93901.

(Adopted October 1, 1998; Amended July 1, 2002; Amended July 1, 2016)

3.05 FILING OF PAPERS

All papers are to be filed ~~and maintained in the clerk's office at the courthouse in Salinas.~~ electronically as set forth in Rule 1.06.

(Adopted October 1, 1998; Amended July 1, 2016)

DEPENDENCY

3.06 TRIAL BRIEF REQUIREMENT

In all contested juvenile dependency matters, parties must file trial briefs at least one (1) week prior to the hearing or per the briefing schedule set by the court. Any exceptions to this rule must be with prior approval of the court.

(Adopted January 1, 2010)

3.07 NOTIFICATION OF CANCELLED CONTESTED HEARING

In all dependency matters, the moving party must notify the court and all parties if the hearing is not going forward as a contested hearing three (3) court days prior to the hearing.

(Adopted January 1, 2010)

3.08 CALENDAR

(Amended July 1, 2002; Amended July 1, 2005; Amended January 2, 2006; Amended January 1, 2008; Renumbered from 3.06 to 3.08 January 1, 2010; Repealed January 1, 2011)

3.09 RELEASE OF JUVENILE CASE INFORMATION

(Adopted October 1, 1998; Amended July 1, 1999; Re-numbered from 3.07 to 3.09 January 1, 2010; Repealed January 1, 2011)

3.10 COURT APPOINTED SPECIAL ADVOCATE PROGRAM

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 (CASA) program, formed and operating under the guidelines established by the National Court Appointed Special Advocate Association. (Welf. & Inst. Code, §§ 100 – 110; Cal. Rules of Court, 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 October 1, 1998; Amended July 1, 1999; Amended January 1, 2000; Amended July 1, 2002; Re-numbered from 3.08 to 3.10 January 1, 2010; Amended 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;

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; and

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 (2) days before each of the following hearings: six (6) month review; twelve (12) month review; eighteen (18) month review; selection and implementation hearing (Welf. & Inst. Code, § 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 two (2) court days before the scheduled hearing. (Cal. Rules of Court, rule 5.655(k)(5).)

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 October 1, 1998; Amended July 1, 2002; Renumbered from 3.09 to 3.11 January 1, 2010; Amended 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 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 rule 3.11 above.

(Adopted October 1, 1998; Amended July 1, 2002; Renumbered from 3.10 to 3.12 January 1, 2010; Amended 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 01/1/11

3.13 RELEASE OF INFORMATION TO ADVOCATE

A. TO ACCOMPLISH APPOINTMENT

To accomplish the appointment of an advocate, the Judge/Referee/Commissioner 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/she is appointed to represent as any case manager (social worker or probation officer) with regard to records pertaining to the child held by any 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/her identification as a court-appointed advocate to any such record holder in support of his/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 he/she is appointed.

D. COMMUNICATION

There shall be ongoing, regular communication concerning the child's best interests, current status, and significant case developments, maintained among the advocate, case manager, child's attorney, attorneys for parents, relatives, foster parents, and any therapist for the child.

(Adopted October 1, 1998; Renumbered from 3.11 to 3.13 January 1, 2010)

3.14 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.

(Adopted October 1, 1998; Renumbered from 3.12 to 3.14 January 1, 2010)

3.15 CALENDAR PRIORITY

In light of the fact that advocates are rendering a volunteer service to children and the court, matters on which they appear should be granted priority on the court's calendar whenever possible.

(Adopted October 1, 1998; Renumbered from 3.13 to 3.15 January 1, 2010)

3.16 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.

(Adopted October 1, 1998; Renumbered from 3.14 to 3.16 January 1, 2010)

3.17 FAMILY LAW ADVOCACY

Should the juvenile court dismiss dependency and create family law orders pursuant to Welfare and Institutions Code section 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.

(Adopted October 1, 1998; Renumbered from 3.15 to 3.17 January 1, 2010)

3.18 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 he/she may be called to testify at some point in the proceedings. An advocate shall not be deemed to be a "party," as described in Title 3 of Part II of the Code of Civil Procedure. However, the court, in its discretion, shall have the authority to grant the advocate amicus curiae status, which includes the right to appear with counsel.

(Adopted October 1, 1998; Amended January 1, 2008; Renumbered from 3.16 to 3.18 January 1, 2010)

APPENDIX: APPLICATION FOR JUVENILE COURT RECORDS

(Appendix: Application for Juvenile Court Records, January 1, 2008; Repealed January 8, 2011)

3.19 REPRESENTATION IN JUVENILE DEPENDENCY PROCEEDINGS CALIFORNIA RULES OF COURT, RULE 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 section 300, and is unrepresented by counsel, unless the court finds the child would not benefit from the appointment of counsel.

1. In order to find that a child would not benefit from the appointment of counsel, the court must find all of the following:

   a. The child understands the nature of the proceedings;

   b. 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

   c. Under the circumstances of the case, the child would not gain any benefit by being represented by counsel.

2. 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.

3. 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 section 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 October 1, 1998; Amended July 1, 2002; Renumbered from 3.17 to 3.19 January 1, 2010; Amended January 1, 2011)

3.20 SCREENING FOR COMPETENCY

A. Effective July 1, 1996, all attorneys who represent parties in a juvenile court proceeding 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 shall complete and submit a Certification of Competency to the court within ten (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 3.21, 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 rule 3.21(B).

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 ten (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 (6) 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 3.21(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 October 1, 1998; Amended July 1, 2002; Renumbered from 3.18 to 3.20 January 1, 2010; Amended 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 (8) 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:

   1. Participated in at least eight (8) 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

   2. At least six (6) 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.

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 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 (8) 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 that 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.

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.

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 twenty (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 October 1, 1998; Amended July 1, 2002; Renumbered from 3.19 to 3.21 January 1, 2010; Amended 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 a 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 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 the child's caretaker. The attorney or the attorney's agent shall make at least one (1) 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 (1) 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 that is consistent with the client's interests, and to comply with the local rules and procedures as well as with statutorily mandated timelines.

(Adopted October 1, 1998; Amended July 1, 2002; Renumbered from 3.20 to 3.22 January 1, 2010; Amended January 1, 2011)

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.

B. Each appointed attorney must provide 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 ten (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 ten (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 twelve (12) years of age or older, a copy of the notice shall also be sent or given to the minor.

C. The court shall review a complaint within ten (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 (20) days from the date of the notice to respond to the complaint in writing.

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.

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.

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 (6) 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.

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 (E) or (F), the attorney shall have ten (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 thirty (30) days after it has been requested except by stipulation of the parties. The complainant and the attorney shall each be given at least ten (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.

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 ten (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 October 1, 1998; Amended July 1, 2002; Renumbered from 3.21 to 3.23 January 1, 2010; Amended January 1, 2011)

3.24 COURT APPOINTED SPECIAL ADVOCATE AS GUARDIAN AD LITEM

If the court makes the findings as outlined in rule 3.19(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.

A. The required training of a CASA volunteer is set forth in California Rules of Court, rule 5.655.

B. The caseload of a CASA volunteer acting as a guardian ad litem must be limited to ten (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 July 1, 2002; Renumbered from 3.22 to 3.24 January 1, 2010; Amended January 1, 2011)

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 section 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 that 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 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) or *Request to Change Court Order* (JV-180) or by the filing of a declaration. The person giving notice shall set forth the nature of the interest or right that 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. 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.

D. 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.

E. 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 October 1, 1998; Amended July 1, 2002; Renumbered from 3.23 to 3.25 January 1, 2010; Amended 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 as set forth in California Rules of Court, rule 5.660, and Monterey County Superior Court Local Rules, 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

Revised 1-1-11

PROBATE DEPARTMENT

4.00 PREAMBLE

The following rules should be adhered to with respect to the majority of matters presented to the court. In exceptional circumstances and for good cause shown, the court will consider individual exceptions to these rules where not prohibited from doing so by statutory or case law.

ADMINISTRATION AND ORGANIZATION

4.01 PROBATE JUDGE

The probate judge shall be designated by the presiding judge.

(Adopted October 1, 1998)

4.02 OTHER PROBATE LAW AND COURT RULES

(Adopted October 1, 1998; Repealed July 1, 2013)

4.03 SIGNATURE OF JUDGE

Any order or document on a calendared matter requiring the signature of the judge must first be submitted to a research attorney for examination.

(Adopted October 1, 1998)

4.04 CONSOLIDATION OF RELATED CASES

Whenever it appears that two (2) or more petitions with different numbers have been filed with reference to the same proceeding, the court will, on its own motion at the first hearing, consolidate all of the matters with the file bearing the lowest number. The file bearing the lower or lowest number will be referred to as the controlling file. All documents filed after consolidation must bear the case number of the controlling file. Upon consolidation, the clerk must transfer all documents in consolidated files to the controlling file with the exception of a copy of the order of consolidation.

(Rule 4.04 previously adopted October 1, 1998; Amended January 1, 2002; Renumbered as 4.05 and new rule 4.04 adopted January 1, 2009)

4.05 MATERIAL TO BE INCLUDED IN PROBATE ORDERS

Complete in Themselves. Orders shall contain the name of the judge presiding, the date of hearing and the department. All pages of the order shall include the case name and number in a footer or header. All orders or decrees in probate matters must be complete in themselves. They shall set forth, with the same particularity required of judgments in civil matters, all matters actually passed on by the court, the relief granted, the names of any persons affected, the descriptions of any property affected and the amounts of any money affected. Probate orders should be written so their general effect may be determined without reference to the petition on which they are based. Orders may reference attached exhibits where use of the exhibits is meant to safeguard against typographical errors, for example where lengthy property descriptions are involved. Exhibits must reference the case name and number. The preferred practice is to incorporate the exhibit into the order and provide for a judicial signature element at the end of the exhibit.

A. Orders Settling Accounts. In orders settling accounts it is proper to use general language approving the account, the report, and the acts reflected therein. It is not sufficient in any order to recite merely that the petition as presented is granted. Orders settling accounts must also contain a statement as to fees approved, fees waived, and the balance of the estate on hand, specifically noting the amount of cash included.

B. When an order is submitted to the court, it will be accompanied by two (2) complete, legible copies, along with copies of all documents attached to the proposed order.

(Adopted October 1, 1998; Amended January 1, 2002; Rule 4.04 renumbered as 4.05 and amended January 1, 2009; Amended January 1, 2010; Amended July 1, 2013)

4.06 APPLICATIONS FOR EX PARTE ORDERS

Procedures for ex parte applications in probate, trust, conservatorship, and guardianship matters shall be conducted in the same manner as those in general civil cases, per rule 7.11.

(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Rule 4.05 renumbered as 4.06 January 1, 2009; Repealed January 1, 2011; Amended July 1, 2012; Amended July 1, 2013)

4.07 TELEPHONE CALLS TO RESEARCH ATTORNEY

The research attorneys are not required to provide answers to general legal and/or hypothetical questions. General legal questions or questions involving hypothetical fact situations will be discussed at the discretion of the research attorney. Such discussions may not be cited as authority for actions subsequently taken. Research attorneys should not be considered an alternative to basic legal research.

(Adopted October 1, 1998; Rule 4.06 renumbered as 4.07 and amended January 1, 2009)

4.08 PROBATE CALENDAR

Probate matters are heard in Monterey at 9:00 a.m. on Wednesday mornings. Please see the court website at www.monterey.courts.ca.gov or call the court at (831) 647-5800, for available dates. Matters shall be calendared at least thirty (30) days prior to the hearing date. The petitioner shall include an appropriate date and time for hearing on the documents submitted.

Normally probate matters are heard on the documents and declarations submitted. If testimony is required, or the hearing will require more than ten (10) minutes, arrangements should be made for a special setting. Special settings are set by way of properly calendared motions.

If it shall appear, when a matter is called, that it will require more than ten (10) minutes, the court may reset the matter to another time and/or day.

(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Amended July 1, 2004; Rule 4.07 renumbered as 4.08 and amended January 1, 2009; Amended July 1, 2013)

4.09 SUBMITTED CALENDAR

Certain probate, guardianship, and conservatorship proceedings may be submitted to the probate court without the necessity of a court appearance by the petitioner in pro per or by the

attorney for the petitioner. To determine if an appearance is required, view "Probate Notes" on the probate section of the court's website at http://www.monterey.courts.ca.gov/Probate/

(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2004; Rule 4.08 renumbered as 4.09 and amended January 1, 2009; Amended July 1, 2013)

4.10 PROPOSED ORDERS—FORM AND CONTENT

A. In all conservatorships where conservator is represented by counsel, counsel must approve the proposed order as to form and content.

B. Orders must be separate documents. Orders may not be included in the body of a petition.

C. Orders may not include a blank judicial signature page following the text on an order. Use footers on the signature page which would include the case name and case number.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2001; Amended January 1, 2002; Amended January 1, 2006; Amended January 1, 2007; Rule 4.09 renumbered as 4.10 and amended January 1, 2009; Repealed 4.10 (A)-(C) and renumbered (D)-(F) to (A)-(C) July 1, 2013.)

PLEADINGS

4.11 WITHDRAWAL OF COUNSEL OF RECORD

The following provisions apply to attorneys appointed by the court to serve as appointed counsel and guardians ad litem and also attorneys for guardians, conservators, personal representatives in estates, and trustees of trusts under court supervision.

A. Counsel wishing to withdraw from a probate proceeding as counsel of record must file and serve a motion to withdraw in accordance with the provisions of Code of Civil Procedure section 284 and California Rules of Court, rule 3.1362.

B. The filing in the case file of a substitution in pro per without prior court approval will not effectively relieve the counsel of record. Such counsel will only be relieved by substitution of another counsel or by court order upon showing that the person wishing to act in pro per is not precluded from doing so by virtue of his or her capacity in the pending proceeding. (See e.g., *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545.) Court approval may be obtained by noticed motion.

C. Motions for withdrawal where a bond has been filed by a surety must be accompanied by proof of service of the notice required by Probate Code section 1213.

(Rule 4.11 previously adopted October 1, 1998; Renumbered as 4.13 January 1, 2009; New rule 4.11 adopted January 1, 2009)

4.12 CAPTION OF PETITIONS AND PLEADINGS

With the exception of Judicial Council forms, all separately filed pleadings must include in the caption, the date, time, and place of hearing. Separately filed pleadings include later filed declarations responsive to inquiries made by the court in advance of the hearing date.

The calendar department of the court is not required to read the body of the petition or the prayer to determine the adequacy of the pleading. The caption of petitions must be all-inclusive

as to the relief sought in the petition so that the matter may be properly calendared and posted, and filing fees, if any, determined. If any part of the estate is to be distributed to a trust, the caption must so indicate.

(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2002; Rule 4.10 renumbered as 4.12 and amended January 1, 2009)

4.13 PLEADINGS MUST BE SIGNED BY REPRESENTATIVE, TRUSTEE, GUARDIAN OR CONSERVATOR

(Adopted October 1, 1998; Rule 4.11 previously adopted October 1, 1998; Renumbered as 4.13 January 1, 2009; Repealed July 1, 2013)

4.14 AMENDMENT OF PLEADINGS

(Adopted October 1, 1998; Rule 4.12 renumbered as 4.14 January 1, 2009; Repealed July 1, 2013)

4.15 FILING DEADLINE

A. When statutes provide that papers may be filed within three (3) calendar days of the hearing, service on opposing counsel must be by personal delivery (or by FAX when permitted by rule 2.306 of the California Rules of Court).

(Adopted October 1, 1998; Amended January 1, 2001; Amended January 1, 2007; Amended January 1, 2008; Rule 4.13 renumbered as 4.15 and amended January 1, 2009; Repealed (A)-(B) and re-lettered (C) to (A) July 1, 2013)

STIPULATIONS

4.16 CONTINUANCES

Matters may not be continued by the petitioning party or by stipulation of counsel without authorization from the court which should be sought through the court's research attorney if set for hearing within five (5) working days.

Matters that have been set by the court shall not be continued at any time without authorization from the court.

(Adopted October 1, 1998; Rule 4.14 renumbered as 4.16 January 1, 2009)

NOTICES, PUBLICATION AND SERVICE OF CITATIONS

4.17 NOTICES GENERALLY

Notice requirements with respect to particular petitions or matters are set forth elsewhere in the Probate Code and California Rules of Court. Counsel must consult the specific rules relating to such petitions or matters and the relevant statutes to assure proper notice is given.

When notice of hearing is required – whether by personal service, mailing or publication – petitioner must give such notice and file the necessary proof of service. The court clerk does not have this responsibility.

(Adopted October 1, 1998; Amended January 1, 2001; Rule 4.15 renumbered as 4.17 January 1, 2009; Amended July 1, 2013)

4.18 REPEALED

(Adopted October 1, 1998; Rule 4.16 renumbered as 4.18 January 1, 2009; Additional Notice Requirements - Repealed July 1, 2013)

APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

4.19 REPEALED

(Adopted October 1, 1998; Amended January 1, 2001; Rule 4.17 renumbered as 4.19 January 1, 2009; Notice Re: Special Letters - Repealed July 1, 2013)

4.20 ALLEGATIONS IN PETITIONS RE: HEIRS OR BENEFICIARIES

A. Nominated Trustee(s). The nominated trustee(s) of a trust created by a will must be listed as a devisee or legatee. If the trustee is also the estate representative or no trustee has been appointed, the individual trust beneficiaries must also be set forth and served with notice of hearing as set forth in Probate Code section 1208.

B. Post-deceased Heirs, Devisees or Legatees. If an heir, devisee, or legatee dies after the decedent, and a personal representative has been appointed for the heir, devisee or legatee, the heir, devisee or legatee should be listed in care of the name and address of the personal representative. If no personal representative has been appointed, the heir, devisee, or legatee should be listed as deceased and notice should be given to the heirs, legatees, or devisee of the post deceased heir. In either case, the date of death should be included.

C. Contingent Heirs. All contingent heirs and legatees must be listed in the petition and are entitled to receive notice of the hearing.

(Adopted October 1, 1998; Amended January 1, 2001) Rule 4.18 renumbered as 4.20 January 1, 2009)

4.21 REPEALED

(Adopted October 1, 1998; Rule 4.19 renumbered as 4.21 January 1, 2009; Subsequent Petitions For Probate - Repealed July 1, 2013)

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4.22 REPEALED

(Adopted October 1, 1998; Rule 4.20 renumbered as 4.22 January 1, 2009; Notice By Mail - By Whom Given - Repealed July 1, 2013)

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4.23 REPEALED

(Adopted October 1, 1998; Amended January 1, 2008; Rule 4.21 renumbered as 4.23 January 1, 2009; Heirs Without Known Addresses - Repealed July 1, 2013)

4.24 REPEALED

(Adopted October 1, 1998; Rule 4.22 renumbered as 4.24 January 1, 2009; Continuance To Permit Filing Of Will Contest - Repealed July 1, 2013)

4.25 PETITIONER SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE

The court requires all petitioners seeking appointment as a personal representative to file the Confidential Statement of Birth Date and Driver's License Number (Judicial Council form DE-147S) pursuant to Probate Code section 8404, subdivision (b).

(Rule 4.25 previously adopted October 1, 1998; Amended January 1, 2008; Renumbered as 4.28 January 1, 2009; New rule 4.25 adopted January 1, 2009)

4.26 REPEALED

(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Amended January 1, 2008; Rule 4.23 renumbered as 4.26 and amended January 1, 2009; Amended January 1, 2010; Bonding Of Personal Representatives - Repealed 4.26(A) – (H) July 1, 2013)

4.27 REPEALED

(Adopted October 1, 1998; Rule 4.24 renumbered as 4.27 January 1, 2009; Bond For Special Administrators - Repealed July 1, 2013)

4.28 REPEALED

(Adopted October 1, 1998; Amended January 1, 2008; Rule 4.25 renumbered as 4.28 January 1, 2009; Issuance Of Letters - Repealed July 1, 2013)

4.29 DECLINATIONS AND CONSENTS TO SERVE

A. Declination of Named Executor. It is insufficient merely to allege that the person named in the decedent's will as executor thereof declines to act as such. A written declination to act, verified under penalty of perjury (Code of Civil Pro., § 2015.5) by such person, must be filed with the court.

B. Two or More Executors. If a petition for letters to be issued to two (2) or more executors is filed, and one (1) or more of the named executors is not a petitioner, each non-petitioning executor must file a consent to act, verified under penalty of perjury.

(Adopted October 1, 1998; Rule 4.26 renumbered as 4.29 January 1, 2009)

4.30 MULTIPLE REPRESENTATIVES

When multiple personal representatives are appointed, letters shall be issued jointly to all of them, and not separately to any of them, unless specifically permitted by court order.

(Adopted October 1, 1998; Rule 4.27 renumbered as 4.30 January 1, 2009)

PETITIONS TO SET ASIDE SPOUSAL PROPERTY

4.31 REPEALED

(Adopted October 1 1998; Rule 4.28 renumbered as 4.31 January 1, 2009; Spousal Property Petitions - Repealed July 1, 2013)

4.32 PROVISION RE: SURVIVORSHIP

If a spouse's right to take under a will is conditioned on survival for a specified period of time, no property will be set aside or confirmed to the spouse until the expiration of the survivorship period.

(Adopted October 1, 1998; Rule 4.29 renumbered as 4.32 January 1, 2009)

INDEPENDENT ADMINISTRATION

4.33 DISTRIBUTION UNDER ACT

A. Schedule of Claims. In any petition for distribution, a schedule of claims must be included as part of the petition, showing the name of the claimant, amount claimed, date presented, date allowed, the amount 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 affidavit of mailing to the creditor must be on file. The notice of allowance should not be filed unless the creditor is the personal representative and/or counsel for the estate.

B. Preliminary Distribution. Although a preliminary distribution may be made without an accounting, sufficient facts must be set forth in the petition to allow the court to ascertain that the estate is solvent. If the court has questions concerning the propriety of a preliminary distribution, the court may require an accounting.

C. Description of Independent Acts. In any petition for distribution, all independent acts taken without prior court approval shall be set forth and described, and an allegation made that the fifteen (15) day notice of proposed action was duly served and that no objections were received or that notice was not required. The original "Notice of Proposed Action," with attached affidavit of mailing shall be on file with the court. If certain acts have been properly reported in a prior petition for distribution, and notices filed, they need not be reported again.

(Adopted October 1, 1998; Rule 4.30 renumbered as 4.33 January 1, 2009)

PETITIONS FOR INSTRUCTIONS GENERALLY

4.34 REPEALED

(Adopted October 1, 1998; Rule 4.31 renumbered as 4.34 January 1, 2009; Limitations on Use of Petitions for Instructions - Repealed July 1, 2013)

4.35 REPEALED

(Adopted October 1, 1998; Rule 4.32 renumbered as 4.35 January 1, 2009; Petitions to Determine Title to Real or Personal Property Pursuant to Probate Code Section 9860 - Repealed July 1, 2013)

CREDITORS' CLAIMS

4.36 REPEALED

(Adopted October 1, 1998; Amended July 1, 2004; Amended January 1, 2008; Rule 4.33 renumbered as 4.36 January 1, 2009; Filing, Approval, Rejection And Payment Of Claims - Repealed July 1, 2013)

4.37 PAYMENT OF INTEREST ON FUNERAL AND INTERMENT CLAIMS

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

Interest on funeral and interment creditors' claims will only be allowed as provided by Health and Safety Code section 7101, which provides that interest is allowed commencing sixty (60) days after the date of death.

(Adopted October 1, 1998; Rule 4.33 renumbered as 4.36 January 1, 2009)

SALES

4.38 PUBLISHED NOTICE FOR SALE OF REAL ESTATE

A. Required Notice. Unless a will specifically grants an executor, as distinguished from an administrator with will annexed, the authority to sell without notice (Prob. Code, § 10303), a publication of notice of sale of real property is required.

B. Content of Notice. The notice of sale of real property must substantially comply in its content with the following example:

"NOTICE IS HEREBY GIVEN that, subject to confirmation of this court on (insert date, time and department), or thereafter within the time allowed by law, the undersigned as (administrator or executor) of the estate of the above named decedent, will sell at private sale to the highest net bidder, on the terms and conditions hereinafter mentioned, all right, title, and interest that the estate has acquired in addition to that of the decedent at the time of death, in the real property located in Monterey County, California, as follows:

(Insert Legal Description of Property here.)

APN:

This property is commonly referred to as (insert address here) and includes (insert any fixture included in the price).

The sale is subject to current taxes, covenants, conditions, restrictions, reservations, right of way and easements of record, with any encumbrances of record to be satisfied from the purchase price.

The property is to be sold on an "as is" basis, except for title.

An offer on the property in the total amount of (insert amount of bid) has been accepted by the (insert administrator or executor) and a REPORT OF SALE AND PETITION FOR ORDER CONFIRMING SALE OF REAL PROPERTY has been filed in these proceedings, which Report and Petition have been set for hearing on (insert hearing date) and notice made to all interested parties. THE PURPOSE OF THIS NOTICE IS TO INVITE BIDS OVER THE ACCEPTED OFFER, in accordance with the provisions of California Probate

Code section 10311. By statute, the initial overbid must be in the amount of (insert first overbid amount).

Overbids are invited for this property and must be in writing and presented on (insert court confirmation hearing date) at (insert hearing time) in department (insert department no.) of the Superior Court of the State of California, for the County of Monterey, 1200 Aguajito Rd., Monterey, California. Bid forms may be obtained from the attorney for the (administrator or executor) at the address shown hereinabove or at the Superior Court on the morning of the hearing.

- The property will be sold on the following terms (insert all applicable terms).
- The undersigned reserves the right to refuse to accept any bids.

C. Time. If notice of sale is published, any sale must be in accordance with its terms. If a petition for confirmation of sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed, and new notice of sale must be published. Pursuant to Probate Code section 10308, any petition for confirmation of sale must allege that the sale was made within thirty (30) days prior to the date on which the petition was filed. The court requires that the specific date of sale be alleged in the return of sale and petition for its confirmation. If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the court cannot announce the sale on the date set for hearing but must deny confirmation without prejudice to a new sale after another notice has been given as prescribed by law.

D. Terms of Sale. The published notice of sale of real property constitutes a solicitation for offers. The terms of the solicitation must be substantially similar to the terms of the accepted offer that is the subject of the report of sale and petition for order confirming sale of real property. Published terms of the solicitation cannot be more onerous than the terms of the accepted offer.

E. Defect in Notice. If an executor publishes a notice of sale of real property and proceeds with that sale and later a technical defect appears, this defect cannot be cured by the executor's power of sale given in the will. The publication constitutes an election by the executor to sell by means of publication of notice.

(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2002; Rule 4.35 renumbered as 4.38 January 1, 2009; Amended July 1, 2013)

4.39 SALE OF REAL PROPERTY

A. Contract for Sale. The real estate purchase agreement or other contract of sale shall be attached to the report of sale and petition for order confirming sale of real property.

B. Appearances of Counsel. In petitions for confirmation of sales of real estate and for sales of personal property where bidding is authorized, the court will not proceed with the confirmation of the sale in the absence of the attorney, except in those cases where the personal representative, guardian, or conservator is present and requests that the sale proceed.

C. Sale Contingencies. Except in exceptional circumstances, all contingencies contained within the real estate purchase agreement, with the exception of court confirmation itself, shall be removed prior to the date of the confirmation hearing. Before the sale is confirmed,

counsel shall state for the record that this requirement has been satisfied. Where exceptional circumstances exist to justify a waiver of this requirement, counsel will obtain ex parte authorization to proceed prior to filing the petition.

D. Continuances. Sale confirmations will be continued only under the most exceptional circumstances. A motion for continuance must be made in open court.

E. Probate Code section 10398 requires that notice be given “to the purchasers named in the petition . . . .”

(Adopted October 1, 1998; Amended January 1, 2001; Rule 4.36 renumbered as 4.39 January 1, 2009)

4.40 EXCLUSIVE LISTINGS FOR THE SALE OF REAL PROPERTY

Where full independent powers have not been granted, Probate Code section 10150 permits a representative to grant an exclusive listing for a period not to exceed ninety (90) days after obtaining the permission of court. To obtain such permission, the representative must file an ex parte petition setting forth, in detail, the property to be sold, the broker to be employed, the terms of the exclusive listing agreement, and the factual reasons why such agreement is necessary and advantageous to the estate. A bare statement of "necessity and advantage" will not suffice.

In all cases, the ex parte order shall provide that a reasonable broker's commission, if any, will be determined by the court at the time of confirmation of sale.

(Adopted October 1, 1998; Rule 4.37 renumbered as 4.40 January 1, 2009)

4.41 BOND ON SALE OF REAL ESTATE

Petitions for confirmation of sale of real estate shall set forth the amount of bond in force at the time of sale and the amount of property in the estate which should be covered by bond (as provided in Probate Code section 8482) at the close of escrow. If no additional bond is required, or if bond is waived, that fact must be alleged. A secured promissory note taken as part of the consideration is personal property, and an additional bond must be fixed in the amount of such note plus whatever cash is paid. If additional bond is ordered, it must be filed prior to obtaining the court's signature on the order confirming sale.

(Adopted October 1, 1998; Rule 4.38 renumbered as 4.41 January 1, 2009)

4.42 BROKER'S COMMISSIONS - GENERAL RULE

A. The order confirming sale must show the total commissions allowed and any allocation agreed upon between brokers.

B. Upon confirmation of the sale of improved real property, the court will not allow a broker's commission in excess of six percent (6%), unless justified by exceptional circumstances. A commission of up to ten percent (10%) may be allowed for the sale of raw land.

C. A commission exceeding the normal schedule will be allowed only under the most unusual circumstances. Whenever possible, the written agreement of the affected beneficiaries should be obtained.

D. A broker bidding for his own account is not entitled to receive or share in a commission. (*Estate of Toy* (1977) 72 Cal.App.3d 392.)

(Adopted October 1, 1998; Rule 4.39 renumbered as 4.42 January 1, 2009)

4.43 DISPUTES ABOUT BROKERS' COMMISSIONS

Normally disputes concerning broker's commissions will be referred to the appropriate Board of Realtors for arbitration.

(Adopted October 1, 1998; Rule 4.40 renumbered as 4.43 January 1, 2009)

4.44 TANGIBLE PERSONAL PROPERTY

Commissions on sales of tangible personal property will be allowed only to individuals holding a broker's license authorizing them to deal in the type of property involved. A commission will be allowed on the original bid only when the commission is requested in the return of sale. When there is an overbid in court, a commission may be allowed to the successful broker, and, if the original bid was subject to a commission, apportionment between the brokers will be made according to the same rules as prescribed for real estate sales. The amount of the commission is within the court's discretion and will not ordinarily exceed a total of ten percent (10%) of the sale price.

(Adopted October 1, 1998; Rule 4.44 renumbered as 4.47 January 1, 2009)

4.45 SALE OF SPECIFICALLY DEVISED OR BEQUEATHED PROPERTY

On a sale of specifically devised or bequeathed real or personal property, fifteen (15) days notice of time and place of hearing of the return of sale must be given to the devisee or legatee, unless his/her consent to such sale is filed with the court.

(Adopted October 1, 1998; Rule 4.42 renumbered as 4.45 January 1, 2009)

INVENTORY, ACCOUNTS AND REPORTS

4.46 "INVENTORY AND APPRAISAL" TO SHOW SUFFICIENCY OF BOND

(Adopted October 1, 1998; Amended July 1, 2004; Rule 4.43 renumbered as 4.46 January 1, 2009; Repealed July 1, 2013)

4.47 PROPERTY TAX CERTIFICATION TO BE FILED WITH "INVENTORY APPRAISAL"

(Adopted October 1, 1998; Rule 4.44 renumbered as 4.47 January 1, 2009; Repealed July 1, 2013)

4.48 REQUIRED FORM OF ACCOUNTS

A. Format of Accounts. All accounts filed in probate proceedings, including guardianship, conservatorship, and trust accounts, shall contain a summary or recapitulation showing:

- Period encompassed by the accounting.
- Amount of Appraisal, if first account. If subsequent account, amount chargeable from prior account.

- Amount of receipts, excluding capital items.
- Gains on sales or other disposition of assets (if any).
- Amount of disbursements, excluding capital items.
- Losses on sales or other disposition of assets (if any).
- Amount of property on hand.

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 incorporated by this reference.

CHARGES

Amount of Inventory and Appraisal (or, if not the first account: Amount chargeable from Prior Account)	$_____
Receipts during Account Period (Schedule "A")	$_____
Gains on Sales (Schedule "B")	$_____
	=========
Total Charges $.....	$_____

CREDITS

Disbursements during account Period (Schedule "C")	$_____
Losses on Sales (Schedule "D")	$_____
Other credits: Property distributed; homestead of other property set apart (Schedule "E")	$_____
Property on Hand (Schedule "F")	$_____
	=========
Total Credits	$_____

B. Support of Summary. 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.

C. Distribution to Trustee**.** When part of the estate is to be distributed to a trustee, and accumulated income is to be paid over by the trustee to the trust beneficiaries, the form of account should permit the court to determine if the personal representative has properly allocated receipts and disbursements between principal and income.

D. Income and Expenses Attributable To Real Property. In estates where real property is specifically devised, the accounting or a schedule submitted therewith should set forth both the income received from said real property and any expenses allocated thereto (such as taxes, insurance, and maintenance). (See *Estate of McSweeney* (1954) 123 Cal.App.2d 787.)

E. Waiver of Accounting. A detailed accounting may be waived by petition when all interested persons consent, are adult and competent. All waivers must be filed with the court or endorsed on the petition. The effect of the waiver is to make it unnecessary to provide financial details, with the exception of a detailed listing of the property to be distributed and its' value for distribution purposes. All other matters normally reported upon at the time an accounting is filed must be presented in the petition.

F. Account Waiver by Administrator/Trustee. The court will ordinarily not approve a waiver of accounting where the estate's administrator is trustee of a trust that is the sole or a primary beneficiary of the estate.

G. Description of Bonds in Accounts. In any account, other than a final account, where bond has been posted, there shall be included a separate paragraph setting forth the total bond(s) posted, the date posted, the appraised value of personal property on hand plus the estimated annual income from real and personal property and a statement of any additional bond required.

(Adopted October 1, 1998; Amended January 1, 2001; Rule 4.45 renumbered as 4.48 January 1, 2009; Amended July 1, 2013)

4.49 ALLEGATION RE: CLAIMS

Prior to filing the interim or final account, counsel are advised to review the court file to insure that all creditors' claims which may have been filed have been addressed in the interim or final account. It is not sufficient in reports accompanying accounts or in reports where an accounting is waived, to allege merely that all claims have been paid. The claims filed must be listed, showing the claimant, the amount claimed, and the disposition of each claim. If any claim has been rejected, the date of service of notice of rejection of claim and whether suit on the claim has been filed must be stated.

Known creditors, contacted pursuant to Probate Code sections 9050 to 9054, inclusive, must be listed, whether or not such creditors filed a claim against the estate. Notices of administration required by Probate Code section 9050 must be on file with the court prior to, or at the time of, the hearing on the petition for final distribution.

The foregoing allegations must appear in the final report even though they may have appeared in whole or in part in prior reports.

(Adopted October 1, 1998; Rule 4.46 renumbered as 4.49 January 1, 2009)

4.50 FEES MUST BE STATED EVEN THOUGH ACCOUNT WAIVED

(Adopted October 1, 1998; Amended January 1, 2001; Amended January 1, 2007; Rule 4.47 renumbered as 4.50 January 1, 2009; Repealed July 1, 2013)

4.51 PROPERTY TO BE DISTRIBUTED MUST BE LISTED

The petition for distribution must list and describe in detail all property to be distributed, individual values and the total value. The description must include any cash on hand and must indicate whether or not promissory notes are secured or unsecured. If any note is secured, the security interest must be described in detail. The petition must include a complete legal description of any real property to be distributed.

The description must be set forth either in the body of the petition or in the prayer, or by a schedule in the accounting incorporated in the petition by reference. Description by reference to the inventory is not acceptable.

The petition for distribution must also list and describe in detail each beneficiary's specific share of all property to be distributed.

(Adopted October 1, 1998; Amended July 1, 2001; Rule 4.48 renumbered as 4.51 January 1, 2009)

4.52 ACCOUNT - DEBTS PAID WITHOUT VERIFIED CLAIMS - VOUCHERS

Even if a claim has not been filed, the court may, under Probate Code section 9154, approve the payment of a debt if the accounting shows that such debt was allowed during the time within which such claim could have been filed and the estate is solvent. Such approval, however, is discretionary with the court and must be justified by allegations in a verified petition.

(Adopted October 1, 1998; Rule 4.49 renumbered as 4.52 January 1, 2009)

4.53 ALLEGATION RE CHARACTER OF PROPERTY

In all cases, a petition for distribution must contain an allegation as to the character of the property, whether separate or community.

If some portion of the assets consists of community property, the allegation must show whether the interest included is only the decedent's one-half (1/2) interest in the community property or 100 percent (100%) of the community property of both spouses. In the absence of an election under Probate Code section 13502 by the surviving spouse to include in the estate his/her one-half (1/2) interest in the community property, the court has no jurisdiction to order distribution of such interest.

(Adopted October 1, 1998; Rule 4.50 renumbered as 4.53 January 1, 2009)

4.54 DESCRIPTION OF DISTRIBUTEES

The names and present addresses of all persons who are affected by the petition, and whether they are adults or minors, must appear in the petition for final distribution.

(Adopted October 1, 1998; Rule 4.51 renumbered as 4.54 January 1, 2009)

4.55 COMPLIANCE WITH PROBATE CODE SECTION 9202

Before the court will authorize distribution there must be a showing of compliance with Probate Code section 9202 or a showing that the notice thereunder is not required because neither decedent nor decedent's spouse received Medi-Cal, or that no claim can be made by the Department of Health Services because decedent died before June 28, 1981, was under age 65, or was survived by a spouse, minor child, or disabled child. In showing compliance with Probate Code section 9202, petitioner must give the Director of the California Victim Compensation and Government Claims Board notice of the decedent's death if there is reason to believe that “an heir is confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation or confined in any county or city jail, road camp, industrial farm, or other local correctional facility.” Additionally, the Franchise Tax Board must be given notice of the administration of the estate within ninety (90) days after the date on which letters are first issued to a general personal representative.

(Adopted October 1, 1998; Rule 4.52 renumbered as 4.55 January 1, 2009; Amended January 1, 2010)

4.56 THE DECREE OF DISTRIBUTION

The decree of distribution shall be drawn so that the full extent of the decree may be determined without reference to the petition on which it is based or to other documents, such as the will. The decree shall contain:

A. The distribution of property by named beneficiary, with a detailed list describing the property to be distributed to each beneficiary. Description by reference to the inventory is not acceptable. For distribution by reference to an attached exhibit, see rule 4.05.

B. For real property, the legal description and street address, if any, shall be stated.

C. If an intestate decedent who survived his/her spouse leaves no issue, the applicability of Probate Code sections 6402 and 6402.5 must be alleged and the necessary tracing must be carried out as far as is possible.

D. Decrees of Distribution Establishing Testamentary Trusts. Upon distribution the court must determine whether a valid trust has been created by a will, determine the scope and terms of the trust, and order distribution of the trust property to the trustee. Since the decree of distribution supersedes the will (*Estate of Callnon* (1979) 70 Cal.2d 150); *In re Lewis* (1969) 271 Cal.App.2d 371), the terms of the trust shall be incorporated in the decree in such a manner as to give effect to the conditions existing at the time distribution is ordered. The pertinent provisions shall be set forth in <u>the present tense and in the third person</u> instead of quoting the will verbatim.

(Adopted October 1, 1998; Rule 4.53 renumbered as 4.56 and amended January 1, 2009)

4.57 RECEIPTS ON DISTRIBUTION

A receipt for property received by a distributee shall be signed by him/her personally. The court will not accept a receipt signed by an attorney-in-fact, except where there is a pre-existing durable power of attorney and a copy of the durable power of attorney is provided.

A receipt for property received by a distributee shall be specifically itemized, giving the distribution value of each asset and the total value of all property received. (Local Rules of Court, rules 4.52 and 4.56(A).)

(Adopted October 1, 1998; Rule 4.54 renumbered as 4.57 and amended January 1, 2009)

TAXES - SPECIAL REQUIREMENTS

4.58 INCOME TAX CERTIFICATE

(Adopted October 1, 1998; Rule 4.55 renumbered as 4.58 January 1, 2009; Repealed July 1, 2010)

ATTORNEY FEES AND PERSONAL REPRESENTATIVE COMMISSIONS IN DECEDENTS' ESTATES

4.59 FORMAT FOR REQUESTING FEES

An application for fees will not be considered unless the caption and prayer of the petition and the notice of hearing contain a reference to that application.

(Adopted October 1, 1998; Rule 4.56 renumbered as 4.59 January 1, 2009)

4.60 FEES TAKEN IN ADVANCE

There is no authority for the payment of fees in decedent's estates in advance of a court order authorizing the same.

(Adopted October 1, 1998; Rule 4.57 renumbered as 4.60 January 1, 2009)

4.61 ALLOWANCES ON ACCOUNT OF STATUTORY FEES

Allowance on account of statutory fees will be granted by the court only in proportion to the work actually completed, and ordinarily no more than fifty percent (50%) of the statutory fees will be allowed prior to the approval of the final account and the decree of final distribution. Until the final account is settled no part of the statutory fees will be allowed without a detailed description of services performed and remaining to be performed. An unsubstantiated claim that, for example, fifty percent (50%) of the requested work has been performed is not sufficient. Until the final account is settled, the court is unable to fix the total amount of statutory fees and any allowance made prior to that time must be low enough to avoid the possibility of overpayment.

The court will allow a preliminary award of statutory fees only for good cause shown and ordinarily only in conjunction with a preliminary distribution of the estate.

(Adopted October 1, 1998; Rule 4.58 renumbered as 4.61 January 1, 2009)

4.62 APPORTIONMENT OF FEES

(Adopted October 1, 1998; Rule 4.59 renumbered as 4.62 January 1, 2009; Repealed July 1, 2013)

4.63 BASIS FOR STATUTORY FEES MUST BE STATED EVEN THOUGH ACCOUNT WAIVED

In accounts or in petitions for distribution accompanied by a waiver of accounting, the report must state the amount of statutory fees payable and set forth the basis for the calculation. (Local Rules of Court, rule 4.50.)

(Adopted October 1, 1998; Amended January 1, 2001; Rule 4.60 renumbered as 4.63 and amended January 1, 2009)

4.64 DECLARATION RE: SEPARATE ATTORNEY'S AND EXECUTOR'S FEES

A. Fees may be awarded to a law firm of which a partner or shareholder is the personal representative only if an agreement not to participate in each other's compensation is first on file in the probate proceeding. Reference shall be made to its filing date in the final account.

B. Whenever the attorneys representing an estate and the executor of the estate are members of the same law firm and each is requesting a separate fee, but there is no specific provision in the will indicating the decedent/testator was informed of the possibility of separate fees, in addition to the declaration not to participate in fees, a declaration must be filed stating: 1) whether the decedent/testator was informed that there would be a separate fee for each in such situations; 2) whether the decedent/testator consented to that arrangement; and 3) what relationship existed between the attorney and the decedent/testator that would justify the receipt of separate fees as executor and as attorney in such a situation. The declaration must be served on all interested parties.

C. When counsel for the personal representative, or another member of counsel's law firm, is retained by the estate to represent it with respect to a civil matter, the personal representative shall first seek court approval of the fee arrangement or demonstrate to the court in the form of a declaration that the fee arrangement was reviewed by independent counsel for the estate.

(Adopted October 1, 1998; Rule 4.61 renumbered as 4.64 January 1, 2009)

4.65 FORMAT FOR REQUESTING EXTRAORDINARY FEES FOR ATTORNEYS AND PERSONAL REPRESENTATIVES IN DECEDENTS' ESTATES

A. Compensation for Extraordinary Services. An application for compensation for extraordinary services will not be considered unless the caption and the prayer of the petition and the notice of hearing contain a reference to that application. All requests must comply with California Rules of Court, rule 7.702, including the mandatory statement referenced therein.

B. Discretion of Court. The award of extraordinary fees and commissions is within the discretion of the court. Ordinarily, extraordinary fees will not be awarded without a proper showing that statutory fees have been exhausted. (See *Estate of Walker* (1963) 221 Cal.App.2d 792.)

C. Standards. Counsel and Personal representatives are directed to California Rules of Court, rule 7.703. The court will look at the reasonableness and benefit to the interested parties in determining whether and what amounts of extraordinary fees will be allowed. The court does not interpret the Probate Code or the Local Rules as allowing payment for attorney's fees for services rendered by any non-attorney staff except for paralegals who demonstrate the qualifications referenced in rule 4.66. Fees will not be allowed for matters which are overhead, secretarial in nature, or do not require special legal skills. Ordinarily, no more than one (1) hour will be allowed for a court appearance in nonlitigated matters. Costs for items such as office supplies will not be allowed.

D. Customary compensation limits. In reviewing requests for extraordinary fees, the court considers the amounts historically and customarily allowed in the community. For attorneys' fees in nonlitigated matters, the court has customarily allowed $200 to $300 per hour. The maximum the court presently will allow is $300 per hour. For paralegals meeting the standards referenced in rule 4.66, the court has customarily allowed $85 to $125 per hour. The maximum the court will allow is $125 per hour. For private professional fiduciaries, the maximum ordinarily allowed is $85 per hour for services rendered by the fiduciary, and $45 per hour for staff. All requests must clearly indicate who has performed the services for which extraordinary compensation is being requested. In the event that a fiduciary is performing services requiring special training and skills (e.g., a CPA preparing tax returns or performing an audit), the court will consider a higher hourly rate on a case by case basis. The court will in its discretion review these rates from time to time and make such adjustments as it appears to the court appropriate. Counsel should not assume that the court will automatically allow the maximum rates set forth herein. Litigated matters will be considered on a case by case basis.

(Adopted October 1, 1998; Rule 4.62 renumbered as 4.65 and amended January 1, 2009; Amended July 1, 2013)

4.66 USE OF PARALEGALS

Pursuant to Probate Code section 10811, subdivision (b), section 2642, subdivision (a), section 8547, subdivision (d), and section 10953, subdivision (d), the use of paralegals to perform

services of an extraordinary nature is permitted. No fees for such services will be allowed unless performed by a paralegal meeting the qualifications specified in Business and Professions Code section 6450 and California Rules of Court, rule 7.702(e), and the petition contains the information set forth in rule 7.702(e). The request for such fees must contain an itemized statement of services rendered by the paralegal.

(Adopted October 1, 1998; Rule 4.63 renumbered as 4.66 January 1, 2009; Amended July 1, 2013)

4.67 PERSONAL REPRESENTATIVE COMMISSIONS

Local Rules of Court, rules 4.61, 4.63, 4.64 and 4.65, are also applicable to requests for commissions for personal representatives in decedents' estates.

(Adopted October 1, 1998; Rule 4.64 renumbered as 4.67 and amended January 1, 2009; Amended July 1, 2013)

TRUSTS

4.68 TRUSTEES' ACCOUNTS

Accounts filed by trustees under authority of Probate Code section 16062 should conform to the requirements set out in rule 4.48 as well as Probate Code sections 1060 – 1064. If the trust is a testamentary trust, the starting balance of the first account must conform to the trustee's receipt filed on distribution of the assets of the decedent's estate.

Except for trusts that are subject to the continuing jurisdiction of the superior court (see Prob. Code, §§ 17300 – 17354), the court will order an accounting and report by a trustee only when an account is requested by someone beneficially interested in the trust. (Prob. Code, § 17200, subd. (b)(5).)

(Adopted October 1, 1998; Amended July 1, 2001; Rule 4.65 renumbered as 4.68 and amended January 1, 2009)

4.69 BENEFICIARIES TO BE LISTED IN PETITION

All petitions involving a testamentary trust or an inter vivos trust under Probate Code section 17200 must set forth the names and last known address of all beneficiaries, whether their interests are vested or contingent – that is, all persons in being who shall or may participate in the income or corpus of the trust.

(Adopted October 1, 1998; Rule 4.66 renumbered as 4.69 January 1, 2009; Amended January 1, 2010)

TRUSTEE AND TRUSTEE'S ATTORNEY FEES

4.70 TRUSTEE FEES

Requests for trustee fees must be supported in the petition or in a separate verified declaration stating the nature, necessity, success, cost in time, detail of services performed, the value of the services believed to warrant additional fees, and the amount requested. Mere recitation of time spent, without more, is not adequate. In making this determination the criteria set forth in *Estate of Nazro* (1971) 15 Cal.App.3d 218 shall be applied. The court has discretion to require further justification for all trustee fees. Although the court will, as a general guideline, allow a fee of

three-quarters (3/4) of one percent (1%) of fair market value per annum, court approval must nevertheless first be obtained in all instances where the amount of compensation is not expressly authorized in the trust instrument. Mere recitation of the three-quarters (3/4) of one percent (1%) guideline is not sufficient. Trustees who base their requests for compensation on this guideline shall include a second column in the accounting which shall indicate the fair market value of each trust asset next to the carry value. Fiduciaries who seek court approval of trustee fees are referred to rules 4.65 and 5.27 for the amounts customarily and historically allowed by the court.

(Adopted October 1, 1998; Rule 4.67 renumbered as 4.70 January 1, 2009; Amended July 1, 2013)

4.71 ALLOWANCE OF ATTORNEY FEES FOR TRUSTEE REPRESENTATION

Attorney fees for trustee representation will be allowed according to the work actually performed. In general, requests for attorney fees must be supported in a petition or in a separate verified declaration stating the specific nature, benefit, time expended, detail of services performed and the amount requested. Mere recitation of time spent, without more, is not adequate. Time sheets may be appended as additional support. In any situation in which approval of fees by the court is required, counsel are referred to rule 4.65 for fees customarily and historically allowed.

(Adopted October 1, 1998; Rule 4.68 renumbered as 4.71 January 1, 2009; Amended July 1, 2013)

MISCELLANEOUS

4.72 USE OF POST OFFICE BOX NUMBERS

Any documents which require the address of the fiduciary in any probate, conservatorship, or guardianship matter must provide a complete street address. The use of P.O. Box numbers or letters is not acceptable.

(Adopted October 1, 1998; Rule 4.69 renumbered as 4.72 January 1, 2009)

4.73 TRUSTEE'S BOND

Court Appointed Fiduciaries. When the court has appointed a fiduciary, the amount of the bond shall include "a reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs" as set forth in the California Rules of Court, rule 7.207.

(Adopted January 1, 2010)

4.74 REPEALED

(Adopted October 1, 1998; Rule 4.70 renumbered to 4.73 January 1, 2009; Rule 4.73 renumbered to 4.74 January 1, 2010, Mediation, Repealed January 1, 2012)

CHAPTER 5

CONSERVATORSHIPS AND GUARDIANSHIPS

5.00 PREAMBLE

The following rules should be adhered to with respect to the majority of matters presented to the court. In exceptional circumstances and for good cause shown, the court will consider individual exceptions to these rules where not prohibited from doing so by statutory or case law. If a certain law or provision is not addressed in this chapter of the Local Rules of Court, please review the Probate or Civil chapters of the Local Rules of Court or the California Rules of Court for information pertinent to the law or provision.

(Adopted October 1, 1998; Amended January 1, 2007)

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, e-mail address, 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. For those persons filing electronically, service on the Court Investigator shall be completed using the following electronic service address: probateinvestigator@monterey.courts.ca.gov ~~.~~ For those persons permitted to file paper documents, service may be completed either electronically at the court investigator's e-service address or by mail to the Monterey Division of the Superior Court, 1200 Aguajito Road, Monterey, CA 93940. Service on the investigator shall be reflected on the ~~appropriate~~ proof of service or notice of hearing filed with the court. ~~at the Monterey Division 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.~~

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(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2004; Amended January 1, 2007; Amended January 1, 2010; Rule 5.27(f) renumbered and re-lettered as 5.01(f) and amended July 1, 2010; Amended January 1, 2011; Amended July 1, 2012; Amended July 1, 2014; Amended July 1, 2016)

5.02 EX PARTE PETITIONS

A. 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. (Prob. Code, § 2545, subd. (b).)

4. Proposed action to exercise substituted judgment. (Prob. Code, § 2580.)

5. Authorization for gifts from excess income. (Prob. Code, § 2423.)

6. Authorization to purchase real property.

7. Petitions for fees.

(Adopted October 1, 1998; Amended January 1, 2008; Amended January 1, 2011; Amended (repealed subd. (a), (b) and (c)(7), renumbered (c) to(a) and (8) to (7) July 1, 2012)

APPOINTMENTS

PETITIONS FOR CONSERVATORSHIP

5.03 PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON ONLY

A. For a petition for appointment of probate conservator of the person only, petitioner shall by declaration indicate why a conservatorship of the estate is not necessary.

B. Where it is stated that a conservatorship of the estate is not necessary because the proposed conservatee has a trust:

1. Petitioner shall identify any and all trusts, including any and all amendments that may or may not have been revoked by the subsequent documents;

2. The proposed conservatee's interest in the trust;

3. The name of the trustee and/or successor trustee;

4. An estimated value of the size of the trust;

5. An estimated value of any income the proposed conservatee may be entitled to, and;

6. An estimated value of principal distributions, if any, the proposed conservatee may be entitled to;

a. Where it is stated that a conservatorship of the estate is not necessary because the proposed conservatee has execute powers of attorney, petitioner shall provide:

i. The identity of the named agent;

ii. An estimate of the value of the assets subject to the power of attorney; and

iii. An estimate of the income of the proposed conservatee and its source;

b. The petitioner shall ~~attach copies~~include ~~of~~ any and all documents identified, including any revoked instruments, and/or state why the documents ~~copies~~ are not available.

(Rule 5.03 previously adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Amended January 1, 2002; Amended January 1, 2007; Renumbered as 5.04, 5.05, 5.06, 5.07, and 5.08 January 1, 2009; New rule 5.03 adopted January 1, 2009; Amended July 1, 2014)

5.04 REPEALED

(Rule 5.03(a) previously adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Amended January 1, 2002; Amended January 1, 2007; Renumbered to 5.04 and amended January 1, 2009; Repealed July 1, 2014)

5.05 REPEALED

(Rule 5.03(b) renumbered as 5.05 and Amended January 1, 2009; Repealed July 1, 2014)

5.06 NOTICE

A. A minimum of thirty (30) days notice is required for the court investigator to complete an investigation pursuant to Probate Code section 1826. An investigation is required in all cases even if the proposed conservatee is the petitioner and will attend the hearing.

(Rule 5.03(c) renumbered as 5.06 and amended January 1, 2009; Amended July 1, 2014)

5.07 REQUIRED DOCUMENTS

The following documents are required to be filed with the petition for appointment of conservator:

A. Where appointment of counsel is required under Probate Code section 1471, subdivision (a), an ex parte order for appointment of counsel should be submitted when the petition is filed to avoid continuance or delay.

B. "Referral for Court Investigator-Conservatorship" (Clerk form CI-123, see the court's website: www.monterey.courts.ca.gov)

C. Order Appointing Court Investigator directed to: "Monterey County Court Investigator". The appropriate boxes on the order should be designated to provide the Court Investigator ongoing authority for future reviews.

(Rule 5.03(e) renumbered as 5.07 and amended January 1, 2009; Amended July 1, 2009; Amended July 1, 2013; Amended July 1, 2014)

5.08 THE PETITION FOR PERMANENT CONSERVATORSHIP

A. When a petition is granted, the petitioner shall file the following documents prior to the issuance of letters of conservatorship:

1. The order appointing conservator (Judicial Council form) and attachments;

2. Proof of service of order appointing conservator, including service on the court investigator and the conservatee;

3. Bond per Probate Code section 2300, subdivision (b) or receipts from financial institutions per Probate Code section 2328; and

4. Conservator's acknowledgment of duties and responsibilities, including his or her date of birth and driver's license number.

(Adopted October 1, 1998; Amended January 1, 2001; Amended July 1, 2001; Amended January 1, 2002; Amended January 1, 2007; Rule 5.03(e) renumbered as 5.08, re-lettered and amended January 1, 2009; Amended July 1, 2014)

5.09 PETITION FOR APPOINTMENT OF PROFESSIONAL CONSERVATOR

(Adopted October 1, 1998; Amended July 1, 2001; Rule 5.04 renumbered as 5.09 and amended January 1, 2009; Repealed July 1, 2014)

5.10 LIMITED CONSERVATORSHIPS

An ex parte order for appointment of the Monterey County Public Defender or private counsel should be submitted when the petition is filed to avoid continuance or delay. Appointment of counsel for a proposed limited conservatee is mandatory. (Prob. Code, § 1471, subd. (c).)

(Adopted October 1, 1998; Amended January 1, 2008; Rule 5.05 renumbered as 5.10 January 1, 2009; Amended July 1, 2014)

5.11 LANTERMAN-PETRIS-SHORT (LPS) CONSERVATORSHIPS

A. Petition Requirements. All petitions for appointment of conservator should state whether or not there is presently a conservator appointed under the Lanterman-Petris-Short Act, and, if so, the number of the case, the name of the conservator, and the LPS court's findings regarding the affidavit of voter registration.

B. Notice. Notice shall be given to the LPS conservator in the same manner as that given to relatives in the second degree.

(Adopted October 1, 1998; Amended January 1, 2009)

5.12 TEMPORARY CONSERVATORSHIPS

A. Where a petition for appointment of temporary conservator is filed, the Court's Investigator's Office shall be personally served at least five (5) days before the scheduled hearing.

B. Extraordinary powers for authority to give or withhold consent for medical treatment pursuant to either Probate Code sections 2355 or 2357 shall not be granted except upon a noticed hearing.

C. Temporary letters of conservatorship must state a date certain of expiration. This date shall not go beyond the date of the hearing on the permanent conservatorship. If a continuance is requested and allowed, new letters will be issued upon request and shall expire on the continued date of the hearing.

(Adopted October 1, 1998; Rule 5.07 renumbered as 5.12 and amended January 1, 2009; Amended July 1, 2014)

5.13 HEARING AND APPOINTMENT

A. The report of the court investigator shall be filed with the clerk at least fourteen (14) calendar days in advance of the hearing. At the same time, a copy shall be mailed or electronically served to the attorneys for petitioner and for the proposed conservatee, if any. The report of the court investigator and its contents shall be kept confidential as required by Probate Code section 1826, subdivision (n).

B. The proposed conservatee must attend the hearing except where excused pursuant to Probate Code section 1825.

   1. The proposed conservatee must come forward to the counsel table where the court may inquire of and advise the proposed conservatee as required by Probate Code section 1828 or, in the case of a limited conservatorship, Probate Code section 1828.5.

   2. If there has been a nomination and/or waiver of bond filed, executed by the proposed conservatee, the court shall satisfy itself that he/she had the capacity to execute and understand the nature and significance of such documents.

   3. The proposed conservatee shall personally respond to any court inquiry. A statement by counsel that the conservatee is present and does not object is not sufficient.

   4. The above requirements also apply where the proposed conservatee is the petitioner.

C. Before Letters shall be issued to the conservator of the person or estate in a newly established conservatorship; or in the case of an existing conservatorship, before any subsequent orders will be signed at the time of the next court review; the conservator must:

   1. Purchase a copy of the "Handbook for Conservators" and supplement "How to Find and Use Community Resources." Execute and file "Acknowledgment of Receipt of Handbook," signed by him/her and including his/her date of birth and driver's license number;

   2. View the video "With Heart - Understanding Conservatorships." Unless the conservator is a registered professional conservator, he/she must execute and file the requisite acknowledgment of viewing.

D. Fees

   1. Legal fees for counsel appointed by the court to represent the conservatee may be approved and included in the order appointing conservator.

   2. Fees for counsel representing the petitioner or the conservator, regardless of whether the conservatee was also the petitioner, may not be requested until after the filing of the "Inventory and Appraisal," and in no case before the expiration of ninety (90) days from the issuance of permanent Letters. (Prob. Code, § 2640.)

(Adopted October 1, 1998; Rule 5.08 renumbered as 5.13 and amended January 1, 2009; Amended July 1, 2016)

5.14 APPOINTMENT OF ATTORNEYS FOR CONSERVATEES

A. Estate in Danger of Dissipation. Where it appears to the court that the estate is in danger of being dissipated or that the conservator or guardian will not respond to citations issued by the court, an attorney will be appointed for the conservatee. Said attorney shall prepare and

file a report for the court no later than seven (7) calendar days prior to the scheduled hearing date.

B. Medical Consent by Conservatee. The court may appoint an attorney for the conservatee when a request is made under Probate Code section 1880 for the court to determine whether the conservatee is incapable of giving medical consent, whether such request is made in the original petition or in a separate petition.

C. Cessation of Representation by Attorney. The representation by an attorney appointed by the court ceases upon the hearing on the petition or petitions for which he/she was appointed, unless continued representation is specifically ordered by the court.

(Adopted October 1, 1998; Rule 5.09 renumbered as 5.14 and amended January 1, 2009)

5.15 BOND

A. If independent powers (Prob. Code, §§ 2590 & 2591) are granted to include the sale of real property (Prob. Code, § 2591, subd. (d)), or to encumber real property as security for a loan, (Prob. Code, § 2591, subd. (f)), the bond shall include the value of the real property.

1. If sufficient restrictions, limitations or, conditions to adequately safeguard and secure the real property are included in the order granting the independent powers, bond need not include the value of the real property.

2. Where the independent power to sell real property is limited by requiring court approval or confirmation, said confirmation shall follow the procedure required as if no independent power had been granted. Confirmation proceedings may be dispensed with upon the filing of an appropriate bond and compliance with Probate Code section 2540, subdivision (b). Dispensing with the confirmation of sale does not imply court approval. The court retains the authority to review the sale at the time of the next account and court review.

3. If real property is sold pursuant to Probate Code section 2591, subdivision (d), the sale price may not be less than ninety percent (90%) of the appraised value determined by the probate referee within one (1) year prior to sale, unless otherwise authorized by the court.

(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2008; Rule 5.10 renumbered as 5.15 and amended January 1, 2009; Amended July 1, 2014)

POST-APPOINTMENT CONCERNS

5.16 NOTICE OF ESTABLISHMENT OF CONSERVATORSHIP

In each case in which real property is an asset of the estate, it is the duty of the conservator of the estate (whether temporary, permanent, or successor) to record a notice of establishment of conservatorship with the county recorder in each county where real property of the estate is located, unless: a) the conservatorship is a limited conservatorship and the conservator has not been given the power to contract; or b) the rights of the conservatee have been broadened pursuant to Probate Code section 1873 so that the conservatee retains all powers to deal with the real property.

(Adopted October 1, 1998; Rule 5.11 renumbered as 5.16 January 1, 2009)

5.17 CONSERVATEE'S RESIDENCE-CONSERVATEE'S REAL PROPERTY

A. When authorization is granted it shall be for a period of time not to exceed four (4) months. The order shall provide for immediate return of the conservatee to the State of California at the end of the authorized time period. The court will extend the four (4) month time period only upon a satisfactory showing that an equivalent proceeding has been initiated in the other state. The period of any extension granted by the court will only be sufficient to allow the equivalent proceeding to be finalized. The court retains jurisdiction until the equivalent proceeding is finalized and a certified copy of the court's order from the new state of residence is filed.

B. Where authorization has been granted for temporary residence outside the State of California, the conservator shall return the conservatee to this state for the personal visit by the court investigator at the time a "Court Review" is required.

C. The court investigator is not authorized to conduct any court investigation or review through a third person out of state.

(Adopted October 1, 1998; Amended January 1, 2002; Amended July 1, 2004; Amended January 1, 2008; Rule 5.13 renumbered as 5.17 and amended January 1, 2009; Amended July 1, 2014)

5.18 PLACEMENT ASSESSMENT EVALUATION

(Rule 5.18 Adopted October 1, 1998; Amended January 1, 2001; Renumbered as 5.24 January 1, 2009; New rule 5.18 adopted January 1, 2009; Repealed July 1, 2014)

5.19 INVENTORY AND APPRAISAL

(Adopted October 1, 1998; Rule 5.14 renumbered as 5.19 and amended January 1, 2009; Repealed July 1, 2014)

5.20 SUBSTITUTED JUDGMENT (Prob. Code, § 2580)

A. Petitions requesting authority to exercise substituted judgment will not be heard until after the permanent conservator is appointed and letters have been issued. Additionally:

   1. The "Inventory and Appraisal" shall be filed, unless the court otherwise orders on the basis of a clear and convincing showing that an urgency exists; and

   2. If the court waives filing of a formal "Inventory and Appraisal," the petition shall nonetheless include a description of the character and estimated value of the property of the estate.

B. Petitions requesting substituted judgment, which potentially have an effect on the conservatee's estate plan, should provide all known testamentary documents related to the petition, including, but not limited to:

   - Existing trust agreement;
   - Proposed trust agreement or proposed amendment;
   - Last will and testament of conservatee;
   - If no will, a specific description of how and to whom property would pass by intestacy; and

- A statement of the nature and amount of existing claims of creditors' against the conservatorship estate.

Confidential documents may be sealed and may be viewed by the judge in chambers to maintain confidentiality.

C. Upon the creation of a trust pursuant to a petition to exercise substituted judgment, the conservatorship of the estate shall continue in effect. The conservator will continue to supervise the trustee and enforce the trustee's fiduciary duties where necessary. Accountings will continue to be required as they would have if the trust had not been established. Nothing in this rule affects a trust already in existence before the conservatorship was established.

D. Regardless of any other provision of the trust to the contrary, during the settler's lifetime the trustee shall be subject to the same duties and limitations as a conservator of the estate under the laws of the State of California, as to the following matters:

1. Posting bond

2. Filing accountings and reports for court approval

3. Investments and transaction

4. Trustee and attorney fees

5. Providing for the conservatee

No sales, or leases for terms exceeding one (1) year, shall be made without prior court approval.

(Adopted October 1, 1998; Rule 5.15 renumbered as 5.20 January 1, 2009; Amended July 1, 2014)

5.21 NOTICE OF CHANGE OF ADDRESS

Conservators and guardians shall file with the court and serve upon the court investigator:

1. Written notice of any change of their address, or the address of their conservatees, within thirty (30) days of the change of address; and

2. "Referral for Court Investigator-Conservatorship" (Form CI-123), See court website: www.monterey.courts.ca.gov). Failure to comply may result in suspension or removal.

(Adopted October 1, 1998; Rule 5.16 renumbered as 5.21 January 1, 2009; Amended July 1, 2014)

5.22 COUNSEL FOR CONSERVATEE

In all cases where the conservatee is represented by counsel, orders submitted to the court must be approved as to form and content by conservatee's counsel.

5.23 ACCOUNTS AND ACCOUNTING

COURT REVIEWS, ACCOUNTS AND STATUS REPORTS

A. 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. 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.

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 (Form CI-126. See court website: www.monterey.courts.ca.gov) 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.

E. 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.

F. Upon appointment of a conservator and/or approval of conservator accountings, the court shall set the next review hearing, if needed, at the time of approval. Notice of the next hearing date will be provided in the courtroom and stated in the minute order, only. No “Notice of Court Review” will be mailed by the court.

   All conservator accountings shall be filed at least forty-five (45) days prior to the scheduled review hearing date.

(Adopted October 1, 1998; Amended January 1, 2007; Amended January 1, 2008; Rule 5.17 renumbered and re-lettered as 5.23; subd. (d) added; Amended January 1, 2009; Amended January 1, 2011; Amended (repealed financial documents caption sheet) July 1, 2012; Amended July 1, 2014; Amended January 1, 2016)

5.24 ACCOUNTING FORMAT

(Adopted October 1, 1998; Amended January 1, 2001; Rule 5.18; renumbered as 5.24 January 1, 2009; Repealed July 1, 2014)

5.25 ACCOUNT - SUPPORTING DOCUMENTS REQUIRED

The following must be filed with each accounting:

A. The "Account" of a conservator of the estate who is also the conservator of the person must be accompanied by a "Confidential Status Report" (rule 5.23(C)). 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.

B. “Referral to Court Investigator” (Form CI-123; See court’s website: www.monterey.courts.ca.gov).

C. "Order Appointing Court Investigator" directed to "Monterey County Court Investigator", unless ongoing authority has been provided for in the initial "Order Appointing Court Investigator."

(Adopted October 1, 1998; Rule 5.19 renumbered as 5.25 January 1, 2009; Amended January 1, 2011; Amended July 1, 2014)

5.26 FINAL ACCOUNTS

A. The "Final Account" shall be filed no later than ninety (90) days after termination of the conservatorship. (Date of death or date of order terminating the conservatorship.)

B. The "Final Account" shall be accompanied by a petition requesting its approval, authority for disposition of the assets, and conservator's discharge upon the filing of receipts.

C. If there is a request for waiver of Probate Code section 1851.5 assessments, a clear and concise reason shall be included in the petition.

D. If a probate proceeding has already been initiated, the petition shall state the caption, case number, county where filed, and the name of the petitioning party.

E. Notice of the hearing on a petition for settlement of the "Final Account" must be given to the personal representative, if any, of a deceased conservatee.

(Adopted October 1, 1998; Amended July 1, 2001; Rule 5.20 renumbered as 5.26 January 1, 2009; Amended July 1, 2014)

5.27 FEES IN CONSERVATORSHIPS

A. Fees for services as conservator or for legal services rendered the conservator or conservatorship may not be requested until after the "Inventory and Appraisal" is filed, and in no case before the expiration of ninety (90) days from the date of appointment of the conservator. (Prob. Code, § 2640.)

B. Fees for legal counsel appointed by the court to represent the conservatee may be requested and included in the order appointing conservator, notwithstanding that an "Inventory and Appraisal" has not yet been filed. If not awarded at this time, counsel for conservatee may request fees by his/her own noticed motion.

C. Attorney Fees. In determining attorney fees for representation of conservators or conservatees, the court will consider those factors referred to in rules 4.65 and 4.66. Counsel is directed to California Rules of Court, rules 7.750 – 7.755. All fee requests must comply with California Rules of Court, rule 7.751. The requested fee must be supported in a verified petition or by a separate verified declaration stating the nature, benefit to the conservatee or conservatorship estate, time spent, hourly rate, detail of services rendered, and the amount requested. A recitation of time spent, without more, is not adequate. The court has the discretion to require additional justification for all attorney fees requested.

D. Conservator Fees. The court's review of conservator's fee request shall consider the nature of services provided, their necessity, the success or benefit to conservatee or the conservatorship estate, time spent, hourly rate, basis for the hourly rate, detail of services performed, expertise required, and the amount requested. A broad, general description of services or a simple recitation of time spent is not adequate. The court has the discretion to require additional justification for all conservator fees requested. Counsel are directed to California Rules of Court, rule 7.756 for additional factors which the court may consider and to rule 4.65 for the amounts customarily allowed for attorneys and professional fiduciaries. For nonprofessional fiduciaries, the court customarily will allow no more than $45 per hour, except when services are performed by family members, in which case the maximum allowed will be $25 per hour. No fees will ordinarily be allowed for services rendered by a family member which are of the type that the court finds are expected to be performed by a family member by virtue of the family relationship (e.g., sitting at the bedside of an ill conservatee or simply being present while handymen remove items from a garage to haul away). Fiduciaries should not assume that the court will automatically allow the maximum rates.

E. Fees must be requested, waived or deferral of payment requested in conjunction with the accounting. Deferral of payment will only be approved subsequent to court approval of the amount of the fees for which deferral is requested.

Where conservator is also the attorney for the conservatorship, there shall be separate itemized statements for services as conservator and for legal services showing clearly that there is no duplication of services and/or fees.

(Adopted October 1, 1998; Rule 5.21 renumbered as 5.27 January 1, 2009; Amended July 1, 2013)

5.28 SMALL ESTATES: PUBLIC BENEFITS (Prob. Code, § 2628)

A. The petition shall be presented each time an "Account" would otherwise be due. This assures the court that the estate continues to qualify. Conservator shall also file:

   1. A Confidential Status Report as required by rule 5.23(C) and;

   2. A “Referral for Court Investigator-Conservatorship” (Form CI-123; See court’s website: www.monterey.courts.ca.gov).

B. 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 October 1, 1998; Rule 5.22 renumbered as 5.28 January 1, 2009; Amended January 1, 2011; Amended July 1, 2014)

5.29 TRUSTS AND CONSERVATORSHIPS

Where conservatee is a beneficiary of a trust not established pursuant to Probate Code section 2580:

A. A copy of the trust agreement shall be provided to the court investigator upon request;

B. At the time of each "Court Review" a verified summary or recapitulation showing the following shall be filed as a confidential document:

   1. The principal amount of the trust estate;

   2. A description of conservatee's beneficial interest in the trust;

   3. The amount of income generated for the benefit of the conservatee, regardless whether distributed or applied to principal; and

   4. The name, address, and telephone number of the trustee.

C. Any income required by the trust instrument to be distributed to the conservatee is conservatorship income and it must be included in an accounting to the court pursuant to these rules and Probate Code section 2620.

D. For any trust created under the conservatorship as a matter of substituted judgment pursuant to Probate Code section 2580, accountings shall continue to be required, and the conservatorship shall not be terminated. (Local Rules of Court, rule l6.08.)

(Adopted October 1, 1998; Rule 5.23 renumbered as 5.29 January 1, 2009)

RESIGNATION AND REMOVAL

5.30 RESIGNATION OR REMOVAL; APPOINTMENT OF SUCCESSOR; FINAL ACCOUNT AND DISCHARGE

A. Effective Date of Resignation. The conservator may resign at any time but the resignation is not effective and will not be approved until the appointment of a successor conservator. (Termination of a conservatorship does not require resignation of the conservator.)

B. Contemporaneous Petition to Appoint Successor. A petition for resignation must be filed contemporaneously with a petition for appointment of a successor conservator, provided that the consent of the successor conservator is filed prior to or at the time of hearing.

C. Final Account. A Final Account of the resigning conservator and/or a petition for fees upon resignation cannot be approved until a successor is appointed and is served with notice of hearing and a copy of the account and/or petition.

D. A successor conservator's "First Account," as in the case of a predecessor, shall be presented to the court one (1) year after appointment.

E. At the hearing for appointment of successor conservator, the same procedural requirements apply as for the initial appointment of conservator. (See Local Rules of Court, rules 5.03 and 5.07, and take particular note of 5.07(g).)

F. The successor conservator of the estate shall not account for the period prior to his/her appointment, except as provided in Probate Code section 2632, and the predecessor shall not be discharged until all of the following are accomplished:

1. Approval of predecessor's Final Account including the period up to the appointment of the successor and delivery of assets;

2. The filing of a receipt, executed by the successor conservator, acknowledging delivery and receipt of the assets as reflected in the "Assets on Hand" in the Final Account; and

3. The predecessor conservator shall include in his/her petition for discharge a statement affirming that assets have been neither received by the estate nor disbursements made from the estate since the Final Account period.

(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2002; Rule 5.24 renumbered as 5.30 and amended January 1, 2009; Amended July 1, 2014)

5.31 ABSCONDING CONSERVATORS (Prob. Code, § 2632)

(Adopted October 1, 1998; Rule 5.25 renumbered as 5.31 January 1, 2009; Repealed July 1, 2014)

5.32 TERMINATION OF CONSERVATORSHIP

(Adopted October 1, 1998; Amended July 1, 2004; Rule 5.26 renumbered as 5.32 January 1, 2009; Repealed July 1, 2014)

5.33 ASSESSMENTS (Prob. Code, § 1851.5)

A. The court investigator fee 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.

B. Any request to have assessments deferred must be included in the petition to appoint conservator, successor conservator, or in the petition to approve or waive the account and must include the factual basis for the request.

C. Upon termination, any assessments previously deferred are nonetheless due and payable, except under either of the following conditions:

1. The conservatee is still living and payment of all or a portion should be waived based upon hardship to the conservatee, or,

2. The conservatee's estate has no assets with which to pay all or a portion of the assessments due. Hardship is not a consideration where the conservatee is deceased.

D. The order approving "Final Account" of conservator will not be granted until the assessments are either paid or waived by the court.

(Adopted October 1, 1998; Amended July 1, 2004; Rule 5.27 renumbered as 5.33 January 1, 2009; Amended January 1, 2010)

MISCELLANEOUS

5.34 CONSERVATORSHIPS TRANSFERRED FROM ANOTHER COUNTY

Copies of the petition and order authorizing transfer shall be served upon the court investigator of the county to which it is transferred, including cases transferred to Monterey County.

(Adopted October 1, 1998; Rule 5.28 renumbered as 5.34 January 1, 2009)

GUARDIANSHIPS

5.35 APPOINTMENT OF GENERAL GUARDIANS

A. Petition for appointment of guardians shall be accompanied by the following:

   1. A “Referral for Court Investigator-Conservatorship” (Form CI-123. See court website: www.monterey.courts.ca.gov); and

   2. A “Confidential Declaration Regarding Household Members” (Form CI-130. See court website: www.monterey.courts.ca.gov).

B. Single Application for Multiple Wards. The court will consider a single application for appointment of the same guardian of the person or estate or both of more than one (1) minor, if the minors are siblings. In all other instances separate applications must be filed.

C. The fee for the court investigator must be paid at the time the petition for appointment of guardian or petition for termination of guardianship is filed. If the petitioner believes the fees should be deferred or waived due to hardship, the petitioner shall file a request for deferral or waiver of the fee and shall set forth facts sufficient to establish a hardship.

(Adopted October 1, 1998; Amended July 1, 2001; Rule 5.29 renumbered as 5.35 January 1, 2009; Amended January 1, 2010; Amended July 1, 2014)

5.36 REPEALED

(Adopted October 1, 1998; Rule 5.30 renumbered as 5.36 January 1, 2009; Definition of Consanguinity, Repealed July 1, 2014)

5.37 REPEALED

(Adopted October 1, 1998; Rule 5.31 renumbered as 5.37 January 1, 2009; Appointment of Temporary Guardian - Repealed July 1, 2014)

5.38 DUTIES OF GUARDIAN--LIABILITY OF PARENTS TO SUPPORT CHILD

Parents are required by statute to support their children. Where a parent is also the guardian, the court will not permit guardianship funds to be used for the minor's maintenance, support, or

education except upon a showing of extraordinary circumstances which clearly justify a departure from this rule as being in the best interest of the minor.

(Adopted October, 1, 1998; Rule 5.32 renumbered to 5.38 January 1, 2009)

5.39 ACCOUNTS

Multiple Wards. When a guardian accounts for the assets of more than one (1) minor, the accounting for each minor must be set forth individually.

(Adopted October 1, 1998; Amended January 1, 2001; Rule 5.33 renumbered and amended as 5.39 January 1, 2009; Amended July 1, 2014)

5.40 ANNUAL REVIEW OF GUARDIANSHIPS

Each guardian shall file with the court a completed Confidential Guardianship Status Report (GC-251) one (1) year after the anniversary date of appointment of the guardianship. The status report shall include a current note from the doctor and dentist, as well as a current report card and school attendance record for each minor. A hearing on the status report shall be set one (1) month after the anniversary date of appointment, and annually thereafter.

(Adopted January 1, 2009; Amended July 1, 2014)

5.41 INDEPENDENT POWERS

The court does not encourage granting of independent powers and will grant particular powers only in response to specific allegations showing their necessity. Where the power to sell real property is granted, the sale must be returned to the court for confirmation.

(Adopted October 1, 1998; Rule 5.34 renumbered as 5.41 January 1, 2009)

MINOR OR INCOMPETENT'S CLAIM

5.42 PROCEEDING TO COMPROMISE MINOR'S OR INCOMPETENT'S CLAIM (Prob. Code, §§ 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 as a 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.

   1. The receipt and acknowledgment for deposit into blocked account shall be signed by a manager or assistant manager and filed with a business card.

2. The court will set a hearing for proof of deposit into blocked account or proof of purchase annuity.

(Adopted October 1, 1998; Amended January 1, 2004; Amended January 1, 2007; Rule 5.35 renumbered to 5.42 and amended January 1, 2009; Amended January 1, 2011; Amended July 1, 2014)

CHAPTER 6

CIVIL DEPARTMENT

6.01 ORGANIZATION AND DISTRIBUTION OF BUSINESS

A. The civil division shall be comprised of the supervising civil judge and a minimum of two (2) other judges as assigned by the presiding judge. The presiding judge may assign additional judges as needed.

B. The supervising civil judge shall have the responsibility of assigning cases, monitoring case and trial management, and supervising the functions of the civil division.

(Adopted October 1, 1998)

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 Division 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, subdivision (b), shall be initially heard in the probate department.

(Adopted October 1, 1998; Amended January 1, 2006; Subd.(c) added and rule amended January 1, 2009; Amended January 1, 2011)

6.03 REPEALED

(Adopted October 1, 1998; Calendars - Repealed January 1, 2011)

6.04 REPEALED

(Adopted October 1, 1998; Determination and designation of jurisdictional amounts in controversy - Repealed July 1, 2012)

6.05 CASE AND TRIAL MANAGEMENT RULES - GENERAL

A. Rules 6.05 – 6.11 shall apply to all civil cases except domestic relations, adoption, probate, and unlawful detainer unless otherwise ordered by the court.

B. The setting of all civil cases for trial shall be in accordance with rules 3.713 – 3.735 of the California Rules of Court and these rules.

(Adopted October 1, 1998; Amended January 1, 2003; Amended January 1, 2008; Amended July 1, 2009)

6.06 POLICY STATEMENT

Pursuant to statutes of the State of California, it is the responsibility of the court to establish procedures for the timely and effective disposition of civil cases.

The court is charged with the responsibility of ensuring all parties a fair and timely resolution of their disputes, and the court is in the best position to establish neutral rules and policies without adversely affecting all parties' right to a fair trial. Effective management of the judicial system will build continuing respect by the community for government, minimize the costs to the parties and the public, and maximize the probability that cases will be timely resolved. It is the purpose of these rules to establish such a procedure without unreasonably affecting the adversarial process.

(Adopted October 1, 1998; Amended July 1, 1999)

6.07 POLICY GOALS

A. The goals of the Monterey County civil case and trial management system are:

   1. To provide an effective and fair procedure for the timely disposition of civil cases;

   2. To provide a mechanism to gather needed case information in order to make appropriate judicial management decisions; and

   3. To establish reasonable rules and policies to require that cases reporting “ready” for trial may be tried without unnecessary delays or interruptions.

B. In order to effectuate these goals, it is the intent of the court to differentiate between cases according to their anticipated complexity and length. In the discretion of the court, cases will generally be assigned, under these policies and rules, into one of the following categories:

   CATEGORY ONE: Category one cases are defined as cases that are expected to reach disposition in no more than twelve (12) months. Generally, these cases would have an estimated length of trial of two (2) days or less and/or present no complex issues.

   CATEGORY TWO: Category two cases are defined as cases that are expected to reach disposition in no more than twelve (12) to eighteen (18) months. Generally, these cases would have an estimated length of trial of four (4) days of less and/or present significant legal issues.

   CATEGORY THREE: Category three cases are defined as cases that are expected to reach disposition in eighteen (18) to twenty-four (24) months. Generally, these cases would have an estimated length of trial of over four (4) court days and/or present complex legal or factual issues.

C. The court may in the interest of justice exempt a general civil case from the case disposition time goals under California Rule of Court, rule 3.713, if it finds the case involves exceptional circumstances that will prevent the court and the parties from meeting the goals and deadlines imposed by the program. In making the determination, the court is guided by California Rules of Court, rules 3.715 and 3.400.

   If the court exempts the case from the case disposition time goals, the court must establish a case progression plan and monitor the case to ensure timely disposition consistent with the exceptional circumstances, with the goal of disposing of the case within three (3) years.

D. The court recognizes that an early and amicable disposition will minimize costs to the litigants and public. The court will encourage referrals to the court-directed mediation program, early voluntary settlement conferences, and/or other alternative dispute resolution in all cases.

E. Failure to follow these rules, file a mandatory case management statement or trial management report and/or attend a mandatory case management conference may result in sanctions.

(Adopted October 1, 1998; Amended January 1, 2007; Amended January 1, 2008; Subd. (e) repealed, rule re-lettered January 1, 2009; Amended July 1, 2010; Amended (repealed subd. (b) and re-lettered (c)-(g) to (b)-(f)) July 1, 2012)

6.08 FROM CASE FILING TO CASE MANAGEMENT CONFERENCE

A. On the filing of every complaint, the clerk shall set a date for an initial CASE MANAGEMENT CONFERENCE at least one-hundred-twenty (120) days, but no later than one-hundred-eighty (180) days, from the filing of the complaint. ~~Notice is in the form of a stamp on the face of the complaint.~~

B. Plaintiff shall serve all parties with notice of the initial case management conference within the timeframe set forth in California Rule of Court, rule 3.722(b).

C. The parties may request that the initial case management conference be vacated or continued by filing a request to vacate or continue initial case management conference and order concurrently with the case management statement. Receipt of a signed copy of the request to vacate or continue initial case management conference and order granting the request is necessary for parties to be excused from the case management conference; if parties do not receive a signed copy of the order granting the request, they must attend the initial case management conference.

(Adopted October 1, 1998; Amended January 1, 2003; Amended July 1, 2004; Amended January 1, 2007; Amended January 1, 2008; Amended January 1, 2010; Subd. (d) repealed, (e) – (h) re-lettered and amended July 1, 2010; Amended (repealed subd. (c) – (d) and (f) – (g), renumbered (e) to (c)) July 1, 2012; (a) Amended July 1, 2016)

6.09 CASE MANAGEMENT CONFERENCES

A. At the case management conference, counsel for each party and each self-represented party must appear personally or telephonically, must be familiar with the case, and must be prepared to discuss all matters contained in the case management statements.

B. If it appears for good cause that the matter will not be ready for trial within three (3) to five (5) months of the case management conference, the court shall set additional case management or status conferences as necessary.

C. Failure to file a case management statement, appear at the case management conference, or participate effectively at the case management conference may result in appropriate sanctions.

(Adopted October 1, 1998; Amended January 1, 2003; Amended January 1, 2007; Amended July 1, 2010)

6.10 MANAGEMENT OF TRIAL

If a case is reported ready for trial and has not settled, it is reasonable for the court to expect that the parties are prepared, have timely reviewed and exchanged information, and that there will be no unnecessary delays in the trial. Trial management policies, orders, reports, and/or conferences are means for the court to monitor trial preparation and ensure that the parties are aware of and comply with the court's expectations. The parties are expected to meet, confer, and cooperate in complying with these rules.

(Adopted October 1, 1998; Amended January 1, 2003; Amended July 1, 2004; Amended January 1, 2008; Amended July 1, 2010)

6.11 TRIAL MANAGEMENT ORDERS AND REPORTS

In order to ensure that the case is ready for trial and that there will be no unnecessary delays, the following orders are made:

A. Trial counsel for each of the parties shall meet and confer prior to trial for purposes of reviewing exhibits, potential witnesses, stipulations, exchange of trial motions, and compliance with this order. Failure to meet and confer concerning the matters herein may result in sanctions in accordance with Code of Civil Procedure section 575.2, including but not limited to the exclusion or limitation of evidence, monetary sanctions, dismissal of the case, striking of pleadings or entry of a default judgment.

B. The attorneys shall prepare a trial management report and brief (see appendix A) and file the report as set forth below. Courtesy chambers copies of all trial management reports, briefs and motions in limine shall be submitted ~~at the same time~~ on the same day that the document is ~~e~~-filed.

   Category One: Friday prior to trial.

   Category Two: Four (4) court days prior to trial, no later than 3:00 p.m.

   Category Three: The court may set a trial management conference approximately ten (10) days prior to trial. The attorneys shall meet and confer, prior to the trial management conference, for purposes of preparing the trial management report and brief. The trial management report and brief shall be filed jointly or individually at least three (3) days prior to the conference, otherwise (4) court days prior to trial.

(Adopted October 1, 1998; Amended July 1, 1999; Amended January 1, 2003; Amended and re-titled July 1, 2010; Amended July 1, 2012; Amended July 1, 2016)

6.12 COURT-DIRECTED MEDIATION PROGRAM RULES

A. Eligible Cases. The court shall determine those cases that are suitable for the "Mediation Program" and shall announce the determination orally to the parties at a case management conference in civil cases when the case is set for trial. Parties may request court directed mediation by filing a stipulation with the court. The case will be reviewed by the court and if the case is suitable, the parties will receive a "Notice of Referral to Mediation" from the court's Alternative Dispute Resolution (ADR) administrator.

B. Referral to Mediation.

1. Referral Process. If the parties accept the court's determination and agree to mediation, the court's ADR Administrator will refer the case for mediation. Mediators are selected from a list on a rotating basis, unless otherwise ordered by the court. The ADR administrator will select two (2) mediators, one of whom shall be the assigned mediator and other shall be the alternate mediator. If there is a conflict of interest for the assigned mediator, the parties will contact the alternate mediator.

2. Compensation. Mediators shall volunteer their preparation time and the first two (2) hours of mediation. After two (2) hours of mediation, the mediator may either: 1) continue to volunteer his or her time; or 2) give the parties the option of concluding the mediation or paying the mediator for additional time at an hourly rate of $200. The mediation will continue only if all parties and the mediator agree. After eight (8) hours in one (1) or more mediation sessions, if all parties agree, the mediator may charge his or her hourly rate or such other rate that all parties agree to pay. In special circumstances for complex cases, requiring substantial preparation time, the parties and the mediator may make other arrangements. No party may offer or give the mediator any gift.

3. Payment. All terms and conditions of payment must be clearly communicated to the parties by the mediator. The parties may agree in writing to pay the fee in other than equal portions. The parties shall pay the mediator directly.

4. Mediation Agreement. A MEDIATION AGREEMENT between the assigned mediator and the parties shall have the form set forth in appendix F and shall set forth the terms of the engagement, including, but not limited to, a specific enumeration of the pro bono hours, the parties' option to continue mediation on a specific fee basis after the pro bono hours have been spent, confidentiality, disclosure of conflicts of interest, and the incorporation by reference of the Mediation Program local rules. The "Mediation Agreement" shall be fully signed before the commencement of the mediation session.

C. Timing and Scheduling the Mediation.

1. Parties Duty to Determine Mediator Conflicts of Interest and to Deliver Documents to the Mediator. Within twenty (20) days of receiving the Notice Referral to Mediation, the parties shall confer with the assigned mediator to determine whether conflicts of interest exist. They shall also deliver a complete copy of their case management statements to the mediator.

2. Scheduling by Mediator. Promptly after being appointed to a case, the parties shall contact the mediator and discuss the timing of scheduling mediation. Counsel shall then confer with their clients and each other, and counsel representing plaintiff shall then inform the mediator of potential dates that are available to the parties and their counsel. The mediator shall then fix the date and place of the mediation within the deadlines set forth by these rules and within their scheduling needs. Counsel shall respond promptly to and cooperate fully with the mediator with respect to scheduling the mediation session.

3. Deadline for Conducting Mediation. Unless otherwise ordered, the mediation shall be completed at least thirty (30) days prior to the parties' next case management conference or mandatory settlement conference.

D. Written Mediation Statements.

1. Time for Submission. No later than five (5) calendar days before the first mediation session, each party shall submit directly to the mediator, and shall serve on all other parties, a written mediation statement.

2. Prohibition Against Filing. Mediation statements shall not be filed with the court.

3. Content of Statement. The statements shall be concise, include any information that may be useful to the mediator, and shall:

    a. Identify, by name and title or status of, the persons(s) with decision-making authority, who, in addition to counsel, will attend the mediation as representative(s) of the party, and persons connected with a party opponent (including an insurer representative) whose presence might substantially improve the utility of the mediation or the prospects for settlement;

    b. Describe briefly the substance of the suit addressing the party's view of the issues and liability of damages and discussing the key evidence;

    c. Identify the discovery or motions that promise to contribute most to equipping the parties for meaningful settlement negotiations;

    d. Describe the history and current status of any settlement negotiations and provide any other information about any interests or considerations not described elsewhere in the statement that might be pertinent to settlement; and

    e. Include copies of documents likely to make the mediation more productive or improve settlement prospects.

E. Contact with Mediator before the Mediation. Before the mediation, the mediator may allow the parties to submit an additional confidential written statement for the mediator only, or may discuss the case in confidence with a party and the party's lawyer during a telephone conversation. The mediator shall not disclose any party's confidential communications without the party's permission.

F. Attendance at the Mediation Session.

1. Parties. All named parties and their counsel are required to attend the mediation session and participate in good faith. This requirement reflects the court's view that the principal values of mediation include affording litigants the opportunity to articulate directly to other litigants and a neutral mediator their positions and arguments and to be heard first hand. Mediation also enables parties to collaborate in the search for mutually agreeable solutions.

    a. A person with authority to settle the case must be present at the mediation.

    b. Corporation or Other Entity. A party other than a natural person (e.g., a corporation or an association) satisfies this attendance requirement if represented by a person (other than outside counsel) who has authority to settle and who is knowledgeable about the facts of the case.

    c. Government Entity. A unit or agency of government satisfies this attendance requirement if represented by a person who has, to the greatest extent feasible, authority to settle, and who is knowledgeable about the facts of the case, the governmental unit's position, and the procedures and policies under which the

governmental unit decides whether to accept proposed settlements. If the action is brought by a governmental entity on behalf of one (1) or more individuals, at least one (1) such individual also shall attend.

2. Counsel. Each party shall be accompanied at the mediation by the lawyer who will be primarily responsible for handling the trial of the matter.

3. Insurers. Insurer representatives who are necessary are required to attend in person.

4. Request to be Excused. Only the assigned mediator may excuse a party from the mediation. A person who is required to attend mediation may be excused from attending in person only after demonstrating to the mediator that his or her personal attendance would impose an extraordinary or otherwise unjustifiable hardship. Any party requesting to be excused must contact the mediator at least five (5) days in advance of the scheduled mediation to arrange how the party will be able to participate without appearing in person. All arrangements must be approved by the assigned mediator.

5. Participation by Telephone. A person excused from appearing in person at the mediation session shall be available to participate by telephone.

6. Failure to comply with this rule may result in an award of attorney fees or sanctions pursuant to California Rules of Court, rule 2.30 and Code of Civil Procedure section 128.5.

G. Procedure at Mediation.

1. Procedure. The mediation shall be informal. Mediators shall have discretion to structure the mediation to maximize the benefits of the process.

2. Separate Caucuses. The mediator may hold separate, private caucuses with each side or each lawyer or, if the parties agree, with the clients only. The mediator may not disclose communications made during such caucuses to another party or counsel without the consent of the party who made the communication.

H. Confidentiality.

1. Confidential Treatment. Except as provided in subdivision 2 below entitled “Limited Exceptions to Confidentiality,” the mediator, all counsel and the parties, and any other persons attending the mediation shall treat all statements made at the session, and documents prepared for and created at the session as “confidential information.” The confidential information shall not be:

   a. Disclosed to anyone not involved in the litigation;

   b. Disclosed to the court; or

   c. Used for any purpose, including impeachment, in any pending or future proceeding in this court.

2. Limited Exceptions to Confidentiality. This rule does not prohibit:

   b. Disclosures as may be stipulated by all parties and the mediator;

c. A report to or any inquiry by the court regarding a possible violation of these Mediation Program rules;

d. Any participant or the mediator from responding to an appropriate request for information duly made by the persons authorized by the court to monitor or evaluate the court's Mediation Program; or

e. Disclosures as are otherwise required by law.

3. Confidentiality Agreement. The mediator may ask the parties and all persons attending the mediation to sign a confidentiality agreement on a form provided by the court or included in the Mediation Agreement utilized by the mediator.

I. Follow Up. At the close of the mediation session, the mediator and the parties shall jointly determine whether it would be appropriate to schedule a follow up session. The follow up could include, but need not be limited to, written or telephonic reports that the parties might make to one another or to the mediator, the exchange of specified kinds of information, or another mediation session.

J. Certification of Session. Within ten (10) days of the close of each mediation session the mediator shall report to the court on the status of the mediation by filing with the court the STATEMENT OF AGREEMENT OR NONAGREEMENT (ADR-100) [appendix G].

K. Membership on the Mediator Panel.

1. The court has established an ADR Committee pursuant to California Rules of Court, rules 10.782 and 10.783. The committee is responsible for overseeing the ADR programs for general civil cases, including the responsibilities specified in California Rules of Court, rule 3.813(b) relating to the court's judicial arbitration program.

2. The court shall maintain a panel of mediators. The ADR committee shall review applications from potential mediators, evaluations of panel members, and make recommendations to the supervising civil judge on the designation of panel mediators. The ADR committee shall designate the panel, and may add or remove mediators from the panel at any time.

3. Any person with a juris doctorate degree who has completed the training required by the Dispute Resolution Program Act for meditators may apply to the ADR committee for membership on the court directed mediation panel. Applications are due by October 1 each year. Applications are available on the court's website and should be submitted to the ADR administrator at the Monterey County Superior Court. If the ADR committee determines that the applicant is qualified for membership on the mediation panel, the ADR committee shall add the applicant's name to the list of members by January 1 of the following year. Mediators on the court's mediation panel must follow the processes in the Court's Mediator Manual available on the court's public website.

(Adopted January 1, 2006; Amended January 1, 2008; Subd. f (6) added and rule amended January 1, 2009; Amended July 1, 2012)

L. Procedures for Handling Complaint about Court-Program Mediators

1. Application. The rules in this chapter establish the court's procedures for receiving, investigating, and resolving complaints about mediators in the court's mediation program for general civil cases, as required by rule 3.868 of the California Rules of Court.

Nothing in these rules should be interpreted in a manner inconsistent with rules 3.865 – 3.872 of the California Rules of Court or as limiting the court's inherent or other authority, in its sole and absolute discretion, to determine who may be included on or removed from its list of mediators or who may be recommended, selected, appointed, or compensated as a mediator by the court. These rules also do not limit the court's authority to follow other procedures or take other actions to ensure the quality of mediators who serve in the court's mediation program in contexts other than when addressing a complaint. The failure to follow a requirement or procedure in these rules will not invalidate any action taken by the court in addressing a complaint.

2. Definitions. As used in this chapter:

   a. The "rules of conduct" means the "Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases" set out in rules 3.850 – 3.860 of the California Rules of Court.

   b. "Court-program mediator" means a mediator who:

      i. Has agreed to be included on the court's list or panel of mediators for general civil cases and is notified by the court or the parties that he or she has been selected to mediate a case within the court's mediation program; or

      ii. Has agreed to mediate a general civil case in the court's mediation program after being notified by the court or the parties that he or she was recommended, selected, or appointed by the court or will be compensated by the court to mediate that case.

   c. "Inquiry" means an unwritten communication presented to the court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.

   d. "Complaint" means a written communication presented to the court's complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.

   e. "Complainant" means the person who makes or presents a complaint.

   f. "Complaint coordinator" means the person designated by the supervising civil judge to receive complaints and inquiries about the conduct of mediators.

   g. "Complaint proceeding" means all of the proceedings that take place as part of presenting, receiving, reviewing, responding to, investigating, and acting on any specific inquiry or complaint.

   h. "Mediation communication" means any statement that is made or any writing that is prepared for the purpose of, in the course of, or pursuant to a mediation or a mediation consultation, as defined in Evidence Code section 1115, and includes any communications, negotiations, and settlement discussions between participants in the course of a mediation or a mediation consultation.

3. Confidentiality.

   a. Preserving the confidentiality of mediation communications.

All complaint proceedings will be conducted in a manner that preserves the confidentiality of mediation communications, including but not limited to the confidentiality of any communications between the mediator and individual mediation participants or subgroups of mediation participants.

a. Confidentiality of complaint proceedings.

All complaint proceedings will occur in private and will be kept confidential. No information or records concerning the receipt, investigation, or resolution of an inquiry or a complaint will be open to the public or disclosed outside the course of the complaint proceeding except as provided in rule 3.871(d) of the California Rules of Court or as otherwise required by law.

4. Submission of inquiries and complaints to the complaint coordinator.

All inquiries and complaints should be submitted or referred to the complaint coordinator.

5. Addressing inquiries.

If the complaint coordinator receives an inquiry, the coordinator must inform the person making the inquiry that the complaint procedure provides for investigation of written complaints only and that the person should submit a written complaint if he or she wants the court to conduct an investigation or take action. If the person does not submit a complaint, the complaint coordinator may prepare a written summary of the inquiry.

6. Acknowledgment and preliminary review of complaints.

a. Acknowledgment of complaints.

When the complaint coordinator receives a complaint, the coordinator will send the complainant a written acknowledgment of this receipt.

b. Preliminary review of complaints.

i. The complaint coordinator will review each complaint to determine whether it warrants investigation or can be promptly, informally, and amicably resolved or closed. The coordinator may:

a) Informally contact the complainant to obtain clarification or additional information or to provide information that may address the complainant's concern.

b) Communicate informally with the mediator to obtain the mediator's perspectives.

ii. If it appears to the complaint coordinator that the mediator may have violated a provision of the rules of conduct, the complaint coordinator must inform the mediator about the complaint and give the mediator an opportunity to provide an informal response.

iii. The complaint coordinator may close a complaint without initiating an investigation if:

a) The complaint is withdrawn by the complainant; or

b) The complainant, the mediator, and the complaint coordinator have agreed on a resolution to the complaint.

iv. With the consent of the presiding judge or the supervising civil judge's designated judicial officer, the complaint coordinator may close a complaint without initiating an investigation if:

a) No violation of the rules of conduct appears to have occurred or the complaint is without sufficient merit to warrant an investigation; or

b) The conduct alleged would constitute a very minor violation of the rules of conduct, the coordinator has discussed the complaint with the mediator, and the mediator has provided an acceptable explanation or response.

c. Notification of closure

If the complaint coordinator closes a complaint without initiating an investigation, the coordinator must send the complainant notice of this action.

7. Appointing an investigator or a complaint committee.

The supervising civil judge will appoint an investigator who has experience as a mediator and is familiar with the rules of conduct, or a complaint committee that includes at least one (1) such individual, to investigate and make recommendations concerning any complaint that is not resolved or closed by the complaint coordinator as a result of the preliminary review.

8. Investigations.

d. Application. The procedures in this rule apply only if a complaint is not resolved or closed through the preliminary review or if the complaint coordinator initiates an investigation under b.

e. Referral of a complaint for investigation. If a complaint is not closed as a result of the preliminary review, the complaint coordinator will refer it to the investigator or complaint committee for investigation.

The complaint coordinator will provide the investigator or complaint committee with a summary of the preliminary review that includes:

i. A copy of the complaint;

ii. A copy or summary of any response from the mediator;

iii. A list of any violation of the rules of conduct that it appears may have occurred; and

iv. Copies of any previous complaints about the mediator and any written summaries of inquiries that are relevant to the current complaint.

Initiation by the complaint coordinator. The complaint coordinator may initiate an investigation based on information received from any source, including an inquiry, indicating that a mediator may have violated a provision of the rules of conduct. To initiate the investigation, the complaint coordinator must refer the information received to an investigator or complaint committee with a list of the violations of the rules of conduct that it appears may have occurred.

b. Mediator's notice and opportunity to respond.

h. The investigator or complaint committee must provide the mediator with a copy of the materials provided to the investigator or complaint committee by the committee by the complaint coordinator under (b) or (c).

ii. The mediator will be given an opportunity to respond to the complaint and the list of apparent violations.

c. Preparing report and recommendation.

The investigator or complaint committee will conduct the investigation that the investigator or complaint committee considers appropriate. Thereafter, the investigator or complaint committee will prepare a written report that summarizes the investigation and states the investigator's or complaint committee's recommendation concerning the final decision on the complaint. The investigator or complaint committee may recommend one (1) or more actions that are permissible under rule 3.870 of the California Rules of Court.

d. Informing mediator of recommendation.

The investigator or complaint committee may inform the mediator of its recommendation and inquire whether the mediator accepts that recommendation. If the mediator accepts the recommendation, the investigator's or complaint committee's report must indicate this.

e. Submitting report and recommendation.

The investigator or complaint committee must submit its report and recommendation to the complaint coordinator. The complaint coordinator must promptly forward a copy of the report and recommendation to the supervising civil judge.

9. Final decision on a complaint that was investigated.

a. Responsibility for final decision.

The supervising civil judge is responsible for making the final decision about the action to be taken on any complaint that was investigated under rule 6.12(I) or for designating another judicial officer or a committee that includes a judicial officer to perform this function.

b. Acting on recommendation.

i. Within thirty (30) days after the investigator's or complaint committee's recommendation is forwarded to the supervising civil judge, the supervising civil judge or designee may submit to the complaint coordinator a decision:

a) Affirmatively adopting the investigator's or complaint committee's recommendation as the final decision on the complaint; or

b) Directing a different action that is permissible under rule 3.870 of the California Rules of Court.

ii. If the supervising civil judge or designee does not submit a decision within thirty (30) days after the complaint committee's recommendation is forwarded, as provided in (i), the investigator's or complaint committee's recommendation will become the final decision on the complaint.

c. Notification of final action.

The complaint coordinator must promptly notify the complainant and the mediator in writing of the final action taken by the court on the complaint.

d. Authorized disclosures.

After the decision on a complaint, the supervising civil judge may authorize the public disclosure of information or records concerning the complaint proceeding that do not reveal any mediation communications. The disclosures that may be authorized under this subdivision include the name of a mediator against whom action has been taken, the action taken, and the general basis on which the action was taken. In determining whether to authorize the disclosure of information or records under this subdivision, the supervising civil judge or designee should consider the purposes of the confidentiality of complaint proceedings stated in rule 3.871 of the California Rules of Court.

10. Interim suspension pending a final decision on a complaint.

If the preliminary review or the investigation indicates that a mediator may pose a threat of harm to mediation participants or to the integrity of the court's mediation program, the supervising civil judge or the other judicial officer or committee designated by the supervising civil judge to make the final decision about the action to be taken on any complaint may suspend the mediator from the court's panel or list pending final decision on the complaint. The complaint coordinator may make a recommendation to the supervising civil judge or the designee regarding such a suspension.

(Adopted January 1, 2006; Amended January 1, 2008; Subd. f (6) added and rule amended January 1, 2009; Amended January 1, 2010; Amended July 1, 2010; Amended July 1, 2012)

6.13 SETTLEMENT CONFERENCES

A. A mandatory settlement conference will be set by the court approximately thirty (30) days prior to the trial date unless the court determines that an earlier settlement conference shall be appropriate.

B. Unless otherwise ordered by the court, at any mandatory settlement conference, all parties and/or principals with full legal and monetary authority to settle the case shall be in personal attendance. Insurance representatives shall have full authority to settle the case and shall be fully knowledgeable about the case.

C. Requests for telephone standby shall be approved only by the judge. If telephone standby is approved, the requesting person shall be available at the agreed location until excused by

the court regardless of the time in that location. In any case where telephone standby has been approved, the court may, in its sole discretion, continue the conference and order that person to personally attend.

Each party shall comply with~~Per~~ California Rules of Court, rule 3.1380(c) in addition the Settlement Conference Statement shall contain ~~each party shall~~

D. ~~prepare~~submit to the court, ~~file and serve five (5) court days before the conference~~, a ~~written statement containing~~ the following information:

1. A complete description of the nature of the case and the facts in support of that party'~~ie~~s contentions, including both liability and damages, and indicating those matters that are agreed upon or in dispute;

2. The legal contentions of that party with authorities in support thereof;

3. A listing of all alleged economic damages incurred and the basis ~~therefore~~; and a statement of those agreed to and/or in dispute;

4. All prior settlement offers and demands; and

5. Any perceived impediments to settlement.

E. Settlement conference statements shall not be confidential unless ordered by the court.

F. The trial attorneys or a fully informed associate with full authority to settle the matter shall attend for each party. Counsel shall be prepared to make a bona fide offer of settlement.

G. Failure to comply with this rule may result in an award of attorney fees or sanctions pursuant to California Rules of Court, rule 2.30 and Code of Civil Procedure section 128.5.

H. These rules shall apply to all settlement conferences whether considered mandatory or voluntary.

(Adopted October 1, 1998; Amended January 1, 2003; Amended January 1, 2008; Amended July 1, 2010; Amended July 1, 2016)

6.14 TELEPHONE APPEARANCE

In accordance with the provision of rule 3.670 of the California Rules of Court, counsel and unrepresented litigants shall have the option of appearing by telephone in any conference or non-evidentiary law and motion hearing, excluding settlement conferences. Teleconferencing is provided through Court Call Service, a private vendor. Arrangements to schedule teleconferencing for a conference or hearing shall be made directly with Court Call Service by calling 1-888-882-6878. A fee will be charged for this service and shall be payable directly to Court Call Service.

(Adopted October 1, 1998; Amended July 1, 1999; Amended January 1, 2003; Amended July 1, 2007)

6.15 MISCELLANEOUS RULES

A. Qualified collection actions (Cal. Rules of Court, rule 3.740) will be assigned to the court's case disposition calendar. A non-appearance hearing* will be set thirteen (13) months from the date of filing.

   *Appearance is not required should default judgment or dismissal be entered prior to the date set for hearing.

   Upon the filing of a response/denial/answer by a defendant(s), the collection action will be changed to a civil fast track/delay reduction case and a case management conference or mandatory settlement conference/trial setting conference will be set within sixty (60) to ninety (90) days of the filing of the responsive pleading.

B. Alternative Dispute Resolution. It is the policy of this court to promote and encourage alternative dispute resolution. In any case where judicial arbitration is ordered, the parties may stipulate to substitute private arbitration or mediation. In any case where the matter is referred to any form of alternative dispute resolution, including judicial arbitration, it shall be finally concluded in no more than ninety (90) days if no other date is set by the court.

C. Interpreters. It is the responsibility of the attorney/party to obtain an interpreter if needed for any civil matter. A family member, friend, or the attorney may only interpret: 1) in an uncontested matter; 2) with the express consent of the party; 3) with the express statement of the attorney that there is no conflict of interest; and 4) on being properly sworn.

(Adopted October 1, 1998; Amended January 1, 2003; Amended January 1, 2007; Amended July 1, 2007; Amended January 1, 2008; Subd. (d) added, rule amended January 1, 2009; Amended July 1, 2010; Amended July 1, 2012 (repealed subd. (b), (c), and (e), renumbered (d) to (a) and (e) to (c))

APPENDIX A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MONTEREY
TRIAL MANAGEMENT REPORT AND BRIEF

A. FORMAT OF REPORT

The "Trial Management Report" and "Brief" shall provide the information requested below. The Report shall be prepared according to California legal format and shall contain the full case caption. The Report shall be typewritten or computer printed on pleading paper. Failure to file a Report as required or provide all requested information may result in exclusion or limitation of evidence, monetary sanctions, dismissal of the case, striking of pleadings, or entry of a default judgment.

All information requested below must be provided or its absence explained. Attachments may be used to provide additional information or to state the positions of each of the parties.

All discovery must be completed prior to trial. Delays will not be granted for the purpose of conducting further discovery except on a showing of good cause, to include, but not be limited to, a showing of why discovery could not reasonably have been completed prior to trial.

The Trial Management Report and Brief shall include the following information.

B. ATTORNEY AND CASE INFORMATION

- Case Name:
- Trial Attorneys:
- Plaintiff:
- Telephone:
- Defendant:
- Telephone:
- Additional Parties:

C. SUMMARY OF THE NATURE OF THE CASE

The Report shall include a summary of the allegations and supporting facts as contended by each party. It is anticipated that the trial court shall use this information to acquaint itself with the competing allegations and contentions, the contested factual issues, and to inform the jury as to the nature of the proceedings. The summary shall be non-argumentative and concise.

D. STATEMENT OF ISSUES, CAUSES OF ACTIONS, AND DEFENSES

The Report shall include a listing of specific causes of action and defenses as contained in the pleadings.

E. TRIAL BRIEFS, PRETRIAL MOTIONS, AND MOTIONS IN LIMINE

The attorneys shall file all trial briefs, as necessary, with the Trial Management Report and Brief. In addition, the Report shall include a list of all requests for judicial notice, pretrial motions, motions in limine, and appropriate points and authorities.

F. DISCOVERY

Each party shall indicate whether discovery is completed. If discovery is not completed, the Report shall indicate why discovery has not been completed and shall specify the specific areas yet to be completed.

G. STIPULATIONS

Each party shall list agreed upon stipulations and any matter to which they are willing to stipulate.

H. EXHIBITS

The Report shall include a list of all proposed exhibits. Each party shall file a declaration indicating any objections to the exhibits of the opposing parties with a brief statement of reasons. Failure to object to an exhibit shall be deemed a waiver of all objections thereto, and the exhibit may be entered into evidence without further argument. Objections to and editing of medical records shall be accomplished prior to trial, unless otherwise ordered by the court. All proposed exhibits shall be pre-marked and exchanged and/or reviewed between the parties. Unless otherwise designated by the trial judge, the Plaintiff/Petitioner will mark his or her exhibits using numbers and the Defendant/Respondent will use letters. Exhibits which are not pre-marked and exchanged shall not be admitted in evidence except on a showing of good cause, to include, but not be limited to, a declaration as to why said exhibit was not so marked and exchanged.

Any and all exhibits (including any demonstrative evidence, charts, posters, etc.) which are to be viewed by the jury before deliberations shall be identified. These exhibits shall be made available for review. If permitted by the court, it shall be the duty of counsel to arrange for sufficient copies for each juror, enlargement, or viewing by overhead projector.

It is the responsibility of the parties to obtain and make available all equipment necessary to view any demonstrative evidence. Necessary equipment shall be available, set up, and approved by the court.

All exhibits and other materials offered in evidence or otherwise presented at civil trials, including transcripts of depositions and administrative records, will be returned at the conclusion of trial to the custody of the offering party. The custodial party must maintain all exhibits and other materials in the same condition as received from the clerk until 60 days after a final judgment or dismissal of the entire case is entered.

I. DISCOVERY MATERIALS

The Report shall include a list of all depositions intended to be used during trial and any objections thereto. Original, signed depositions to be used during the trial shall be lodged with the courtroom clerk, on the first day of trial. Procedures for presenting the materials during the trial, shall be established by the court.

J. VIDEO DEPOSITIONS

Parties shall indicate in the Report the intended use of any video depositions. The parties shall review video depositions prior to the preparation of the Trial Management Report and Brief.

Objections shall be identified in the Report. The party intending to use a video deposition shall be responsible for editing of any further objections sustained by the court. The court shall be provided with an original, signed written transcript of the video deposition.

K. WITNESSES

Each party shall prepare a list of witnesses and the general nature of their testimony [e.g., percipient witness, character witness, expert witness on damages, etc.]. No witness, except a witness for purposes of impeachment, who has not been designated as a witness in the list above shall be allowed to testify except on a showing of good cause, to include, but not be limited to, a showing of why that witness was not so designated. Any witness needing any special assistance shall be identified [e.g., interpreter, disabled, etc.].

All witnesses are expected to be available as needed for trial. Any special scheduling problems shall be noted.

L. VOIR DIRE

The Report shall indicate the subject areas which the parties wish the court to inquire into and those subject areas which the parties request to ask questions about themselves. Requests for a juror questionnaire or in camera questioning of a juror as to particular matters shall be indicated in the Report and a copy of the proposed questionnaire attached to the Report.

M. JURY INSTRUCTIONS

All proposed instructions shall be lodged with the court with the Report~~. However, CACI instructions which are requested without modification may be requested by number~~. CACI 200 must be completed and modified as it pertains to the particular case. ~~Proposed non-CACI or modified CACI~~All proposed instructions shall be submitted in duplicate. One (1) copy shall be prepared on plain paper, separate from argument or authorities, and shall not indicate by whom the instructions are presented. At the close of evidence, the trial court will conduct a hearing on instructions to determine the final instructions to be given to the jury.

N. VERDICT FORMS

Proposed verdict forms shall be filed with the Report. The verdict forms shall be prepared on plain pleading paper and shall not indicate by whom the verdict forms are presented. The trial court will conduct a hearing to determine the final form of verdict.

O. OTHER REQUESTS: [list all additional requests]

(APPENDIX A: Adopted October 1, 1998; Amended January 1, 2003; Repealed July 1, 2010; Appendix C re-titled appendix A July 1, 2010; ~~Appendix A a~~Amended July 1, 2012, Amended July 1, 2016)

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APPENDIX F

MONTEREY COUNTY COURT-DIRECTED MEDIATION PROGRAM

MEDIATION AND CONFIDENTIALITY AGREEMENT

This Mediation and Confidentiality Agreement is dated _____, and entered into by and between the undersigned parties and _____, Attorney at Law, who will serve in the capacity of mediator pursuant to this agreement.

Applicable Law - This mediation shall be subject to the terms and conditions of California Evidence Code sections 1115 – 1128, and the terms and conditions of the Monterey County Court-Directed Mediation Program Rules, both of which are incorporated herein by reference as though fully set forth in this mediation agreement,

Confidentiality - All statements made in preparation of or during the course of this mediation are privileged settlement discussions, are made without prejudice to any party's legal position, and are undiscoverable and inadmissible for any purpose in any legal, administrative, or other proceeding.

The privileged character of any information is not altered by disclosure to _____, the mediator. Disclosure of any statements made to the mediator in confidence, records, reports or other documents received or prepared by the mediator cannot be compelled. The mediator shall not be compelled to disclose or testify in any proceeding of any kind.

Mediator's Services – The attorney-mediator's services are offered to the parties on a *pro bono* (no fee) basis for preparation time and two hours of mediation service. See Attachment A for a complete description of *voluntary* fee options after expiration of *pro bono* services.

Signed before the commencement of the mediation by each of the persons whose signatures appear below:

Date:

_____
Insert Name of Attorney, Mediator

Date:

Print Name of Party (1):_____

Signature of Party (1): _____

Print Name of Party (1) Attorney: _____

Signature of Party (1) Attorney: _____
Date:

Print Name of Party (2):_____

Signature of Party (2): _____

Print Name of Party (2) Attorney: _____

Signature of Party (2) Attorney: _____

Date:

Print Name of Party (3):_____

Signature of Party (3): _____

Print Name of Party (3) Attorney: _____

Signature of Party (3) Attorney: _____

Date:

Print Name of Party (4):_____

Signature of Party (4): _____

Print Name of Party (4) Attorney: _____

Signature of Party (4) Attorney: _____

(APPENDIX F: Adopted January 1, 2006)

MEDIATION AGREEMENT

ATTACHMENT "A"

PRO BONO SERVICES AND VOLUNTARY FEE STRUCTURE

MONTEREY COUNTY COURT-DIRECTED MEDIATION PROGRAM

The "Mediation Agreement" between (among) the parties and their legal representatives incorporates this Attachment A as an integral component of the Mediation Agreement.

I. PRO BONO MEDIATION – The attorney-mediator is a member of the Monterey County Court-Directed Mediation Program and offers his/her mediation services for no cost subject to the following terms and conditions:

   1. Preparation time and Scheduling: Volunteer attorney-mediator will offer his/her time necessary to the preparation of, scheduling, and coordination with the parties and their representatives prior to the commencement of the scheduled mediation session(s) as a component of his/her participation in the court-directed program;

   2. Mediation Session: Volunteer attorney-mediator offers two (2) hours of his/her time as volunteer attorney-mediator in working with the parties to reach a voluntary settlement (agreement) in their case. The two (2) hours will commence after the parties have signed the Mediation Agreement and at the time of the mediator's opening statement. The two (2) hours will include any necessary breaks, caucuses, recesses, or other intermittent breaks from the formal mediation session but will not include meal breaks or recess involving a rescheduling of the mediation. The mediator shall maintain accurate time records and those time records shall be determinative in the calculation of accrued mediation time.

J. VOLUNTARY FEE OPTION - At the expiration of the first two (2) hours of accumulated mediation time, the attorney-mediator may offer to continue the mediation at the rate of $200/hour to be shared equally by the parties (unless otherwise negotiated to the agreement of all parties and incorporated as a component of the signed mediation agreement). The election of this option is VOLUNTARY and no party shall be compelled to continue with paid mediation unless subject to the parties' voluntary and signed commitment to such fee schedule.

   1. Voluntary Waiver by Attorney-Mediator - The volunteer attorney-mediator may waive the imposition of voluntary fee at his/her discretion and subject to the agreement of the parties to continue in the mediation process. This voluntary waiver is subject to the will of the attorney-mediator and may be offered for a finite and defined period of time (e.g., one (1) more hour, two (2) more hours, etc.).

   2. After Six hours of Voluntary Compensation at $200/Hour - After six (6) hours of attorney-mediation compensation at the $200/hour level that has been agreed to by the parties and their attorneys, the attorney-mediator may at his/her discretion offer to continue the mediation at his/her regular hourly fee subject to the *voluntary* agreement of the parties.

Coordination of Payment of Agreed to Fees After Expiration of Pro-Bono Services. Should the parties elect to continue with mediation after the expiration of the *pro bono* preparation and two (2) hour mediation, all such financial agreements shall be recorded by the attorney-mediator in

the Mediation Agreement or amendment thereto signed by the parties and their attorneys including the volunteer attorney-mediator. Payments shall be made directly to the attorney-mediator, and the court will not oversee the collection of payments. The court, at its discretion, may postpone trial setting in a case that does not settle in mediation pending full payment of agreed to attorney-mediator fees that remain unpaid.

(ATTACHMENT A: Adopted January 1, 2006)

APPENDIX H

STIPULATION AND ORDER VACATING AND RESETTING DATES; CERTIFICATE OF CONTINUING MEDIATION

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

_____, Plaintiff(s), v. _____, Defendant(s).	Case No. M_____ **STIPULATION AND ORDER VACATING AND RESETTING DATES; CERTIFICATE OF CONTINUING MEDIATION**

WHEREAS, the initial mediation session in the above-uncaptioned matter has been held in accordance with the Court-Directed Mediation Program rules; and

WHEREAS, the parties wish to have a further mediation session in accordance with those rules, and to vacate dates now set to allow that to occur;

IT IS HEREBY STIPULATED, by and between the parties through their respective counsel of record, that the

( ) Case Management Conference date of _____

( ) Trial date of _____

( ) Settlement Conference date of _____

shall be vacated and reset to a date approximately ____ days thereafter.

Dated: _____

_____ Attorney for Plaintiff

_____ Attorney for Defendant

MEDIATOR CERTIFICATION

I HEREBY CERTIFY that a mediation session was held as set forth above, that the parties have expressed the wish to have a further mediation session, and that I have agreed to hold such a further session.

Dated: _____ _____
Mediator

ORDER

Upon the stipulation of the parties, IT IS HEREBY ORDERED that the dates set forth above are vacated, and that the

( ) Case Management Conference is reset to _____

( ) Trial date is reset to _____

( ) Settlement Conference is reset to _____

Dated: _____ _____

Judge of the Superior Court

(APPENDIX H: Adopted January 1, 2007)

CHAPTER 7

LAW AND MOTION

7.01 LAW AND MOTION JUDGES

The law and motion judges shall be designated by the Presiding judge.

(Adopted October 1, 1998; Amended July 1, 2015)

7.02 LAW AND MOTION CALENDAR

A. FAMILY LAW

Family Law and Motion matters, whether one or two attorney, are heard in Monterey, as reflected on the court's website.
.
Family Law and Motion matters ***in pro per*** are heard in Monterey, as reflected on the court's website.

B. MEET AND CONFER FOR FAMILY LAW AND MOTION MATTERS

The moving party and the responding party, or his/her attorney if represented, shall each contact one another and attempt to resolve the issues raised in the moving papers prior to the date set for hearing, unless doing so would violate a restraining order in effect.

C. CIVIL

Civil Law and Motion matters are heard in Monterey, as reflected on the court's website.

(Adopted October 1, 1998; Amended July 1, 1999; Amended January 1, 2001; Amended July 1, 2003; Amended July 1, 2013; Amended July 1, 2015)

7.03 MATTERS INCLUDED

A. The Family Law and Motion Department shall handle, issue and sign all ex parte orders, orders to show cause, temporary restraining orders, and other family relations related Law and Motion matters.

B. The Civil Law and Motion Departments shall handle, issue, and sign all orders in Civil Law and Motion matters. All ex parte motions and orders for injunction, writs of mandate, nonfamily law restraining orders, writs of prohibition, and ex parte provisional remedies, such as attachments and appointment of receivers, shall be presented in the supervising judge's department or as assigned by the supervising judge.

(Adopted October 1, 1998; Amended July 1, 2015)

7.04 CONTINUANCES

A. The parties may, with good cause, stipulate to continue a law and motion matter for a

reasonable amount of time. The clerk's office must be notified of such stipulations at least two court days prior to the scheduled hearing.

B. All requests for stipulated continuances of law and motion matters must be made to the judge scheduled to hear the matter. The request must indicate good cause for the continuance, describe the basis for previous stipulated continuances, if any, and state the position of opposing counsel regarding the continuance. Failure to appear at the date and time set for hearing, may result in the matter being dropped from the calendar.

(Amended July 1, 2003; Amended July 1, 2012; Amended July 1, 2015)

7.05 LONG MATTERS

Upon calling a law and motion matter, if it should appear that more than fifteen (15) minutes will be required, the court may specially reset the hearing.

(Adopted October 1, 1998, Amended July 1, 2012)

7.06 UNCONTESTED CIVIL MATTERS

No uncontested civil matter shall be heard unless application is filed with the clerk , using form CI-133, Request to Set Hearing found on the pubic website, at least 15 days prior to the date requested, unless an emergency exists which requires an earlier hearing. No matter shall be set unless all pleadings, stipulations and other necessary papers are on file with the clerk and default, if required, has been entered.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2015)

7.07 TELEPHONE APPEARANCE IN CIVIL LAW AND MOTION HEARINGS

In accordance with the provision of rule 3.670 of the California Rules of Court, counsel and unrepresented litigants shall have the option of appearing by telephone in any conference or non-evidentiary law and motion hearing, excluding settlement conferences. Teleconferencing is provided through Court Call Service, a private vendor. Arrangements to schedule teleconferencing for a conference or hearing shall be made directly with Court Call Service by calling 1-888-882-6878. A fee will be charged for this service and shall be payable directly to Court Call Service.

(Adopted July 1, 1999; Amended July 1, 1999; Amended July 1, 2004; Amended July 1, 2007)

7.08 REPEALED

(Adopted January 1, 2004; Obtaining an expedited order after hearing or stipulation - Repealed January 1, 2011)

7.09 REPEALED

(Adopted October 1, 1998; Page limitations for points and authorities - Repealed July 1, 2012)

7.10 REPEALED

(Adopted October 1, 1998; Summary judgment and summary adjudication of issues - Repealed July 1, 2012)

7.11 EX PARTE APPLICATIONS

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, rules 3.1200 – 3.1207 and directed to the attention of the supervising civil judge.

Ex Parte appearances are calendared on Wednesdays at 1:30 p.m., and heard on Thursdays at 2:00one afternoon a week, except when exceptional circumstances are presented in the application for an appearance on a different day and/or time. If upon review of the application the judicial officer finds those exceptional circumstances exist, the court will inform the applicant and may adjust the hearing date and/or time, requiring the applicant to re-notice all the parties.

In addition to compliance with California Rules of Court, rules 3.1200 – 3.1207, the application and all supporting papers shall be filed with the court by 11 10 a.m. on the court day preceding the hearing date. Copies of any responding papers should be submitted prior to the hearing, if possible. Late-submitted moving papers will be accepted for filing and presented to the appropriate judicial officer pursuant to California Rules of Court, rule 3.1205. However, parties are advised that the late submittal of ex parte application and supporting documentation may cause the hearing and/or decision thereon to be delayed.

An ex parte application will be considered without a personal appearance in the cases set forth in California Rules of Court, rule 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 January 1, 2004; Amended January 1, 2005; Amended July 1, 2010; Amended January 1, 2011; Amended July 1, 2014; Amended July 1, 2016)

7.12 EXECUTED ORIGINAL OF AMENDED PLEADING

The purpose of this rule is to ensure the court's records include the executed original of an e-file version of every amended pleading as a free-standing, file-stamped separately e-filed document as provided in Rule 1.06 F. As set forth in other rules, amendment of pleadings requiring leave of the court may be made upon the granting of a motion or by stipulation.

A. If upon motion: In addition to the copy of the proposed amended pleading required by California Rules of Court, rule 3.1324(a), the moving party must lodge the original executed proposed amended pleading and one (1) additional copy with the court. These documents must not be attached to any other document. These documents may be lodged before, during, or after the hearing on the motion to amend. If the motion to amend is granted, and if the documents were lodged at or before the hearing, the original executed amended pleading will shall be e-filed by the moving partywith the court on the date the motion is granted by moving party. If the documents are lodged after the hearing, the amended pleading will be file-stamped on the date it is received by the court.

B. If upon stipulation: The proponent of the amended pleading must lodge e-file the original executed proposed amended pleading and one (1) additional copy with the court along with the stipulation. These documents must not be attached to the stipulation or to any other document.

A self-addressed envelope with sufficient postage for return of the copy of the amended pleading must be provided by any party or attorney who does not maintain a folder in the court's drop-box.

(Adopted July 1, 2012; Amended July 1, 2013; Amended July 1, 2016)

7.13 DISCOVERY FACILITATOR PROGRAM (PILOT)

The Court has adopted a Discovery Facilitator and Evaluator Pilot Program. Parties are encouraged to utilize this program for resolving discovery disputes.

The purpose of the program is to provide a vehicle where parties and counsel resolve discovery disputes in an economical, flexible, and participant-controlled manner while avoiding the risk of delay and the imposition of sanctions inherent in formal discovery motion practice.

The rules of the program are posted on the Court's website on both the civil and mediation pages.

(Adopted effective July 1, 2015)

CHAPTER 8

ATTORNEY FEES - DEFAULT AND UNCONTESTED MATTERS

8.01 SCHEDULE OF ATTORNEY FEES

If the obligation sued upon provides for the recovery of a reasonable attorney's fee, the fee in each default case and in each case where judgment is rendered pursuant to section 585(a)of the Code of Civil Procedure, may be fixed pursuant to the following schedule:

Principal Amount of Judgment	Attorney's Fee
Under $2,000	25 percent
Under $2,000.01 to $5,000.00	20 percent or $500.00 – whichever is greater
$5,000.01 to $10,000.00	15 percent or $1,000.00 – whichever is greater
$10,000.01 to $25,000.00	12 percent or $1,500.00 – whichever is greater

On judgments in excess of $25,000.00 the attorney's fee may be ten percent (10%) of the principal amount between $25,000.00 and $50,000.00, and five percent (5%) of any additional sum.

Plaintiff shall have the right, in accordance with section 585(a) of the Code of Civil Procedure, to have the attorney fee fixed by the court in an amount different than as set forth above.

(Adopted October 1, 1998)

8.02 REQUEST FOR ATTORNEY FEES IN UNLAWFUL DETAINER ACTIONS

In unusual cases, attorneys may apply to the court by written motion with supporting documents for fees in excess of the above schedule.

If the obligation sued upon provides for recovery of reasonable attorney fees, the court may allow a $450.00 fee to the prevailing party in an unlawful detainer default hearing. In unusual cases, attorneys may apply to the court, by motion, for increased fees.

(Adopted October 1, 1998)

CHAPTER 9

APPELLATE DIVISION

9.01 JURISDICTION

The appellate division of the Superior Court of California, County of Monterey has jurisdiction over all appeals and writs (excluding habeas corpus) concerning infraction, misdemeanor and limited civil cases (excluding small claims) arising out of courts in Monterey County. The appellate division also has jurisdiction over writs of mandamus and prohibition in felony matters still pending before the magistrate

General rules applicable to appellate division proceedings are set forth in the California Rules of Court, rule 8.800 et seq.

(Adopted October 1, 1998; Amended July 1, 2003; Amended January 1, 2006; Amended January 1, 2010; Amended July 1, 2014)

9.02 JUDICIAL ASSIGNMENT AND SESSIONS

The presiding appellate judge shall supervise the business of the appellate division. 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 at his or her discretion.

The panel is composed of three (3) judges, including the presiding appellate judge. The Chief Justice may appoint alternate panel members pursuant to section 77, subdivision (a), of the Code of Civil Procedure.

All appeals shall be set for hearing on the first Thursday of every month unless otherwise specified. The presiding appellate judge, or a designee from the appellate panel shall hear and decide the traffic appeals.

The appellate panel shall hear and decide the limited civil and misdemeanor appeals.

(Adopted October 1, 1998; Amended January 1, 2006; Amended January 1, 2010; Amended January 1, 2011; Amended July 1, 2013; Amended July 1, 2014)

9.03 RECORD ON APPEAL

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

B. Limited civil, misdemeanor, and infraction matters.

   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. (Cal. 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 California Rules of Court, rules 8.867 or 8.920, the oral record shall include the following items unless the parties have filed a stipulation under rules 8.860(b) or 8.910(b) of the California Rules of Court, 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;

    a. If the appellant is the defendant, the reporter's transcript must also contain:

    b. The oral proceedings on any defense motion denied in whole or in part except motions for disqualification of a judge;

    c. Any closing arguments; and

    d. Any comment on the evidence by the court to the jury (misdemeanors only). (Cal. Rules of Court, rules 8.865, 8.866, 8.918, & 8.919.)

(Adopted October 1, 1998; Amended January 1, 2006; Amended January 1, 2007; Amended January 1, 2010; Amended July 1, 2010; Amended January 1, 2011)

9.04 BRIEFS

The original brief submitted for filing must be accompanied by three (3) copies.

(Amended January 1, 2007; Amended January 1, 2009; Amended January 1, 2010)

9.05 ORAL ARGUMENT

A party who is not present at calendar call is deemed to have waived oral argument unless the party has advised the clerk in advance of a delay.

(Adopted October 1, 1998; Amended January 1, 2007; Amended January 1, 2010)

CHAPTER 10

FAMILY LAW DEPARTMENT

10.01 LAW AND MOTION

A. Law and Motion Attorney and Self-Represented Calendars. There shall be a Law and Motion attorney-represented and self-represented calendar which shall be heard at the time and place set by the Court.

1. The court shall routinely maintain, update and post a calendar of assignments online and on the court bulletin board identifying the judge assigned to hear the family law cases scheduled on Family Law and Motion calendar in Department 13 and 17. All such cases are hereby assigned to be heard on odd number, even number assignment (last digit of case number). The odd numbered cases are assigned to the Family Law Judge in Department 13 and the even numbered cases are assigned to the Family Law Judge in Department 17.

2. The posted calendar of assignments shall reflect the date of posting each updated assignment and the Superior Court Clerk shall maintain a record of each update and when it was posted.

3. The assignment of alternate judges to hear the Family Law and Motion Calendar shall be made by the Presiding judge, the Supervising Family Law Judge, or a judicial delegate.

4. Family Law Trials and Special Hearings: All cases set by a Family Law Judge for special hearing or trial are hereby assigned to that judge for said special hearing or trial. ~~The Family Law Judges shall schedule said special hearing or trial around his or her planned absences such as vacation and conferences.~~ If, in the discretion of the Presiding judge, the Supervising Family Law Judge, or a judicial delegate, exigent circumstances in the case require a hearing or trial when a Family Law Judge is unavailable (e.g., because of pressing custody issues) the hearing or trial may be otherwise scheduled. In such event, a judge shall be assigned to hear such special hearing or trial and the parties shall be promptly notified of the assignment.

5. Nothing herein shall be construed to prevent the assignment of a family law case to a judge for all purposes whenever in the discretion of the Presiding judge, the Supervising Family Law Judge, or a judicial delegate, one judge should hear the case for all purposes, such as in a particularly complex case.

6. 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.

7. Continuances: The parties may, with good cause, stipulate once to a continuance for a reasonable amount of time. Any subsequent requests for continuances are subject to approval by the assigned Family Court Judge. All requests must be submitted 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. The timely filing of papers must conform to the Rules of Court and the Code of Civil Procedure. (Cal. Rules of Court, rules 3.1300, 5.15, 5.20, 5.21, 5.22; Code of Civ. Pro., §§ 1005 & 1013; Fam. Code, § 242). *(Amended January 1, 2006; Amended January 1, 2007; Amended July 1, 2012)*

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 twenty-four (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 nine (9) court days prior to the hearing for responsive declarations and five (5) court days prior to the hearing for reply documents. *(Amended January 1, 2006).*

   b. Orders to show cause with temporary orders attached – five (5) court days prior to the hearing for responsive declarations and two (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 APPLICATIONS

The timely filing of papers must conform to the California Rules of Court and Code of Civil Procedure as referenced in the authority stated herein. (California Rules of Court 5.151, 5.165, 5.167, 5.169; Code of Civil Procedure section 575.2)

D. SPECIAL SETTINGS

All matters requiring more than twenty (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. In all law and motion matters, declarations shall be submitted with pleadings. Testimony shall also be received at hearing or trial unless the court makes a finding that there is good cause to refuse to receive live testimony under Family Code section 217, as set

forth in the California Rules of Court, rule 5.119. *(Amended January 1, 2007; Amended July 1, 2012)*

2. Evidence or Argument. Evidence or argument will be heard only on issues clearly raised in timely filed pleadings. Argument, if requested by the court at the time of hearing, shall 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. Declarations for review hearings must be filed and served no less than five (5) court days prior to the date set for review-hearing.

   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.

G. TELEPHONE APPEARANCE IN FAMILY LAW ACTION

This rule applies to all family law cases, including domestic violence restraining order cases, except Title IV-D child support proceedings.

Telephone appearances by a party or an attorney for a party may be authorized for appearances at family law status conferences, family centered case resolution conferences, and other hearings, at the discretion of the court. The court may deny or grant a request to appear by telephone if the court determines that it is appropriate to do so in an individual case. A personal appearance is required for domestic violence restraining order hearings, evidentiary hearings, special set hearings, and contempt proceedings when witnesses are expected to be called and cross-examined.

Notice by Party: A party or attorney who wishes to appear by telephone at a family law proceeding must file and serve a Request to Appear by Telephone and Order Thereon (local form CI-139) at least 12 court days before the date set for the hearing or proceeding. Service on the opposing party must be made in time to give notice to the other party at least 12 court days in advance of the court date.

Objections: a party or attorney objecting to the Request for Telephone Appearance may file a pleading objecting to the telephone appearance, which must be filed and served at least 7 court days before the date set for the proceeding.

If approved to make a telephone appearance, teleconferencing is provided through Court Call Service, as set forth in Chapter 6, Local Rule 6.14, unless another method is authorized by the judicial officer.

If telephone appearance is granted, the court may change the date and/or time of the scheduled proceeding, in its discretion.

If at any time during a hearing or proceeding while any person is appearing by telephone, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance.

(Adopted October 1, 1998; Amended July 1, 2000; Amended January 1, 2004; Amended January 1, 2007; Amended January 1, 2008; Rule 10.01.B4 and B5 repealed, amended January 1, 2009; Amended January 1, 2011; Amended 10.01.A1, A3, C, and E3b July 1, 2012; Amended July 1, 2013, Amended July 1, 2015; Amended July 1, 2016)

10.02 SETTLEMENT CONFERENCES

A. MANDATORY V. NON-MANDATORY

All long cause (more than one (1) day in length) family law trials will be set for mandatory settlement conference by the court. Upon request of both parties or court order, short cause trials (one (1) day or less in length) shall be set for settlement conference. With agreement of counsel and advance permission of the court, litigants and/or their attorneys may attend settlement conferences telephonically. Arrangements shall be made at least five (5) court days in advance.

B. MEET AND CONFER

Counsel shall confer with opposing counsel, or opposing party if that party is unrepresented by counsel, no less than five (5) court days prior to the first date set for settlement conference. Counsel shall inform the court of all issues that can be determined by stipulation and those remaining for determination by the court in the settlement conference statement filed with the court. The settlement conference statement shall also state that the parties have complied with this rule. Non-compliance may result in the matter being dropped from calendar.

C. SETTLEMENT CONFERENCE STATEMENT

1. Service. Settlement conference statements shall be served and filed with the clerk of the court no later than five (5) court days preceding the settlement conference hearing. Failure to comply with this rule may result in an award of attorney fees or sanctions pursuant to California Rules of Court, rule 2.30, and Code of Civil Procedure section 575.2. *(Amended January 1, 2007; Amended July 1, 2012)*

2. Contents. The statement must set forth the following information as to the party filing, as well as to the opposing party, to the extent known or contended:

    a. Separate Property. List each item of separate property. If characterization of property is uncontested, list only its current market value. If characterization of property as separate is contested, list the date it was acquired, the basis upon which it is claimed that it is separate rather than community property, the current market value, the nature, extent and terms of payment of any encumbrance against the property and the manner in which title thereto is presently vested.

b. Community Property. List each item of community property. If characterization of property is uncontested, list only its current market value and the nature, extent, and terms of payment of any encumbrance against the property. If characterization of property as community is contested, list the date it was acquired, the basis upon which it is claimed as community rather than separate property, the current market value, the nature, extent, and terms of payment of any encumbrance against the property and the manner in which title thereto is presently vested.

c. Funds Held by Others. To the extent that either separate property or community property consists of funds held by others, such as insurance policies, pensions, profit sharing, or other trust funds, the statement shall fully identify the policy or fund, its present cash value, and any terms or conditions imposed upon withdrawal of such values.

d. Tracing. If a segregation of community property and separate property interests in a single asset is to be an issue in the case, the statement shall set forth in detail, including dates, values, and dollar amounts, the transactions which form the basis upon which the tracing is to be proven.

e. Current Obligations. Separately list all debts and obligations of the parties which constitute liabilities of the community and debts and obligations which are the separate liabilities of the respective parties. Specify the identity of the creditor, the date upon which the debt was incurred, the balance currently due thereon, the terms of payment and the security, if any, held by the creditor.

f. Proposal for Settlement. Set forth a proposal for settlement, including proposals regarding custody, visitation, division of the community property and liabilities, reimbursements, credits, payment of costs, and payment of attorney's fees. In addition, specify each party's contentions as to the amount and duration of child and spousal support. The purpose of this rule is to promote amicable settlement and thorough preparation of domestic relations matters. Full disclosure of all contested issues will aid the court in suggesting a fair settlement, ease tension between the parties and help to provide a more meaningful resolution. Counsel should confer prior to the time set for settlement conference or trial in order that, to the fullest extent possible, issues can be determined by stipulation and those remaining for determination by the court can be clearly delineated.

3. Declaration of Disclosure. A declaration regarding service of preliminary and final declaration of disclosure should be filed by each party verifying that there has been an exchange of information regarding assets, liabilities and income as required in Family Code sections 2100 – 2110.

4. Current Income and Expense Declaration. A CURRENT income and expense declaration should be filed concurrently with the settlement conference statement. The parties' last three (3) month's earnings and deduction statements shall be attached.

5. Setting at the court's discretion. At the court's discretion, settlement conferences, case management conferences, and trial setting conferences may be set by the court.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2000; Amended July 1, 2001; Amended January 1, 2007; Amended subd. C July 1, 2012)

10.03 CHILD AND SPOUSAL SUPPORT

A. CHILD SUPPORT

The amount of child support awarded will be determined according to the guidelines set forth in Family Code section 4050 et seq. The percentage of time each party spends with the child(ren) shall be calculated by counting the number of hours that the children spend with each party divided by the total hours for the time period in question.

1. Credit for Time Spent with Others. The parent who bears primary responsibility for the child even during periods when the child is with others, will be attributed with the hourly credit for that time.

B. SPOUSAL SUPPORT

Temporary spousal support will ordinarily be determined in accordance with Santa Clara County's Temporary Spousal Support Guidelines; the court may order non-guideline temporary spousal support upon a showing of good cause. The court may order a party to pay for the permanent support of the other party an amount, and for a period of time that the court determines just and reasonable, based upon the standard of living established during the marriage, taking into consideration the factors specified in Family Code section 4320.

C. FINANCIAL DECLARATIONS

Income and expense declarations must be filled out completely by both parties. The last three (3) months' earnings and deduction statements shall be attached. A current income and expense declaration must be on file any time there is a request for a monetary award from the other party.

D. DEPARTMENT OF CHILD SUPPORT SERVICES

All cases in which the Department of Child Support Services is involved in establishing or enforcing child support shall be set on the Department of Child Support Services Calendar when appropriate.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2000; Amended July 1, 2003; Amended January 1, 2008; Retitled subd. C July 1, 2012; Amended July 1, 2013)

10.04 OFFICE OF FAMILY LAW FACILITATOR

The family law facilitator shall perform the duties listed in Family Code section 10004, and may perform any and all of the duties listed in Family Code section 10005 as directed by the court.

(Adopted October 1, 1998; Amended July 1, 2000)

10.05 REPEALED

(Adopted July 1, 1999; Co-parenting workshop - Repealed July 1, 2012)

10.06 MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

A. PREAMBLE

Child custody and visitation mediation is a program administered by the Office of Family Court Services.

Mediation is provided in a number of different proceedings involving the custody and visitation of a minor. These proceedings include: 1) Dissolution and Legal Separation (Fam. Code, § 3170), 2) Stepparent Visitation (Fam. Code, §§ 3171, 3172, 3185); 3) Grandparent Visitation (Fam. Code, §§ 3171, 3176, 3185); 4) Domestic Violence (Fam. Code, §§ 3170, 3181, 3182); 5) Paternity (Fam. Code, §§ 3172, 7600 et seq.); 6) Child Support Enforcement (Fam. Code, § 17404); 7) Termination of Parental Rights (Fam. Code, § 7660) and 8) Guardianships (Prob. Code, § 1500 et seq.).

B. MANDATORY MEDIATION

Family Code sections 3170 and 3175 require that when it appears on the face of a petition or application or other pleading for an order or modification of an order that custody, temporary custody, or visitation rights are contested, the matter must be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. The purpose of mediation is the reduction of acrimony which may exist between the parties, the development of an agreement assuring the child's close and continuing contact with both parents, and to effect a settlement of the issue of visitation rights of all parties that is in the best interests of the minor (Fam. Code, § 3161).

C. COST OF MEDIATION

There is no direct cost to either party for the use of the Family Court Services' Mediation Program. The program is paid for by a portion of the filing fee for dissolution actions and a portion of the cost of a marriage license. The parties are free to retain a mediator of their own choice who is not employed or contracted by the court and encouraged to attempt to resolve the dispute without court intervention. Mediation services provided by the court are limited and should be used only when there is an actual dispute that cannot be resolved by the parties themselves or with the assistance of their lawyers. The court will not pay for the services of an independent mediator or family counselor unless such services are provided through the court. Failure to reschedule or cancel timely as stated in 10.06 E.2. may result in the imposition of a monetary sanction.

D. TYPES OF MEDIATION

The court offers "Court Connected Mediation" and "Child Custody Recommending Counseling" (recommending mediation). The following sections set forth the general and special rules applicable to Child Custody Recommending Counseling.

E. GENERAL RULES

1. Referral of Cases to Mediation. Mediation services are only available where there is a case filed with the court. If there is no pending action (dissolution, paternity, visitation, guardianship, etc.), no mediation will be scheduled.

   In any case in which custody, temporary custody, or visitation is contested, the matter must be referred for mediation. The parties will be required to participate in a parent orientation in conjunction with mediation. There will be no final judicial determination of any contested custody or visitation issue until mediation has been completed.

2. How to Refer a Case to Mediation. Mediation referrals are made by contacting the Family Court Services Office either by phone or in person, at the following location:

Family Court Services Office
1200 Aguajito Rd.
Monterey, CA 93940
Monterey: (831) 647-5800 Extension 3009
Salinas: (831) 775-5400 Extension 3009

In order to accept a referral and schedule mediation, the following information must be provided:

a. The case number and case name and the case number of any related cases (such as child support or domestic violence actions);

b. If there is a domestic violence restraining order in place or whether there is an allegation of domestic violence in the file under penalty of perjury;

c. The parties' names, their current addresses and daytime telephone numbers;

d. The name of a party's attorney if there is one; and

e. Any information that would affect scheduling, such as parties coming from out of town, or the need for an interpreter.

Rescheduling of a mediation appointment is discouraged. However, if there is a compelling reason, an appointment may be rescheduled if the parties contact the Family Court Services Office at least five (5) calendar days before the appointment date and rescheduling will not result in a hearing date being continued.

If the parties wish to cancel a mediation appointment because the dispute has been settled or if both sides agree to cancel the mediation for good reason, at least five (5) calendar days' notice must be given to the mediation service to avoid the possibility of sanctions.

The mediators shall review the court's file in the case prior to mediation to familiarize themselves with existing or temporary orders regarding custody and visitation. If there are other written agreements relating to custody or visitation which are not in the court file and which would assist the mediator, for example orders from another jurisdiction, copies should be delivered to the mediation service prior to the first session.

3. Mediation Where OSC or Motion Pending. If mediation has not been completed nor an agreement reached prior to the date set for hearing or trial of the issue, the court will refer the case for mediation at the hearing. The court may make temporary custody or visitation orders, or continue existing orders pending completion of mediation. All temporary orders pending mediation are without prejudice and should not be cited as a basis for permanent orders. Before arranging mediation the parties or their attorneys should have discussed custody and visitation issues, or made reasonable attempts to do so, and concluded that the issues cannot be resolved by the parties themselves.

   If mediation has not been ordered by the court, a "Request for Mediation" form describing the nature of the dispute must be submitted by both parties at the time mediation is requested. Counsel will be allowed to phone in the request for mediation and provide the information required on the form on behalf of their client.

The court may ask the mediator to see the parties at the time of hearing (or within 48 hours if orders are requested ex parte) to negotiate temporary orders until further mediation can be scheduled to resolve any dispute related to permanent custody and visitation orders. Attorneys and parties are urged to arrange for mediation sufficiently in advance of the hearing to allow it to be completed prior to the date of the hearing.

Family Court Services will attempt to accommodate parties who are coming from out of the county or state if given sufficient advance notice. If a case requires mediation and one of the parties resides out of the county or state, the mediation may be scheduled preceding or following the hearing so that disputed issues may be resolved without requiring the out-of-county or out-of-state parent to make additional trips to Monterey County. Parties are not to expect a mediation appointment on the day of the hearing without prior contact with the Family Court Services. Mediation by phone may be requested in exceptional circumstances and will be scheduled only upon court order. The party who requested the telephonic mediation shall bear the telephone charges.

4. Ex-Parte Requests for Mediation. Any ex parte requests for mediation orders shall be accompanied by a declaration establishing good cause for the ex parte request. The declaration shall detail the existence of a custody or visitation dispute and what efforts, if any, have been made to reach an agreement and state specific reasons why an order for mediation is sought prior to service and without notice.

   Specific appointment dates will not be given ex parte, as there is no certainty that a party will be timely served. If an ex parte application for mediation orders is approved, the applicant without counsel must deliver a completed Request for Mediation form to the Family Court Services Office or provide the required information by telephone. An attorney should contact Family Court Services as soon as service has been made to start the scheduling process.

5. Mediation with No Court Hearing. It is not necessary that an order to show cause (OSC) or a notice of motion for custody or visitation be set for hearing in order to refer a case to mediation. If no OSC or motion is scheduled, there must be an actual dispute, the parties must have attempted to resolve the dispute themselves, and there must be an express agreement of both parties to enter into mediation. Even though no hearing is pending, there must be a petition or complaint filed with the court. (This section does not apply to Child Custody Recommending Counseling, which is only available by court order.) Parents may voluntarily attend mediation once every twelve (12) months without a court order or hearing set.

6. Resolution of Other Issues Pending Mediation of Child Custody and Visitation Disputes. The court may make orders on issues such as spousal support and child support pending the completion of mediation. Orders for temporary child support will generally be based upon the custody and visitation arrangement at the time of the hearing. Such orders will be made without prejudice to the rights of either party with respect to the issues of custody and visitation.

7. Child custody and visitation mediation services will be provided in child support actions when both parents are parties to the action.

8. There is a ten (10) day rescission period available to address any objections to an agreement reached in Court Connected Mediation. Child Custody Recommending Counseling reports are to be provided to the parties and/or their counsel ten (10) days in advance of hearing on the receipt of the report.

9. Non-English Speaking Participants. In the event one or both of the parties is not fluent in English, Family Court Services will attempt to provide a mediator or interpreter to conduct the mediation in the spoken language of both participants. If an interpreter is required, the cost of the interpreter shall be paid by the parties in advance. Family Court Services will schedule the interpreter. Sufficient advance notice (seven (7) days) must be provided to allow time to locate an interpreter.

10. Request for Change of Mediator. In the event there is a request by a participant in mediation for a change of mediator or a concern regarding a problem relating to the mediation process, the participant shall ~~complete a form provided by Family Court Services.~~ Notify the mediation clerk of the request to change of mediator.

11. Status Report. If the dispute between the parties is not resolved in mediation, the mediator will report to the court that no agreement has been reached. The mediator may recommend to the court that an investigation be ordered or psychological evaluation be obtained, note that a report to County Child Protective Services has been made, or recommend appointment of counsel for the child(ren). Further, the mediator may recommend that restraining orders be issued to protect the well-being of the child(ren). The mediator will not advise the court of the reasons why mediation was not successful unless the reason is that one or both of the parties: a) would not cooperate in the process; b) did not come to the appointments; or c) there is an allegation of abuse which was reported.

12. Recommendation for Appointment of Counsel for Child. The mediator or custody investigator may recommend that counsel be appointed to represent any minor child(ren) when it appears that the best interests of the minor child requires independent counsel (Fam. Code, § 3184). The reason for the recommendation of the mediator or the child custody investigator shall be stated in general terms and shall not be binding on the court. It shall only be considered insofar as it alerts the court to the need to consider the appointment of counsel. Neither the mediator nor the investigator shall be called as a witness and/or regarding the specific factual basis for the recommendation.

13. Extended or Ongoing Family Counseling. In certain cases, the mediator may recommend to the parties extended or ongoing family counseling. If the parties agree, provision for such counseling may be incorporated into the mediation agreement when the child is in need of such counseling, or the parties need extended or ongoing counseling in order to resolve the conflicts in their relationship which give rise to their disputes concerning child custody and visitation. Such extended counseling services will not be provided by Family Court Services or at court expense. The mediator may recommend one or more persons or agencies which the parties might contact to obtain counseling.

14. Child Abuse. Penal Code section 11166 requires that the mediator immediately report all instances of suspected child abuse and/or neglect to a child protective agency. The parties will be advised at the beginning of the first mediation session of the reporting responsibility.

F. SPECIAL RULES

1. COURT CONNECTED MEDIATION (CONFIDENTIAL)

   a. MEDIATION PROCEDURE

The mediator's role is as a neutral party whose primary concern is the satisfactory resolution of the dispute between the parties concerning custody and visitation in a manner which is in the best interests of the child(ren). The mediator is a problem solver and an advocate for the best interests of the child, not an adversary or trier of fact. In Mediation, all communications between the parties and the mediator are confidential except: 1) information (which legally must be reported) that someone in the dispute is a danger to self or others; or 2) information incorporated into a written agreement between the parties. Confidentiality of mediation proceedings facilitates communications between the parties and the mediator without fear that such communications will be used in subsequent judicial proceedings. Mediator's files are considered confidential and not available to the parties or their attorneys by subpoena or otherwise. The mediator may not be called as a witness in a subsequent hearing, nor may the mediation service records be subpoenaed.

b. THE MEDIATION AGREEMENT

i. GENERAL

If the parties reach a parenting agreement as a result of mediation, their agreement will be handwritten by the mediator immediately. The parties will be asked to review and sign the handwritten version of the parenting agreement. Each party will receive a copy of the signed handwritten parenting agreement before leaving, with a copy forwarded to his or her counsel of record. Copies of the "Parenting Agreement, Stipulation and Order" will be provided to the parties and their counsel of record upon filing. *(Amended January 1, 2006; Amended July 1, 2007; Amended July 1, 2008)*

If an agreement is reached, a ten (10) day rescission period is given to permit parties an opportunity to consult with their attorneys regarding the agreement. If, during the ten (10) calendar days following the mediation agreement date, either party wishes to rescind the agreement, they must contact Family Court Services. Written notice of rescission must be given to Family Court Services as well as to opposing counsel.

If either party objects to the agreement, the mediation is reported to the court as one in which no agreement has been reached and the parties are free to pursue whatever legal remedies are available to them. Any agreement which has been rescinded may not be presented to the court at any subsequent hearing.

If a notice of rescission is not received within ten (10) calendar days of the date of the agreement, the agreement will be submitted to a judge for signature, at which point the agreement becomes a court order. Signed and file stamped copies of the agreement will then be mailed to the parties.

The agreement can be filed and made a court order before the expiration of the ten (10) day period either: a) by written stipulation of all parties; or b) by oral stipulation in open court on the record.

The agreement will not create, modify or extinguish any obligation of support. If either party believes that the custody/visitation agreement necessitates a modification of support, a separate order must be sought.

This agreement will not modify, rescind, or preclude existing or future protective orders. Any such orders must be separately modified as necessary before this agreement may be implemented.

ii. TEMPORARY AGREEMENTS

If an agreement is reached which covers only a limited period of time, applies pending further court action, or is to be used on a trial basis only, the following procedures will be implemented. There will be no ten (10) day rescission period (see iv. below), and the agreement will not automatically become a court order.

a) The agreement will be kept on file in the Family Court Services Office and will not be submitted to the court, even after ten (10) days, by the Family Court Service.

b) A status form will be filed with the court.

c) Family Court Services will schedule a return appointment for the parties and will confirm the appointment with the parties when the temporary agreement is made.

d) If the agreement breaks down prior to the date the parties are scheduled to return, an appointment will be scheduled for the parties as soon as possible at their request if they are unable to resolve the dispute themselves or through the aid of their attorney(s).

e) If one of the parties fails to attend further mediation regarding a temporary agreement or declines to participate in further mediation, the temporary agreement will expire on the date set forth in the agreement.

iii. PARTIAL AGREEMENTS

In the event some of the disputed issues are resolved and some are left unresolved, the mediator will prepare an agreement covering the resolved issues. A status form appraising the court of the unresolved custody or visitation issues will also be filed. The ten (10) day rescission process described above applies to partial agreements.

2. CHILD CUSTODY RECOMMENDING COUNSELING

Child Custody Recommending Counseling may be scheduled only upon court order. Upon a finding of good cause, the court may direct the Child Custody Recommending Counselor to render a custody or visitation recommendation consistent with Family Code section 3183. Copies of the Child Custody Recommending counselor's report to the court will be provided to the parties and counsel of record prior to the date of hearing on the review of the report.

If an agreement has been reached between the parties regarding the issues of custody and visitation, the Child Custody Recommending counselor will prepare and forward to the court and the parties and/or their counsel a written summary of such agreement.

If there is no agreement or only partial agreement between the parties regarding issues of custody and/or visitation, the Child Custody Recommending counselor will submit a recommendation to the court regarding custody and/or visitation with the minor child(ren)

pursuant to Family Code section 3183. The Child Custody Recommending counselor's recommendation shall state the factual basis for the recommendation, which may include matters communicated to the Child Custody Recommending counselor by the parties or the minor child(ren). The court may consider the written recommendation of the Child Custody Recommending counselor and the basis for that recommendation in determining the issues before the court at the time of hearing.

All Child Custody Recommending Counseling sessions will be held in private. All communications from a party, a party's attorney, the minor child, the child's attorney and/or any collateral contacts or experts designated by any of the above individuals to the Child Custody Recommending counselor shall be deemed official information within the meaning of Evidence Code 1040. *(Amended January 1, 2006; Amended July 1, 2007; Amended July 1, 2012)*

3. SEPARATE MEDIATION

In any case in which a domestic violence order (CLETS) has been issued or a criminal protective order is in place against one of the parties, the mediation shall be set and conducted as Child Custody Recommending Counseling. It shall be set and conducted as separate mediation if so ordered by the court or requested by the protected party.

In cases where there has been a history of domestic violence but no order has been issued, the mediation shall be conducted as separate mediation when requested by the party who has alleged under penalty of perjury that the violence has occurred.

The time and date of separate mediation sessions are confidential and are not disclosed to the other party. The parties are cautioned not to inform the other party of the time and date set.

The Child Custody Recommending counselor shall render a written recommendation to the court regarding visitation and custody issues taking into consideration the parameters set by any restraining orders. The protected party may be accompanied by a support person during the session. Until the court adopts the recommendation, the parties must follow any interim order regarding custody and visitation.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2000; Amended July 1, 2003; Amended January 1, 2005; Amended July 1, 2005; Amended July 1, 2007; Rule 10.06.E.2 (a) – (f) re-lettered, amended January 1, 2009; Amended subd. C, D, E1 E2(f), E3, E4-5, E8, E10, F, F2, and F3 July 1, 2012; Amended July 1, 2016)

10.07 COURT ORDERED CUSTODY FACT BASED INQUIRY, EVALUATION, AND ASSESSMENT

A court-ordered fact based inquiry refers to a factual inquiry into custody or visitation issues.

An evaluation refers to a psychological evaluation prepared by a psychologist or psychiatrist, under Family Code sections 3110-3118 and Rules of Court 5.220-230. *(Amended effective January 1, 2007)*

An assessment refers to a counseling assessment prepared by a Child and Family Counselor or similar licensed therapist or counselor.

A. APPOINTMENT OF EVALUATOR/ FACT BASED INQUIRY LIAISON/COUNSELOR

In any case in which custody or visitation is in dispute, the court may appoint a fact based inquiry liaison officer , evaluator or counselor and order that a child custody/visitation fact based inquiry, evaluation or assessment be conducted if, in the opinion of the court, or upon the recommendation of a mediator, there is a need for such service.

When a fact based inquiry through Family Court Services is ordered, each party shall complete a written questionnaire within seven (7) days or as otherwise directed by the judge. The fee must be paid in full or a payment plan ordered by the court. Each party shall inform the liaison officer with 72 hours of any change of address or telephone number occurring during the pendency of a fact based inquiry. *(Amended January 1, 2006; Amended effective July 1, 2012)*

The court may appoint a person the court has determined possesses the necessary qualifications. Multiple examinations of the child by different examiners shall be avoided to the greatest degree possible.

When a counseling assessment is ordered, and before appointment as a court-appointed evaluator, the proposed evaluator shall, upon request, provide to the attorneys for the parties, or to the parties if they are unrepresented, the following information:

- a curriculum vitae;
- the names of at least three attorneys who have worked with the individual in connection with previous investigations, or three mental health professionals who are familiar with the individual's work; and
- provide proof of meeting the requirements of Family Code § 3110-3118 and Rules of Court § 5.220-230 when applicable;
- payment for the evaluation shall be arranged directly with the evaluator.

(Amended effective January 1, 2007)

B. CHALLENGES TO COURT-APPOINTED EVALUATOR

No peremptory challenge of a court-appointed evaluator shall be allowed.

C. WITHDRAWAL BY COURT-APPOINTED EVALUATOR

A court-appointed evaluator may seek to withdraw from a case. Such request shall be made as soon as possible after the evaluator is aware of a conflict or other reason that should cause the evaluator to seek to withdraw.

D. EX PARTE CONTACT PROHIBITED

No party or attorney for a party shall initiate contact with a court-appointed evaluator, orally or in writing, to discuss the merits of the case without giving the other party notice and an opportunity to be present or to receive a copy of a written communication. Nothing in this rule shall prohibit the court-appointed evaluator from contacting either party or attorney.

E. CONTACT BETWEEN COURT-APPOINTED EVALUATOR AND MINOR CHILDREN

The Court relies on the judgment of the evaluator and other persons appointed, as a part of the investigation, in making decisions as to whether children will be interviewed, under what circumstances children will be interviewed, and in justifying such decisions in a particular case. Except in extraordinary circumstances, including the potential for danger to the child, children will be informed that the information provided by the child will not be confidential. During the initial meeting, if any, the evaluator shall provide the child with an age-appropriate explanation of the evaluation process. A child seen by the evaluator with one parent will also be seen with the other parent. At the discretion of the evaluator, interviews with siblings may be separate. Unless ordered by the court, an evaluation shall not be based on an interview with only one parent.

F. COURT REPORT

The court order appointing the evaluator shall state the purpose and scope of the evaluation and the date the report shall be filed with the court. Generally, the court will order the report filed within 60 calendar days from the date of appointment. The date for return of the report may be extended by order of the court or written agreement of the parties. The report shall be in writing and shall be distributed to the court, all counsel, and to the parties if they are unrepresented ten (10) calendar days prior to hearing. All written reports and recommendations of the court-appointed evaluator shall be conducted in accordance with and served upon the parties or attorneys consistent with the provisions of Family Code section 3111 and California Rules of Court 5.220. *(Amended effective January 1, 2007)*

G. ACCESS TO THE REPORT

Any written report or recommendation from the court-appointed evaluator or the person appointed by the court to render a report as a part of the investigation shall be confidential and unavailable to any person except the court, the parties, their attorneys and any person to whom the court expressly grants access by written order made with prior notice to all parties. No person who has access to a report shall make copies of the report or disclose the contents of the report to <u>any</u> child.

H. GRIEVANCE PROCEDURE

Grievances raised in connection with court-ordered evaluations shall be made in writing, signed, under penalty of perjury, by the party filing the grievance, and addressed to the Presiding judge. The penalty of perjury statement shall be made in the following format:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ Signature of Grievant: _____

The grievance must specify the issue which is being alleged as the basis for the grievance. The remedy requested must also be specified. Upon receipt of the grievance, the Presiding judge shall initiate an internal court investigation. The court will determine whether there are witnesses, ascertain the facts of the allegation, notify the investigator of the grievance, and solicit a response to the allegation in the grievance from the investigator. The investigation shall be completed within 30 calendar days of the date the court received the written grievance. The court shall notify the grievant and the grievant's attorney as to whether the grievance is sustained, not sustained or unfounded. The grievance and findings by the court shall be

maintained in the court's Administrative Office, for a period of one year, from the date the Presiding judge's findings are issued. At the end of the one year period, the grievance file shall be destroyed. The grievance file shall be maintained as a confidential record during and after the evaluation and shall not be made part of the court's case file. The file shall not be open to inspection by the attorneys or the parties, except upon court order.
(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2000; Amended January 1, 2001; Amended January 1, 2005; Amended July 1, 2005; Amended January 1, 2007; Amended 10.07, subd. A and repealed subd. (I) –(J) July 1, 2012, Amended July 1, 2015)

10.08 DEPARTMENT OF CHILD SUPPORT SERVICES

A. APPEARANCES BY TELEPHONE

1. General Provisions

   Requests for appearance by telephone and opposition to such requests shall be made in compliance with California Rules of Court, rule 5.324. Judicial Council form FL-679 must be used for requests. Judicial Council form MC-030 may be used for the declaration in opposition. *(Amended January 1, 2007; Renumbered July 1, 2010)*

B. CHILD SUPPORT ORDER ATTACHMENTS

All orders for child support must have as attachments:

1. Notice of Rights and Responsibilities Health Care Costs and Reimbursement Procedures (Judicial Council form FL-192);

2. Information Sheet on Changing a Child Support Order (Judicial Council form FL-192, side 2);

3. A computer generated support calculation (required in all cases where there is a child support order whether or not there is an agreement regarding support). If the parties do not agree upon a single calculation, each party may attach a computer generated calculation.

4. Notice of Right and Responsibilities, Child Care Costs and Reimbursement Procedures if the order provides for payment of a percentage or ration of child care costs (Monterey County form to parallel the Medical Reimbursement form).

(Adopted January 1, 2005; Amended January 1, 2007; Section 10.08(D) repealed January 1, 2010; Section 10.08(A-1), (A-3), (A-4) repealed, (A-2) renumbered July 1, 2010; Renumbered from 10.08 C to 10.09 July 1, 2012)

10.09 FAMILY CENTERED CASE RESOLUTION

Parties seeking dissolution, nullity, legal separation, termination of domestic partnership, and establishment of paternity under the Uniform Parentage Act are subject to compliance with procedural milestones set forth in California Rules of Court, rule 5.83.

Upon the filing of any of the actions listed above, the court shall set a Status Conference to be held 180 days from the initial filing date, and issue a "Notice of Status Conference" (local form CI-135) to the Petitioner. A copy of this Notice must be served by the Petitioner on the Respondent with the Summons, Petition, and other required documents for service. Upon the initial filing, the clerk shall also provide the Petitioner with a copy of Judicial Council form FL-107-INFO (or local form CI-137 if the matter is a parentage case) and a listing of Local Resources (local form CI-138).

Each party must file and serve a completed "Status Conference Questionnaire" (local form CI-136) at least 30 days prior to any scheduled Status Conference date.

If a judgment has not been entered in the matter at the time of the first Status Conference, it shall be set for a second Status Conference 180 days after the first status conference. A Status Conference Questionnaire (local form CI-136) shall be served and filed at least 30 days prior to the second Status Conference. Court staff will provide litigants with a Status Conference Report detailing required actions and/or documents to be filed to bring the matter to judgment.

If the matter has not been finalized by entry of judgment at the time of the second Status Conference, the matter shall be set for a Case Resolution Conference before a Judicial Officer 180 days after the second Status Conference has been held. A Family Centered Case Resolution plan order shall be issued at the conclusion of the Conference, pursuant to California Rule of Court, rule 5.83.

(Adopted July 1, 2013, Amended July 1, 2015)

10.10 MISCELLANEOUS RULES

A. DUPLICATE FILING

Copies of previously filed pleadings or declarations should not be attached as exhibits to subsequent documents. Reference to the previous documents is sufficient.

B. CONFIDENTIAL RECORDS

Whether filed electronically or otherwise, ~~I~~it is the responsibility of the filing party to identify any documents that are considered confidential and to secure such documents when filed with the court. Such documents may include medical reports, HIV laboratory test results, psychological records, custody investigation reports, and police reports~~. HIV laboratory test results shall not be made public~~. This rule pertains to any documents that are attached to a pleading and filed with the court. If such attachments are not submitted ~~as~~ in a secured envelope pursuant to rule 10.10(F) or as a confidential document through the electronic service provider, the clerk of the court will not act to secure the documents and . ~~Unless submitted in a secured envelope by the filing party,~~ the documents will be considered as open and public.~~, upon filing with the clerk. Refer to rule 10.10(F) for instruction in securing confidential documents.~~

C. PLEADING FOR ADVERSE PARTY

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The practice in domestic relations proceedings whereby the petitioner's attorney prepares pleading for the respondent is not favored. Unless good cause is shown (e.g., military service, party out of state, etc.), no uncontested civil matter shall be heard on answer or response, unless such instruments are prepared by the answering party or his counsel.

D. SANCTIONS

Failure to comply with these Local Rules of Court ~~above rules and policies~~ may result in an award of attorney fees, costs, or other sanctions pursuant to ~~California Rules of Court, rule 2.30 and~~ Code of Civil Procedure section 575.2.

E. DISMISSAL OF FAMILY LAW CASE ON COURT'S OWN MOTION

Absent good cause, a family law case may be dismissed, without prejudice, on the court's own noticed motion when:

1. The case is dropped from the trial calendar because the parties have reconciled; and

2. No further action is taken in the case within one-hundred-eighty (180) calendar days from the date the case is dropped from the trial calendar.

F. INSTRUCTIONS IN SECURING CONFIDENTIAL DOCUMENTS

If not electronically filed, ~~A~~any confidential documents shall be submitted for filing in a clasped envelope not smaller than seven (7) inches by ten (10) inches or larger than eight-and-a-half (8 ½) inches by eleven (11) inches in size. The envelope shall be attached to the accompanying document with the clasp facing up and at the bottom of the document to allow access for the court through the clasped end. A label shall be affixed to the envelope showing the case name, number and identity of the documents enclosed

G. COURT COMMUNICATION PROTOCOL FOR DOMESTIC VIOLENCE AND CHILD CUSTODY ORDERS

Court records shall be accessed as set forth in the following paragraph in order to determine if a Criminal Protective Order (CPO) exists involving the parties and affecting the custody or visitation of the children. Any Custody or Visitation Order (CVO) subsequently issued shall take into consideration the terms of any existing CPO and shall be drafted in a manner not inconsistent with the CPO.

The court records shall be accessed as follows:

1. Family Law, Probate and Juvenile: When there are allegations of domestic violence in the documents submitted to the court.

2. Civil Restraining Orders - Domestic Violence, Harassment, Elder Abuse and Workplace Violence: Prior to the issuance of a temporary restraining order and prior to the hearing on such order.

3. Mediation: Prior to every Separate Mediation and any time there are allegations of domestic violence in the file.

The Domestic Violence court shall make reasonable efforts to determine if a custody or visitation order exists involving the defendant. The court issuing the CPO may permit visitation

pursuant to any Family Law, Probate or Juvenile Court order so long as such visitation is determined by the court to be consistent with the safety of the victim[s].

When a CPO exists, any CVO that permits contact between the defendant and the children shall provide for the safe exchange of the children. The CVO shall also specify the time, day, place and manner of transfer of the child pursuant to FC3100 so as to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. The safety of the parties and their children shall be the court's paramount concern.

This rule does not prevent a CVO from containing more restrictive terms than the CPO.

H. COMPLAINTS CONCERNING FAMILY COURT SERVICES MEDIATORS AND LIAISONS.

Complaints not in connection with court-ordered evaluations, must be made in writing and addressed to the Court Executive Officer, Superior Court of California, County of Monterey, 240 Church Street, Salinas, CA 93901. The Court Executive Officer or designee, will conduct an investigation and will respond to the written complaint within thirty (30) days. The complainant may appeal the response to the presiding judge. The presiding judge will rule on the appeal within thirty (30) days.

I. LIMITED LEGAL REPRESENTATION

If representation by an attorney is limited in scope, the Notice of Limited Scope Representation form (Judicial Council form FL-950) specifying the scope of the representation shall be filed with the court. All communications and notices relating to the limited purposes shall be made or sent to all attorneys of record, self-represented parties, and the Department of Child Support Services. When the task specified in the Notice of Limited Scope Representation has been completed, the attorney shall file a Substitution of Attorney-Civil (Judicial Council form MC-050) or proceed pursuant to California Rules of Court, rule 5.71.

J. NON–CLETS ORDERS

The court will not issue or approve a stipulation by the parties for a non-CLETS restraining order.

(Adopted October 1, 1998; Amended July 1, 1999; Amended July 1, 2000; Amended July 1, 2001; Amended January 1, 2002; Amended January 1, 2004; Amended January 1, 2005; Amended January 1, 2007; Amended January 1, 2009; Amended January 1, 2010; Amended July 1, 2012; Amended July 1, 2013; Amended July 1, 2014,; Amended July 1, 2015; Amended July 1, 2016)

CHAPTER 11
PARENTING COORDINATOR GUIDELINES (CHILD CUSTODY AND VISITATION)

11.01 ROLE OF PARENTING COORDINATOR

A Parenting Coordinator is a mental health professional, or family law attorney who specializes in helping high-conflict parents resolve disputes regarding their children. Parenting Coordination is a child-focused dispute resolution process that combines parent education, dispute assessment, mediation, facilitated negotiation, and conflict and communication management. When parents are unable to resolve their parenting disputes with the Parenting Coordinator's assistance, the Parenting Coordinator makes recommendations or decisions on issues that are specified in a stipulation and order. The ultimate goal is to help parents learn to resolve disputed or difficult issues amicably and efficiently on their own, without having to involve the Parenting Coordinator or the adversarial process.

(Adopted effective October 1, 1998, Amended July 1, 2015)

11.02 SELECTION AND APPOINTMENT OF PARENTING COORDINATORS

A. TIMING

A Parenting Coordinator may be appointed at any time during a proceeding involving child custody or visitation issues, upon the stipulation of the parties and subject to the approval of the court.

B. PROCEDURE

1. Appointment

   The parties may stipulate to appointment of a Parenting Coordinator, subject to consent of the individual selected, and subject to the court's approval. The Parenting Coordinator's role, powers, duties, term, and incidental matters should be set forth in a written stipulation and order. (See Attached Stipulation and Order Appointing Parenting Coordinator.)

2. Acceptance of Appointment

   The proposed Parenting Coordinator shall have the right to accept or decline any appointment, with or without giving a stated reason. A person proposed as a Parenting Coordinator is required to decline appointment if he or she knows of any bias or conflict of interest that would prevent him or her from acting fairly and impartially.

   The Parenting Coordinator shall act pursuant to a written stipulation and order defining his or her role, duties, and fees. The form of the order shall be signed and approved by the Parenting Coordinator.

C. TERM OF APPOINTMENT

The Parenting Coordinator shall be appointed for a specified term or length of time, usually at least one (1) year and not more than three (3). This will give the Parenting Coordinator sufficient time to work with the family, while reinforcing the parents' responsibility for their own lives and their children's welfare.

D. LEGAL AUTHORITY FOR APPOINTMENT

There is no specific legal authority for appointment of a Parenting Coordinator. For this reason, a Parenting Coordinator may only be appointed upon the stipulation of the parties.

Absent a stipulation for appointment of a Parenting Coordinator, the court does have authority to appoint a third party (not a Parenting Coordinator) under one or more of the following Code sections:

1. An expert witness under Evidence Code section 730;

2. A referee under Code of Civil Procedure section 638, *et seq.*;

3. An investigator or evaluator under Family Code section 3110 *et seq.*

4. An arbitrator under Code of Civil Procedure section 1280;

5. A mediator under Family Code section 3160-3186.

E. QUALIFICATIONS

The parties and counsel are responsible for determining whether a proposed Parenting Coordinator is qualified for appointment. Upon request, a proposed Parenting Coordinator must provide the requestor with a resume or other documentation of his or her qualifications prior to the filing of a stipulation and order appointing a Parenting Coordinator.

For the benefit of the parties and counsel the following qualifications are recommended.

All Parenting Coordinators should have completed a training (twelve (12) hours or more) in Parenting Coordination. In addition, Parenting Coordinators should meet the following professional standards at the time of appointment:

PSYCHOLOGISTS, PSYCHIATRISTS, MARRIAGE, FAMILY AND CHILD THERAPISTS, AND LICENSED CLINICAL SOCIAL WORKERS:

1. Valid current license to practice in the State of California.
2. Experience

    a. Three (3) years post-license experience in child and family therapy, and high conflict families, including provision of court ordered co-parenting counseling; and/or

    b. Three (3) years experience in evaluations for family court and/or CPS and/or family mediation practice; or

    c. Three (3) years experience in court-based family mediation or assessment.

3. Training

a. Six (6) hours in child development and/or psychology of divorce and custody;

b. Twenty-four (24) hours or more of mediation training is recommended.

4. Familiarity with ethical issues of custody disputes and adherence to the American Psychological Association Guidelines for Parenting Coordinators.

5. Working knowledge of custody law, with a minimum of six (6) cases working with attorneys and/or court appearances.

ATTORNEYS:

1. Valid current license to practice in the State of California.

2. Experience

   a. Five (5) out of the last five (5) years experience practicing family law;

   b. At least twenty (20) custody cases in which the attorney represented a parent or a child.

3. Training

   a. At least thirty (30) hours training in mediation;

   b. At least six (6) hours continuing legal education in custody law over the previous three (3) year period;

   c. The equivalent of completion of a course in child development (six (6) hours)

   d. Familiarity with ethical issues and practices in providing Parenting Coordination services and the Association of Family and Conciliation Courts guidelines for Parenting Coordination.

F. FEES

A person appointed as a Parenting Coordinator is entitled to charge a reasonable fee commensurate with his or her experience and abilities and to request an appropriate retainer (subject to replenishment as it becomes diminished). The order appointing the Parenting Coordinator shall clearly specify the fee arrangement and each party's responsibility for the fee, as determined by the court or by stipulation. The Parenting Coordinator shall also have the

ability to recommend a reallocation of fees as a sanction for obstructive behavior; this power shall also be spelled out in the order.

G. WITHDRAWAL AND REMOVAL

Once appointed, the Parenting Coordinator shall have the right to withdraw upon written notice to the court and the parties, with or without a stated reason.

The Parenting Coordinator may be disqualified on any of the grounds applicable to the removal of a judge, referee or arbitrator, upon noticed motion by either party or the court, sua sponte, after notice to all parties and the Parenting Coordinator.

Neither party may initiate court proceedings for the removal of the Parenting Coordinator or to bring to the attention of the court or any other body any grievances regarding the performance or actions of the Parenting Coordinator without meeting and conferring with the Parenting Coordinator in an effort to resolve the grievance.

(Adopted effective October 1, 1998, Amended July 1, 2015)

11.03 POWERS AND SCOPE OF THE PARENTING COORDINATOR'S AUTHORITY

The Parenting Coordinator shall not make any recommendations that alter a custodial designation of joint, or sole, legal or physical custody established in a current order of the court, prohibit a party's contact with his/her children, require or prohibit adherence to a religion, or which substantially alter or reconfigure the parents' time sharing arrangements (defined as increasing or decreasing a parent's time more than two (2) twenty-four hour (24) periods in twenty-eight (28) days). These decisions and others relating to issues not included among those assigned to the Parenting Coordinator, as set forth in the stipulation and order, are reserved to the Monterey County Superior Court for adjudication. For those matters, a Parenting Coordinator's authority is limited to recommending to the parents (without any recommendation as to the preferred outcome) that the court be requested to review and consider any such matter. A party who wishes a court review of the matter following a recommendation for review by the Parenting Coordinator must file and serve a Request for Order in order for the matter to be reviewed and considered.

A. POWERS OF THE PARENTING COORDINATOR; FIRST LEVEL – AUTHORITY TO MAKE BINDING DECISIONS

The Parenting Coordinator shall have authority to make binding decisions, if the parties so stipulate, on matters relating to daily routines, management of services provided by third parties and minor alterations in the visitation schedule.

Subject to the stipulation of the parties, the Parenting Coordinator has the authority to make decisions regarding the issues set forth below and such decisions are effective as orders when made. The decisions will continue in effect unless modified or set aside by a court of competent jurisdiction. Parenting Coordinator decisions on these matters shall be communicated to parties and counsel in person, by telephone, mail, fax, email or email attachment and/or personal delivery, and will take effect immediately upon issuance.

1. Minor alterations in schedule that do not substantially alter a child's time with either parent during a thirty (30) day period
2. Dates, times, designated person, location and method of pick-up and delivery
3. Sharing of parent vacations and holidays
4. Responsibility for transportation of the child(ren) to accommodate time-sharing between the parents
5. Selection of child care/daycare and babysitting providers
6. Childrearing disputes such as bedtime, diet, clothing, homework, and discipline
7. Participation in afterschool, enrichment, and athletic activities

8. Scheduling disputes arising from afterschool, enrichment, athletic, religious education and training and other activities

9. Health care management, such as scheduling appointments, and determining who attends appointments and responsibility for reporting the outcome of any appointments to the other parent

10. Participation of others in a parent's designated time with the child(ren) (significant others, relatives, etc.)

11. In the case of infants and toddlers, increasing time share when developmentally appropriate

12. Right of first refusal for child care responsibilities

13. Scheduling swaps of custodial time

14. Coordinate participation in court-ordered alcohol and drug monitoring or testing, including setting a process for selection of monitors or testers if the parents cannot agree

15. Other matters, subject to the stipulation of the parties and the approval of the court

B. POWERS OF THE PARENTING COORDINATOR; SECOND LEVEL – AUTHORITY TO MAKE RECOMMENDATIONS TO THE COURT

The Parenting Coordinator shall have authority to make recommendations on issues having a longer-term impact on the children's best interests, short of changes in physical or legal custody or substantially limiting parents' access to children.

The Parenting Coordinator has the authority to make recommendations on the issues set forth below. The recommendations shall be submitted to the court, which may approve them and enter them as court orders.

1. Alterations in schedule that do not increase or decrease a child's time with either parent by more than two (2) twenty-four (24) hour periods in twenty-eight (28) days

2. Coordinating church attendance and religious classes

3. Large changes in vacation and holiday timeshare

4. Supervision of a child's contact with a parent

5. Private or public school education

6. Appointment of counsel for a child

7. Recommending a child custody investigation, evaluation or re-evaluation, including setting a process for selection of a professional when the parents cannot agree

8. Recommending participation by parents and/or children in alcohol and drug evaluation, monitoring, and/or testing

9. Recommending participation by the parents and/or children in health services, including physical and psychological examinations, assessments, and psychotherapy, and

including recommending a process for selection of providers

A Parenting Coordinator's recommendation on these matters shall be served on the court, parties, and counsel by mail, fax, or personal delivery. Either party shall have the right to request a written explanation from the Parenting Coordinator of any recommendation, which shall be provided within ten (10) calendar days to both parties, counsel, and the court. The Parenting Coordinator recommendations shall be subject to adoption by the court as an order unless either party files and serves a motion objecting to entry of the order within twenty (20) calendar days of service of the recommendations.

(Adopted October 1, 1998; Amended July 1, 2015)

11.04 PROCEDURE FOR IMPLEMENTING RECOMMENDATIONS

A. The Parenting Coordinator's decisions on first-level matters shall be communicated to parties/counsel orally and/or in writing, in person, by telephone, fax, email or email attachment, and/or mail, and take effect immediately.

B. The Parenting Coordinator's recommendation on second-level matters shall be communicated in writing to the court/parties and counsel by mail, fax, or personal delivery. The Parenting Coordinator's recommendations are subject to adoption by the court as an order after fifteen (15) days unless either party files and serves a motion objecting to entry of the order. Either party should have the right to request a written explanation of any recommendation, to be provided within twenty (20) calendar days, to the other party, counsel, and the court.

(Adopted October 1, 1998; Amended July 1, 2015)

11.05 COOPERATION AND COMMUNICATIONS

A. Both parents shall participate in the dispute resolution process as defined by the Parenting Coordinator and shall be present when so requested by the Parenting Coordinator. The Parenting Coordinator may conduct sessions that are informal in nature, by telephone or in person, and need not comply with the rules of evidence. No formal record need be made, except the Parenting Coordinator's written decision and recommendations and the parents' mutual agreements. The Parenting Coordinator shall have the authority to determine the protocol of all interviews and sessions including, in the case of meetings with the parents, the power to determine who attends such meetings, including individual and joint sessions with the parents. The Parenting Coordinator shall have the authority to communicate with the child(ren) and/or and other relevant third parties.

B. The parents shall provide all reasonable records, documentation, and information requested by the Parenting Coordinator.

C. The Parenting Coordinator may utilize consultants as necessary to assist the Parenting Coordinator in the performance of the duties.

D. The parents and their attorneys shall have the right to initiate or receive ex parte communication with the Parenting Coordinator under guidelines established by the Parenting Coordinator. Copies of all written communications to the Parenting Coordinator including emails are to be provided to the other party. The Parenting Coordinator may, in his/her sole discretion initiate written communications with a parent or counsel that are not copied to the other party.

E. The Parenting Coordinator may communicate with the parties' child or children outside the presence of the parents. The Parenting Coordinator may communicate with the therapists who are treating the parties' child or children as well. The Parenting Coordinator may keep such communications confidential.

F. Except as to communications referred to in rule 11.05 (E), the Parenting Coordinator process is not confidential. If the Parenting Coordinator is a licensed mental health professional, no therapist-patient relationship and/or privilege is created by the stipulation to use a Parenting Coordinator. If the Parenting Coordinator is a licensed attorney, no client-attorney relationship and/or privilege is created by the stipulation to use a Parenting Coordinator.

(Adopted October 1, 1998; Amended July 1, 2015)

11.06 PARENTING COORDINATOR ROLE WHEN ISSUES ADDRESSED INTERRELATE WITH FINANCIAL OR PROPERTY ISSUES.

If issues arise that are outside of the expertise of the Parenting Coordinator, particularly issues such as support, use or occupancy of property, management of assets and other financial issues, the Parenting Coordinator shall inform the parties, and their attorneys that these issues are not within the scope of the Parenting Coordinator's authority.

(Adopted October 1, 1998; Amended July 1, 2015)

11.07 IMMUNITY; TESTIMONY

The Parenting Coordinator is a court officer and has quasi-judicial immunity. The Parenting Coordinator cannot be sued based on his/her actions in this matter, so long as the Parenting Coordinator maintains neutrality and performs quasi-judicial functions. (See *Howard v. Drapkin* (1990) 222 Cal.App.3rd 843.) The Parenting Coordinator's file may not be subpoenaed, and the Parenting Coordinator may not be compelled to testify.

(Adopted October 1, 1998; Amended July 1, 2015)

11.08 FORMAT OF ORDER APPOINTING PARENTING COORDINATOR

A proposed stipulation and order for use and adaptation as appropriate is included in these guidelines (See Attachment, Order Appointing Parenting Coordinator). The court and counsel may fashion individual orders for unique situations.

(Adopted October 1, 1998; Amended July 1, 2015)

ATTACHMENT
ODER APPOINTING PARENTING COORDINATOR

SUPERIOR COURT OF CALIFORNIA
County of Monterey

In Re the Marriage of: Petitioner: and Respondent:	Case No. STIPULATION AND ORDER RE APPOINTMENT OF PARENTING COORDINATOR

PRINCIPLES:

A. The parents acknowledge that their child(ren) will benefit from a meaningful relationship with both parents that continued parental conflict will generally negatively impact their child(ren)'s adjustment, and that every effort should be made to keep the child(ren) out of the middle of their parents' disputes and communications.

B. The parents agree voluntarily to enter into this Agreement because of a desire to:

- De-escalate parental conflict to which the child(ren) are exposed;
- Focus on their child(ren)'s needs and best interests;
- Promote their child(ren)'s optimum adjustment;
- Resolve issues and disputes between the parents concerning the clarification, implementation, modification and/or adaptation of the court-ordered parenting plan through the informal process described in this order in a timely and cost efficient manner without litigation; and
- Benefit from the direction of a qualified professional chosen to serve as the Parenting Coordinator.

C. Parenting Coordination is a child-focused dispute resolution process that combines parent education, dispute assessment, mediation, facilitated negotiation, and conflict and communication management. When parents are unable to resolve their parenting disputes with the Parenting Coordinator's assistance, the Parenting Coordinator makes recommendations or decisions on issues that are specified in this Stipulation and Order. The ultimate goal is to help parents learn to resolve disputed or difficult issues amicably and efficiently on their own, without having to involve the Parenting Coordinator or the adversarial process.

PURSUANT TO THE STIPULATION OF THE PARENTS hereinafter set forth, and good cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

A. APPOINTMENT:

1. _____is appointed Parenting Coordinator by agreement of the parties until resignation of the Parenting Coordinator or written agreement of the parents, further court order, or _____months (normally not to exceed three (3) years) after the date on which this stipulated Order becomes effective, whichever first occurs.

2. This appointment is based upon the expertise of the Parenting Coordinator as a licensed mental health professional or licensed attorney. However, the Parenting Coordinator process is not confidential. If the Parenting Coordinator is a licensed mental health professional, no therapist-patient relationship and/or privilege is created by this stipulation. If the Parenting Coordinator is a licensed attorney**,** no client-attorney relationship and/or privilege is created by this stipulation.

3. The Parenting Coordinator is a Court Officer and has quasi-judicial immunity. The Parenting Coordinator cannot be sued based on his/her actions in this matter. The Parenting Coordinator's file may not be subpoenaed, and the Parenting Coordinator may not be compelled to testify.

4. The Parenting Coordinator may resign any time he/she determines the resignation to be in the best interest of the child(ren) or the Parenting Coordinator is unable to serve out his/her term, upon thirty (30) days written notice to the parents.

B. AUTHORITY OF PARENTING COORDINATOR

5. The role of the Parenting Coordinator is to decide disputes relating to the clarification and implementation of current court-ordered parenting plans. The Parenting Coordinator may also make decisions regarding the parenting matters listed below in Section C (Level One Authority), and the Parenting Coordinator may make recommendations, but not decisions, regarding the other parenting matters listed below in Section D (Level Two Authority).

6. If either party requests a decision or recommendation that would change a provision set forth in an existing order re child related issues, the party requesting the change must demonstrate to the Parenting Coordinator that a change in the family's situation has occurred which warrants changing the specific provision, including substantial child development issues, in an existing order.

7. The Parenting Coordinator may only make decisions or recommendations resolving conflicts between the parents which do not affect the court's exclusive jurisdiction to determine fundamental issues of custody and time-share. Specifically, the Parenting Coordinator does not have authority to make any decisions or recommendations that alter a custodial designation of joint or, sole, legal or physical custody established in a current order of the court, prohibit a party’s contact with his/her children, or require or prohibit adherence to a religion or which substantially alter or reconfigure the parents' time sharing arrangements (defined as increasing or decreasing a parent's time more than two twenty-four hour periods in twenty-eight (28) days). These decisions and others relating to issues not included among those assigned to the

Parenting Coordinator, as set forth in the Stipulation and Order, are reserved to the Monterey County Superior Court for adjudication.

8. For the matters described in Section 7, the Parenting Coordinator's authority is limited to recommending to the parents (without any recommendation as to the preferred outcome) that the court be requested to review and consider any such matter. A party who wishes a court review of the matter following a recommendation for review by the Parenting Coordinator must file and serve a Request for Order for the matter to be reviewed and considered by the court.

C. AUTHORITY TO MAKE DECISIONS AND ORDERS (LEVEL ONE AUTHORITY)

9. Each party specifically agrees that the Parenting Coordinator may make decisions regarding possible conflicts they may have on the following issues, and that such decisions are effective when made and will continue in effect unless modified or set aside by a court of competent jurisdiction:

- Minor alterations in schedule that do not substantially alter a child's time with either parent during a thirty (30) day period
- Dates, times, designated person, location and method of pick-up and delivery
- Sharing of parent vacations and holidays
- Responsibility for transportation to accommodate time-sharing between the parents
- Selection of child care/daycare and babysitting providers
- Childrearing disputes such as bedtime, diet, clothing, homework, and discipline
- Participation in afterschool, enrichment, and athletic activities
- Scheduling disputes arising from afterschool, enrichment, athletic, religious education and training and other activities
- Health care management, such as scheduling appointments, and determining who attends appointments and who is responsible for reporting the outcome of any appointments to the other parent
- Participation of others in a parent's time with the child(ren) (significant others, relatives, etc.)
- In the case of infants and toddlers, increasing time share when developmentally appropriate
- Right of first refusal for child care responsibilities
- Scheduling swaps of custodial time

- Coordinate participation in court-ordered alcohol and drug monitoring or testing, including setting a process for selection of monitors or testers if the parents cannot agree

- Other matters, subject to the stipulation of the parties and the approval of the court

(Note: the parents may exclude specified items from the above list by agreement of the parents and Parenting Coordinator).

10. Decisions on the matters listed above are binding when communicated by phone, voicemail, fax, email, including email attachments, or personal delivery. If communicated by phone or voicemail, a written communication will also be sent to the parents. At the request of either parent, a decision will be formalized by the Parenting Coordinator and submitted to the court to be entered as a court order. By signing this agreement, each parent acknowledges his/her understanding that the Parenting Coordinator's decisions on the issues listed above in paragraph 9 are binding on them. Such decisions are to be treated the same as final orders of the court, which may be reviewed by the state Court of Appeals.

D. AUTHORITY TO MAKE RECOMMENDATIONS TO THE COURT (LEVEL TWO AUTHORITY):

11. The Parenting Coordinator will have authority to make recommendations on the following issues:

- Alterations in schedule that do not increase or decrease a child's time with either parent by more than two (2) twenty-four (24) hour periods in twenty-eight (28) days

- Coordinating church attendance and religious classes

- Large changes in vacation and holiday timeshare

- Supervision of a child's contact with a parent

- Private or public school education

- Appointment of counsel for a child

- Recommending a child custody investigation, evaluation or re-evaluation, including setting a process for selection of a professional when the parents cannot agree

- Recommending participation by parents and/or children in alcohol and drug evaluation, monitoring, and/or testing

- Recommending participation by the parents and/or children in health services, including physical and psychological examinations, assessments, and psychotherapy, and including recommending a process for selection of providers

(Note: the parents may exclude specified items from the above list by agreement of the parents and Parenting Coordinator.)

12. Recommendation on these matters shall be served on the Court, parties and counsel by mail, fax or personal delivery. Either party shall have the right to request a written explanation from the Parenting Coordinator of any recommendation, which shall be provided within ten (10) calendar days to both parties, counsel and the court. The Parenting Coordinator recommendations shall be subject to adoption by the Court as an order unless either party files and serves a motion objecting to entry of the order within twenty (20) calendar days of service of the recommendations.

E. PROCEDURE:

13. Both parents shall participate in the dispute resolution process as defined by the Parenting Coordinator and shall be present when so requested by the Parenting Coordinator. The Parenting Coordinator may conduct sessions which are informal in nature, by telephone or in person, and need not comply with the rules of evidence. No formal record need be made, except the Parenting Coordinator's written decision and recommendations and the parents' mutual agreements. The Parenting Coordinator shall have the authority to determine the protocol of all interviews and sessions including, in the case of meetings with the parents, the power to determine who attends such meetings, including individual and joint sessions with the parents and/or the child(ren) and other relevant third parties.

14. The parents shall provide all reasonable records, documentation, and information requested by the Parenting Coordinator.

15. The Parenting Coordinator may utilize consultants as necessary to assist the Parenting Coordinator in the performance of the duties contained herein.

F. COMMUNICATION WITH PARENTING COORDINATOR:

16. The parents and their attorneys shall have the right to initiate or receive ex parte communication with the Parenting Coordinator under guidelines established by the Parenting Coordinator. Copies of all written communications to the Parenting Coordinator including emails are to be provided to the other party. The Parenting Coordinator may, in his/her sole discretion initiate written communications with a parent or counsel that are not copied to the other party.

17. The Parenting Coordinator may communicate with the parties' child or children outside the presence of the parents. The Parenting Coordinator may communicate with the therapists who are treating the parties' child or children, as well. The Parenting Coordinator may keep such communications confidential.

G. CHILD ABUSE REPORTING

18. The Duty to Report: The California Penal Code mandates that all child care custodians and health care practitioners (Doctors, Marriage, Family and Child Counselors, Psychologists, Social Workers and others) report to child protective services information regarding child abuse that comes to the attention of the health care practitioner. The reporting requirement is an exception to the confidentiality privilege.

19. Immunity For Child Abuse Reporting: Health care practitioners who are required to report allegations of child abuse are immune from civil suits or liability for making their required reports. They cannot be sued for the report. Specific statutes provide for the immunity from civil suits.

20. Attorney Parenting Coordinator: The child abuse reporting statute does not apply to attorneys because attorneys are not named in the statute as a class of persons who mandatorily must report a child abuse allegation. However, an attorney Parenting Coordinator has the discretion to report any such allegation and may make such a report.

21. False Allegations of Child Abuse: The Family Code section 3027.1, subdivision (a), provides for a monetary sanction and attorney fees for any knowingly false allegation of child abuse made during a child custody proceeding. This section does not apply to a Parenting Coordinator who reports an allegation made to him/her by a parent, child, or other third party, but does apply to the person making the allegation to the Parenting Coordinator if the court finds that the initial allegation was made knowing that it was untrue.

H. FEES AND ALLOCATION OF FEES:

22. The Parenting Coordinator's fees shall be shared according to the following allocation: Petitioner %; Respondent %. The Parenting Coordinator will require an advance security deposit of $ from each party, to be returned to the parents at the end of the Parenting Coordinator tenure, less any balance owing by either party. The Parenting Coordinator may also require a retainer against which ongoing work is charged and which is to be replenished.

23. The Parenting Coordinator fees are $ per hour. Time spent in interviewing, report preparation, review of records and correspondence, telephone conversations with the parents or others relevant to the parental disputes, travel, court preparation and any other time invested in connection with serving as Parenting Coordinator will also be billed at the $ hourly rate. The Parenting Coordinator fee for Court appearances and settlement conference is $ per hour while in Court and at the settlement conference and $ per hour travel time to and from his/her office. The Parenting Coordinator shall have the right to allocate payment of his/her fees at a percentage different from the above if he/she believes the need for his/her services is attributable to the conduct and/or intransigence of one party.

24. The Parenting Coordinator shall be reimbursed for any expenses he/she incurs in association with his/her role as Parenting Coordinator. These costs may include, but are not limited to, the following: photocopies, messenger service, long distance telephone charges, express and/or certified mail costs, parking, tolls, mileage, and other travel expenses.

25. The Parenting Coordinator may require payment at the end of each in-person session, and require payment within ten days of receipt of billing sent for all other services, as above and may require replenishment of the retainer. Any objection to the Parenting Coordinator bills must be brought to his/her attention in written form within ten business days of the billing date; otherwise the billing shall be deemed agreed to. The Parenting Coordinator may cease to perform services for the parties if payment is not current.

26. In the event that either party fails to provide twenty-four (24) hours telephone notice of cancellation of any appointment with the Parenting Coordinator, such party shall pay all of the Parenting Coordinator charges of such missed appointment at the full hourly rate, at the discretion of the Parenting Coordinator.

I. GRIEVANCES:

27. The Parenting Coordinator may be disqualified on any of the grounds applicable to the removal of a judge, commissioner, referee or arbitrator.

28. Neither party may initiate court proceedings for the removal of the Parenting Coordinator or to bring to the court's attention any grievances regarding the performance or actions of the Parenting Coordinator without meeting and conferring with the Parenting Coordinator in an effort to resolve the grievance. Participation in an alternative dispute resolution process such as arbitration to resolve grievances may be required by the Parenting Coordinator prior to the Parenting Coordinator's acceptance of this appointment.

29. Neither parent shall complain to the Coordinator's professional licensing board without first meeting and conferring with the Parenting Coordinator in an effort to resolve the grievance. In the event no resolution is reached, the parents and Parenting Coordinator shall attend at least one session of mediation or other alternate dispute resolution process prior to any action being undertaken.

30. The court shall reserve jurisdiction to determine if either or both parents and/or the Parenting Coordinator shall ultimately be responsible for any portion of all of said Parenting Coordinator time and costs spent in responding to any grievance and the Parenting Coordinator's attorney's fees, if any.

31. If either party or the Parenting Coordinator believes that there exists a grievance between them with respect to this stipulation that cannot be resolved**,** either party or the Parenting Coordinator can move the court for relief from this stipulation, after complying with paragraph thirty (30) above.

J. ENFORCEMENT:

32. The court reserves jurisdiction in the family law action to enforce the provisions of this stipulation.

33. In the event that arbitration proceedings or a legal action become necessary to enforce any provision of this order**,** the non-prevailing party shall pay attorney's fees and costs as may be incurred.

K. ADDITIONAL REPRESENTATIONS:

34. I have had an opportunity independently to consult with a lawyer of my choice before entering into this stipulation. I have read this stipulation and understand it. I freely and voluntarily enter into this stipulation.

Initials _____ _____

35. I choose to use the Parenting Coordinator process as an alternate method of dispute resolution to reduce future custody and visitation litigation. I waive the right to formal court litigation over the issues assigned to the Parenting Coordinator by this stipulation and order subject to the Court's power to review the Parenting Coordinator's decision.

Initials _____ _____

36. I understand that no California court can appoint a Parenting Coordinator without the consent of the parents, and that no California statute or court rule authorizes the appointment of a Parenting Coordinator absent such consent.

Initials _____ _____

37. I understand that the Parenting Coordinator will resolve certain disputes between the parties without a court hearing, and will issue some decisions that will be court orders automatically, and others that are recommendations for court orders.

Initials _____ _____

38. I understand that I cannot sue the Parenting Coordinator; that the Parenting Coordinator process is a quasi-judicial process; i.e., that the Parenting Coordinator has immunity from lawsuits to the broadest extent permissible under the law. The procedures set forth in this stipulation and order for addressing grievances about the Parenting Coordinator decision-making process and decisions are the sole remedy for complaints about the Parenting Coordinator available to me.

Initials _____ _____

39. I understand that the Parenting Coordinator has made no warranties or guarantees relating to his/her conclusions, findings, or orders. The Parenting Coordinator shall exercise independent judgment in making decisions. The fees and costs paid under this stipulation and order are not contingent on results or outcome.

Initials _____ _____

40. I agree that the executed copy of this Stipulation is a release allowing the Parenting Coordinator to speak with mental health providers who are treating me and/or my children. I understand that by signing this stipulation that the mental health providers may share confidential information with the Parenting Coordinator.

Initials _____ _____

41. I have had the opportunity to investigate and consider the training and experience of the Parenting Coordinator appointed in this stipulation, and I am satisfied that this person is qualified to serve as my Parenting Coordinator.

Initials _____ _____

DATED: _____ DATED: _____

_____ _____
MOTHER FATHER

_____ _____
ATTORNEY FOR MOTHER ATTORNEY FOR FATHER

I agree to serve as Parenting Coordinator in this case.

_____
PARENTING COORDINATOR

FINDINGS AND ORDER

Based upon the stipulation of the parents (who have signed this stipulation and initialed this stipulation where indicated to document their agreement), the court finds that the parties have knowingly, intelligently, and voluntarily agreed to the terms of this stipulation, after having been advised to consult with independent counsel.

Upon reading the foregoing stipulation, and good cause appearing therefor, IT IS SO ORDERED:

DATE: _____ _____
SUPERIOR COURT JUDGE

CHAPTER 12

SETTING OF CONTESTED FAMILY LAW, ADOPTION AND UNLAWFUL DETAINER ACTIONS

12.01 CONTESTED LAW AND ADOPTION

Contested Family Law and Adoption actions will be set for trial only upon the filing of an At-Issue Memorandum, which is located in the forms section of the court's website.

(Adopted October 1, 1998; Amended January 1, 2011; Amended July 1, 2015)

12.02 AT-ISSUE MEMORANDUM

The setting of cases for trial shall be in accordance with rule 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.

C. Petitioner and respondent must have complied with Family Code section 2104, subdivision (a), and, prior to, or concurrently with, submission of the At-Issue Memorandum, must have filed a Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration. (Judicial Council form FL-141.)

   If the non-submitting party has failed to file a Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration, the submitting party must demonstrate compliance with Family Code section 2107 by:

   1. Filing a Request for Order (Judicial Council form FL-300) regarding non-compliance with disclosure requirements prior to or concurrently with the At-Issue Memorandum.

(*Adopted October 1, 1998; Amended January 1, 2007; Amended January 1, 2008; Amended January 1, 2011; Amended July 1, 2014)*

12.03 COUNTER AT-ISSUE MEMORANDUM

A. Any party not in agreement with any other representation made in an At-Issue Memorandum shall within ten (10) days after the service thereof, serve and file a "Counter At-Issue Memorandum" on his or her behalf.

(Adopted October 1, 1998)

12.04 SHORT CAUSE

In short cause cases (one (1) day or less), in addition to the information required by rules 10.900 of the California Rules of Court, the At-Issue Memorandum shall indicate those dates, not less than thirty (30) days nor more than ninety (90) days from the date the At-Issue Memorandum is filed, during which trial counsel is not available for trial.

(Adopted October 1, 1998; Amended January 1, 2007; Amended January 1, 2008)

12.05 LONG CAUSE

In long cause cases (more than one (1) day), in addition to the information required by rules 3.714 and 10.900 of the California Rules of Court, the At-Issue Memorandum shall indicate those dates, not less than three (3) months nor more than six (6) months from the date the At-Issue Memorandum is filed, during which the trial counsel is not available for trial.

(Adopted October 1, 1998; Amended January 1, 2007; Amended January 1, 2008)

12.06 REPEALED

(Settlement conferences - Repealed July 1, 2003)

12.07 UNLAWFUL DETAINER ACTIONS

Unlawful detainer actions will be set for trial no later than twenty (20) days from the date the Request to Set Case For Trial (Judicial Council form UD-150) is filed pursuant to Code of Civil Procedure section 1170.5, subdivision (a).

(Adopted January 1, 2011)

CHAPTER 13
REPEALED

(Adopted October 1, 1998; Reset and Continuance of a Trial Date-Repealed July 1, 2010)

CHAPTER 14

CRIMINAL DEPARTMENT

14.01 FILING OF CRIMINAL COMPLAINTS

The deadline for filing new felony charges shall be filed no later than 11:00 am of the day the defendant is to appear for arraignment, unless otherwise directed by the presiding judge.

The deadline for filing new misdemeanor charges shall be filed no later than 2:00 pm for the next day setting, unless otherwise directed by the presiding judge.

(Adopted July 1, 2009)

14.02 ADDING CASES TO CRIMINAL CALENDAR

Any application or memorandum for setting a criminal matter on calendar shall be submitted to the clerk's office no later than two (2) court days (excluding weekends and holidays) before the requested hearing date. Any exceptions to this rule must be approved by the judge hearing the case.

(Adopted July 1, 2009)

14.03 DEADLINES FOR FILING

The deadline for filing on the felony "grist" calendar shall be 11:00 am, the day prior to next available grist day for in-custody matters.

The deadline for filing on the felony grist calendar shall be 11:00 am, two (2) court days prior to the requested hearing date (excluding weekends or holidays) for defendants not in custody.

The deadline for a defendant out of custody appearing at the counter to be set for an arraignment on a warrant shall be 2:00 pm for the next day's calendar. This excludes Mondays for all calendars and Fridays for department 11 only.

The deadline for filing or faxing a memorandum to set a matter on calendar for arraignment on warrant shall be two (2) court days (excluding weekends or holidays) prior to the requested hearing date.

(Adopted July 1, 2009)

14.04 PENAL CODE SECTIONS 995 AND 1538.5 MOTIONS

Except for good cause shown, a Motion to Set Aside the Indictment or Information must be set for hearing within ten (10) court days of the date of arraignment.

A Motions to Suppress Evidence must be calendared for setting of hearing within ten (10) court days of the date of arraignment on the information in felony matters. In all misdemeanor cases, a motion to suppress evidence must be calendared for setting of hearing within ten (10) court days of the date of the first pre-trial hearing where time is waived or within ten (10) court days of the date of arraignment where time is not waived.

(Adopted October 1, 1998; Amended July 1, 2015

14.05 OTHER PRETRIAL AND DISCOVERY MOTIONS

All other pretrial and discovery motions must be heard prior to the jury trial readiness calendar (Cal. Rules of Court, rule 4.112(b)).

At the time of the defendant's first appearance on a criminal matter, an informal request for continuing discovery shall be deemed to have been made by the defendant requesting the prosecutor to comply with Penal Code section 1054.1, and by the prosecutor requesting the defendant to comply with Penal Code section 1054.3.

(Adopted October 1, 1998; Amended July 1, 2002; Amended January 1, 2009)

SHORT CAUSE CRIMINAL

14.06 PRE-TRIAL CONFERENCE CALENDAR

In order to reasonably predict the business of the court, anticipate assignments of judges, and to eliminate unnecessary inconvenience to parties, witnesses, and trial jurors, a pre-trial conference shall be held in every criminal case (including traffic) in which a trial by jury has been demanded.

A. Procedures. The judge in each department, except the felony arraignment department, shall, at the time of arraignment and entry of plea, set the date for pre-trial conference.

B. Date Set for Trial. Once a case is set on the pre-trial conference calendar, it may not be changed without the approval of the judge before whom it is assigned.

C. Failure to Appear at Pre-trial Conference. Any failure of an attorney to prepare for, appear at, or participate in, a pre-trial conference, unless good cause is shown for any such omission, is an unlawful interference with the proceedings of the court and may be punished as contempt.

D. Trial Brief Requirement. In all criminal matters where the case does not settle at the pre-trial conference and the matter remains set for trial, trial counsel will be required to file a brief no later than 12:00 noon on Friday for all felony cases and no later than 3:00 p.m. on Friday for all misdemeanor cases immediately preceding the trial date (in most instances the following Monday) unless an earlier date is ordered by the court. The only exception to the timely filing of a trial brief is by authorization of the presiding judge, designee of the presiding judge, or the trial judges.

   The trial brief shall include the following:

   - A brief factual statement of the case that can be read to the jury
   - Proposed jury instructions
   - All in limine motions along with supporting points and authorities
   - Proposed voir dire questions that are being requested
   - A list of any witness problems that may interfere with the timely conduct of the trial
   - Any other issues that will have to be dealt with by the trial judge
   - Witness list
   - Exhibit list
   - Proposed verdict form

(Adopted October 1, 1998; Amended July 1, 2001; Amended January 1, 2004; Rule 14.05 renumbered as 14.03 and amended January 1, 2009)

14.07 JURY TRIAL READINESS CALENDAR

There shall be a jury trial readiness calendar for all criminal and traffic misdemeanor cases at which time all trial counsel must be present. The trial readiness conference is to be a sincere effort by the attorneys and parties to eliminate congestion of the trial calendar so long as justice can be properly afforded to all parties. If the trial attorney fails to appear, the court may, in its discretion, find him/her in contempt.

A. Procedures. Upon the calling of such readiness calendar, all motions for continuance, waiver of jury, change of plea, reductions, or other procedural matters shall be presented. In the event the case is not disposed of at the trial readiness conference and a trial date is requested or confirmed, all offers on either side will be deemed withdrawn and the case will be set for trial and tried on all counts. No further amendments to pleadings or continuances will be granted except for good cause shown.

B. Date Set for Trial - Duties. When the parties announce they are ready for trial, the parties announce that:

- The respective attorneys are prepared to commence the trial immediately.
- All pre-trial motions and discovery have been completed.
- All witnesses are readily available and have been interviewed by the respective attorneys.
- The attorneys' calendars permit them to commence the trial immediately and see it to conclusion.

C. Proposed Jury Questionnaires. Unless waived by the trial judge, counsel shall submit proposed jury questionnaires to the court no less than fifteen (15) court days in advance of the trial date. Upon receipt, the questionnaires shall not be officially filed by the clerk of the court, but shall be immediately forwarded by the clerk to the trial judge for review.

D. Continuance Policy. The welfare of the People of the State of California requires that all proceedings in criminal cases shall be set for trial and heard at the earliest possible time (Pen. Code, § 1050). Therefore, it is the policy of this court to maximize the use of judicial time and avoid continuances, resetting and unnecessary trailing of cases. Any motion to continue in a criminal proceeding must comply with Penal Code section 1050. Further, this court adheres to no trial continuance policy - when a courtroom event is scheduled, that event should take place as scheduled.

1. Counsel.

    a. Counsel's attention is directed to rule 3-110 of the Rules of Professional Conduct State Bar of California, "Failing to Act Competently."

        i. A member of the State Bar shall not:

            a) Accept employment or continue representation in a legal matter when the member does not have sufficient time, resources and ability to perform the matter with competence, or

b) Repeatedly accept employment or continue representation in legal matters when the member reasonably should know that the member does not have or will not acquire before performance is required, sufficient time, resources and ability to perform the matter with competence.

ii. Counsel should not set a case if they are committed to another trial during that period or if they are going to be on vacation. This includes cases set in the superior court and cases in different divisions and departments of the court. Counsel should not schedule other cases to begin if they have another matter set in court. Neither reason constitutes "good cause" for a continuance.

iii. Motions, pre-trials, and trials are to be heard at the date and time set

iv. Substitute Counsel. An attorney who appears for another attorney is representing the defendant then before the court. An attorney who makes such an appearance is required to do so competently. (Cal. Rules of Professional Conduct, rule 3-110.) Such an attorney is expected to be prepared to carry out and perform any duties required at that calendar event; should a continuance be required it is his or her responsibility to have complied with this policy and to know when the other attorney will be available to appear; if a case is not to be tried, he or she should have the authority to dispose of the case. Should these rules not be complied with, sanctions will be applied against this attorney. (Code of Civ. Pro., §§ 128.5 & 177.5; Cal. Rules of Court, rule 2.30.) At the next scheduled calendar event, the counsel of record must file a declaration with the court explaining his or her ability to be present at the last calendar event. *(Amended January 1, 2007)*

v. Counsel should not delay in filing and serving proper motions. Failure to timely file or serve without good cause will result in the imposition of sanctions.

vi. Counsel should subpoena witnesses as soon as a case is set for hearing or trial.

vii. Counsel should not accept representation of a defendant if he/she does not have sufficient time to adequately prepare before the next scheduled event.

2. Motions. Motions to continue must comply with Penal Code section 1050. Courtroom events will be continued only when extraordinary circumstances, not within the control of the parties and which were not foreseeable at the time of setting the date of the event, necessitate a continuance. In ruling on motions to continue, the following factors will be taken into consideration:

a. The time when the need for the continuance arose and the diligence of counsel in bringing the need for a continuance to the attention of the court and opposing counsel at the earliest possible date and in attempting to avoid a continuance;

b. The proximity of trial, the age of the case, the established time limits for processing cases, and the nature of any previous continuances or prior orders entered in the case;

c. The earliest possible date all parties and the court will be ready to proceed;

d. Whether the continuance may be avoided by substitution of attorneys or witnesses, or by the use of stipulations as to testimony; and

e. The injury or inconvenience caused to the party not requesting the continuance.

3. Good Cause. Continuances will only be granted on the showing by competent evidence of good cause. The facts proven justifying good cause and the length of continuance shall be set forth on the record. Good cause is not shown by the following:

    a. Counsel's vacation or commitment to another trial or proceeding except as provided in Penal Code section 1050, subdivision (g)

    b. Failure of a client to adhere to a financial agreement with his/her attorney
    c. Failure to expeditiously prepare for trial

    d. A witness's vacation or attendance at school unless this is accompanied by a showing of the witness's unavailability, that the testimony is material and that the party seeking the attendance exercised due diligence to secure the presence of the witness

    e. Informal diversion

    f. A civil compromise pursuant to Penal Code section 1378

    g. Other pending cases

    h. Negotiations not yet completed

    (Misdemeanor cases coming within (e) and (f) can be conditionally dismissed on waiver of the prohibition against re-filing).

4. No continuance will be granted solely because all parties agree thereto.

5. The failure to adhere to this policy will result in the imposition of sanctions and the assessment of reasonable costs. (Code of Civ. Pro., §§ 128.5 & 177.5; Cal. Rules of Court, rule 2.30.) *(Amended January 1, 2007)*

6. Trailing. Should it be necessary that cases be trailed for hearing or trial, they will be trailed day by day. The case will be called each day at 11:30 a.m., 4:30 p.m., and the next day at 8:30 a.m. When a case is trailing, the defendant and counsel, except in extraordinary circumstances, must be present when the case is called.

(Adopted October 1, 1998; Amended July 1, 2002; Amended January 1, 2004; Amended January 1, 2007; Rule 14.06 renumbered as 14.04 and amended January 1, 2009)

14.08 EVIDENTIARY PRE-TRIAL

In all misdemeanor pre-trial motions requiring the presentation of any evidence of any party will be noticed in writing with proof of service of opposing party(ies) filed no later than ten (10 court days prior to the date of hearing, unless, for good cause shown, and upon written order of court, time is shortened for the filing of said pre-trial motion.

B. Motion to Suppress Evidence. In misdemeanor cases, whenever a Penal Code Section 1538.5 motion to suppress evidence is made, the moving party shall file written points and authorities at least <u>ten (10)</u> days prior to the date of the hearing. The written points and authorities shall:

    1. Identify with particularity the evidence sought to be suppressed;

2. Specifically state the legal theory(ies) which will be relied upon; and

3. Cite the specific authority(ies) which will be offered in support of the motion.

(Adopted October 1, 1998; Rule 14.07 renumbered as 14.05 and amended January 1, 2009, Amended July 1, 2015)

14.09 MODIFICATION OF SENTENCE ADJUDGED

The judge placing a defendant on probation in a misdemeanor case shall, as far as practicable, hear any application for modification, change, or termination of probation, except for applications under Penal Code sections 1203.4 or 1203.45.

Any request for modification of sentence imposed must be filed in writing on a form provided by the court.

(Adopted October 1, 1998; Rule 14.08 renumbered as 14.06 January 1, 2009)

14.10 COURT APPOINTED COUNSEL

Only the Office of the Public Defender shall be appointed as counsel in all appointments authorized under Penal Code section 987 et al. In situations involving conflict of interest filed by the Office of the Public Defender of Monterey County, referral will be made to the Alternate Defender's Office for appointment of counsel.

(Adopted October 1, 1998; Amended January 1, 2004; Rule 14.09 renumbered as 14.07 January 1, 2009)

14.11 REPEALED

(Adopted October 1, 1998; Appeals in misdemeanor cases that were electronically recorded - Repealed January 1, 2011)

14.12 POSTING OF A PROPERTY BOND IN A CRIMINAL CASE

Security in Real Property

In lieu of a deposit of cash or a bail bond, the defendant or any other person may give as security any equity in real property which he or she owns. No charge is made to the defendant or any other person for the giving as security of any equity of real property. (Pen. Code, § 1298.)

Purpose

The purpose of a property bond is to release the defendant from actual custody and guarantee the appearance of the defendant at all future court hearings.

Requirements

A hearing is required if equity in real property is submitted as security. At the hearing, at which witnesses may be called or examined, the magistrate will determine the value of such equity. If the magistrate finds that the value of the equity is equal to twice the amount of the cash deposit required he or she shall allow such bail. (Pen. Code, § 1298.)

Procedure

A. To set the matter for hearing, a noticed motion for real property equity bond with proof of service to the Office of District Attorney and Monterey County Counsel must be filed with the clerk's office at least five (5) days prior to the date set for the hearing. The following documents must be submitted as attachments to the motion:

   1. Declaration of property owner(s).

   2. A notarized promissory note in the amount of the required bond.

   3. Copy of the deed of trust proposed to be recorded securing the promissory note naming Monterey County as beneficiary and Court Executive Officer of Superior Court of California, County of Monterey, as trustee.

   4. Current preliminary title report including legal description of property, location and all encumbrances from a recognized California Title Company dated within thirty (30) days prior to the application for property bond.

   5. Appraisal Report of the fair market value of the property, completed by a certified real estate appraiser. The report should be dated no more than thirty (30) days prior to the application for property bond.

   6. Proof of insurance coverage for the property. Must have an adequate amount of coverage to cover all encumbrances. Must show County of Monterey on the insurance policy.

   7. Order approving property bond and order for release of defendant. (Pen. Code, § 1281.)

B. All documents submitted for filing must conform to the form/format requirements set forth in California Rules of Court, rule 2.100(b).

C. The clerk's office will review all forms and paperwork to ensure that all necessary items have been presented for court approval.

D. The court may require additional evidence in order to ascertain the true equity in the property held by the applicants. (Pen. Code, § 1280.)

E. If the court approves the property bond, the applicant shall record the deed of trust with the county recorder's office where the property is located to be recorded, and shall deliver to the clerk of the court a copy of the recorded deed of trust. The original deed of trust shall be returned by mail from the county recorder's office to the clerk of the court. All costs incurred to process the property bond and to comply with this rule shall be borne by the applicant.

F. The clerk of the court will present the order approving property bond and order for release of defendant to the magistrate. Magistrate signs order(s) if not previously signed.

G. The clerk of the court will send a duplicate copy of order approving property bond and order for release of defendant with court seal affixed, to the county jail.

H. The clerk of the court will place the promissory note and newly recorded deed of trust in a sealed envelope and store the envelope in a secured area.

I. In the event the property bond is ordered exonerated, the attorney of record must do the following:

   1. Prepare a full reconveyance form.

   2. Schedule an appointment with the Court Executive Officer or designee.

      a. Court Executive Officer or designee shall sign the full reconveyance in the presence of a notary public provided and paid for by the defendant.

      b. Signed full reconveyance form, cancelled recorded deed of trust, and cancelled promissory note shall be given to the attorney of record.

   3. In the event the property bond is ordered forfeited, upon entry of summary judgment and order of the court, the clerk shall prepare an appropriate form of order for the court's signature directing the clerk to release the original deed of trust and promissory note to County Counsel for the commencement of foreclosure proceedings. (Pen. Code, § 1280.1, subd. (b).)

(Adopted January 1, 2008; Rule 14.11 renumbered as 14.09 January 1, 2009; Amended July 1, 2010; Amended July 1, 2012)

14.13 LOCAL CRIMINAL BAIL SCHEDULE

This rule sets forth a schedule and procedure for adoption of the local bail schedule pursuant to Penal Code section 1269b, subdivisions (c) and (d), and California Rules of Court, rule 4.102. This bail schedule will be used for setting bail at all times provided by law.

A. The local bail schedule will be reviewed annually.

B. Judicial officers of this court designated by the presiding judge will review and consider revision of the local bail schedule annually and submit their proposed revisions to the presiding judge. The proposed revised local bail schedule will then be reviewed for adoption by a majority of the judicial officers.

C. Copies of the local bail schedule shall be sent to the officer in charge of the county jail and of each city jail within the county, to each judicial officer of this court, to the Judicial Council and posted on the court's public website. (Pen. Code, § 1269b, subd. (f); Cal. Rules of Court, rule 4.102.)

Bail shall be set according to the Uniform Bail Schedule established by the Judicial Council per California Rules of Court, rule 4.102 for those charges addressed in said schedule except when a judge determines in his or her discretion that factors in aggravation of mitigation justify a different amount in a specific case.

(Adopted January 1, 2009)

14.14 TRIALS BY DECLARATION

The court adopts the trial by declaration process, defined in Vehicle Code section 40902 and California Rules of Court, rule 4.210.

(Adopted July 1, 2010)

14.15 NIGHT COURT

Night court is held the last Monday of every month (excluding holidays) for traffic arraignments and special sets from the court. No pre-trial or court trials will be set for night court. (Veh. Code, §42006, subd. (a).)

(Adopted July 1, 2013)

14.16 TRAFFIC SCHOOL

The court does not allow installment payments on cases where the defendant is requesting to attend traffic school. (Veh. Code, § 42007, subd. (a)(2).)

(Adopted July 1, 2013)

14.17 MOTION TO RE-OPEN CASE ADJUDICATED BY BAIL FORFEITURE

Any motion to re-open a conviction reported to the Department of Motor Vehicles following a bail forfeiture under Vehicle Code section 40512 or reported as a failure to complete traffic violator school under Vehicle Code section 40512.6 shall be filed with the Traffic division no later than ninety (90) days from the date of the bail forfeiture.

(Adopted July 1, 2013)

14.18 REQUEST FOR EXTENSION

Upon written or verbal request for an extension of time to take care of an infraction traffic or infraction non-traffic matter, the clerk of the court or designee is authorized to grant a one (1) time sixty (60) day extension from the original pay or appear date (appearance date on citation).

(Adopted July 1, 2013)

CHAPTER 15

WRITS

15.01 HABEAS CORPUS

Petitions for writs of habeas corpus shall be filed in accordance with the California Rules of Court, rule 4.550 et seq. and Penal Code section 1473 et seq.

Petitions for writs of habeas corpus shall be addressed to the designated criminal writ judge.

Petitions for writs of habeas corpus will be assigned a unique case number unless otherwise directed by the court.

Requests to set habeas corpus petitions on calendar for matters other than an evidentiary hearing under California Rules of Court, rule 4.551(f) shall be addressed to the designated criminal writ judge.

(Rule 15.01 previously adopted October 1, 1998; Repealed January 1, 2009; New rule 15.01 adopted January 1, 2009; Amended July 1, 2014)

15.02 EXTRAORDINARY WRITS

All petitions for writs of mandamus, prohibition, and certiorari that are subject to the original jurisdiction of the appellate division (i.e., infraction, misdemeanor, or limited civil cases) shall be addressed to the presiding appellate judge.

Other than habeas corpus, all petitions for extraordinary writs (e.g., coram nobis, mandamus, prohibition, etc.) related to a criminal proceeding that falls within the original jurisdiction of the superior court shall be addressed to the presiding judge.

Other than habeas, all petitions for extraordinary writs not related to a felony matter and not falling within the original jurisdiction of the appellate division shall be addressed to the supervising civil judge.

(Rule 15.03 renumbered as 15.02, amended January 1, 2009; Amended July 1, 2014)

15.03 OTHER WRITS

Unless specified otherwise by statute, all other writ petitions (e.g., administrative writs of mandamus) shall be addressed to the supervising civil judge.

Writs addressed to the appellate division shall also comply with the rules in Chapter 9.

(Adopted January 1, 2000; Rule 15.04 renumbered as 15.03, amended January 1, 2009; Amended July 1, 2014)

15.04 ADMINISTRATIVE RECORD

The parties shall lodge any administrative record, along with an electronic courtesy copy (e.g., on a thumb drive), in the department in which the matter will be heard, at least thirty (30) days before the hearing.

(Adopted January 1, 2000; Rule 15.06 Renumbered as 15.04, January 1, 2009, Amended July 1, 2014, Amended July 1, 2015)

15.05 RECORD ON TRADITIONAL WRIT OF MANDAMUS

Whenever a Petitioner moves for issuance of a traditional writ of mandamus under Code of Civil Procedure section 1085, the parties shall lodge any documentary evidence presented in support of, or in opposition to, the writ, along with electronic courtesy copies (e.g., on a thumb drive) thereof, in the department in which the matter will be heard, at least thirty (30) days before the hearing)

15.06 ADMINISTRATIVE AND TRADITIONAL WRIT OF MANDAMUS BRIEFING SCHEDULES AND PAGE LIMITS

Unless otherwise ordered by the court, points and authorities prepared for a hearing on the merits of a writ petition shall be filed in accordance with the following schedule and page limits: Opening memorandum of points and authorities shall be filed at least 45 calendar days prior to the hearing date; opposition shall be filed at least 25 calendar days prior to the hearing date; and the reply shall be filed at least 15 calendar days prior to the hearing.

The opening and opposition memoranda shall not exceed 7,500 words.~~, not including the cover page, tables, signature blocks, or word count certification.~~ The reply shall not exceed 5,000 words~~, not including the cover page, tables, signature blocks, or word count certification~~.. Attorneys shall, on a separate page following the final page of the memorandum, certify compliance with this requirement using substantially the language below:

I, [attorney name],~~ appointed~~ counsel for [party], hereby certify, under ~~Monterey County Court~~ Local Rule 15.06, that I prepared the foregoing memorandum of points and authorities on behalf of my client, and that the word count for this briefing is [insert word count], which does not include the cover, the tables, signature blocks, or this certification. This briefing complies with the rule, which limits briefing to [insert the appropriate number] words. I certify that I prepared this document in [insert software name such as Word 2010], and that this is the word count [Word] generated for this document.

Dated: _____, 2016 _____
[Attorney name]
Attorney for [party]

The parties may, subject to this court's approval, stipulate to file briefs exceeding the word count noted in this rule 15.06 and/or to modify this briefing schedule. Alternatively, any party may file a motion to file an oversized brief consistent with the procedure specified in rule 3.1113(e) of the California Rules of Court.

~~Points and authorities filed~~Any motion to be heard prior to the merits of a writ petition shall comply with the filing schedule and page limits specified in rules 3.1113 and 3.1300 of the California Rules of Court.

(Adopted July 1, 2016)

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CHAPTER 16

MENTAL HEALTH DEPARTMENT

16.01 MENTAL HEALTH JUDGE

The mental health judge shall be designated by the presiding judge.

(Adopted October 1, 1998)

16.02 CALENDAR

All mental health cases initiated under Welfare and Institutions Code section 5000 et seq. (Lanterman-Petris-Short Act) shall be heard on Fridays at 1:30 P.M. If Friday falls on a court holiday, the mental health calendar shall be heard on the preceding judicial day.

(Adopted October 1, 1998)

16.03 JURY TRIALS

If a jury trial is demanded, the trial date will be set by the mental health judge.

(Adopted October 1, 1998; Amended January 1, 2010)

CHAPTER 17

DUTIES OF ATTORNEYS

17.01 NOTIFICATION OF SETTLEMENT

Whenever any case pending on the trial calendar is settled, the attorneys shall immediately notify the court. Failure to do so shall be deemed to be an unlawful interference with the proceedings of the court.

(Adopted October 1, 1998)

17.02 EXAMINATION OF WITNESSES

Only one (1) attorney on each side will be permitted to examine or cross-examine the same witness.

(Adopted October 1, 1998)

17.03 SUBSTITUTION

When an attorney withdraws from an action or proceeding and no other counsel is substituted, he shall endorse upon the withdrawal the address and telephone number of the client.

(Adopted October 1, 1998)

17.04 COPIES OF JUDGMENTS

(Adopted October 1, 1998; Repealed July 1, 2005)

17.05 TIMELY FILING

It shall be the duty of counsel, on all filed documents ~~presented for filing as part of the official court file~~, to indicate the date of any pending relevant court trial or hearing ~~to which the documents may be pertinent,~~ as part of or directly below the caption describing the nature of the document. ~~The clerk shall process court filings on a priority basis, ensuring that all documents are properly entered and filed in the appropriate court file with all due promptness following receipt. The clerk shall further give all necessary processing priority to documents with pending court trial or hearing dates, ensuring that documents reach the court file prior to delivery of the file to the court for hearing, or as soon thereafter as is reasonably possible in consideration of the date of receipt.~~

(Adopted October 1, 1998; Amended July 1, 2015; Amended July 1, 2016)

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17.06 ~~COPIES OF PLEADINGS, JUDGMENTS AND APPEALABLE ORDERS~~REPEALED

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~~Attorneys or individuals acting as their own attorney shall furnish the clerk with copies of all pleadings, judgments and appealable orders as follows:~~

~~A. An original and no more than two (2) copies of any civil judgment, proposed civil judgment, appealable order, or pleading;~~

~~B. An original and three (3) copies of any family judgment or proposed family judgment;~~

~~C. An original and two (2) copies of the Notice of Entry of Judgment (Judicial Council form FL-190) along with a stamped self-addressed envelope for each party;~~

~~D. The clerk shall return copies if a self-addressed stamped envelope is provided.~~

(Adopted July 1, 2005; Amended July 1, 2009; Amended July 1, 2013; Copies of Pleadings, Judgments and appealable orders – Repealed July 1, 2016)

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17.07 JUDGMENT DEBTOR EXAMINATION

Judgment creditor must promptly notify the court forty-eight (48) hours prior to the scheduled court hearing, in writing, if the examination is not proceeding on the date scheduled.

(Adopted July 1, 2012)

17.08 ORDERS AND JUDGMENTS SUBMITTED AFTER HEARING

A. The party directed by the court shall prepare the findings and order after hearing, judgment and order in accordance with the court's decision, or stipulation put on the record and shall submit it to opposing counsel/party for objection or approval pursuant to California Rules of Court, rules 3.1312 and 5.125.

B. The court may require any party submitting a proposed order after hearing who does not obtain approval as to form from opposing counsel to submit a transcript to the court with a cover letter explaining why it was submitted without such approval.

C. If the parties require a transcript of the proceedings to resolve disputes over the form of order, the judge is to be advised that the transcript has been ordered and the expected date of availability of the transcript.

D. Failure to submit orders after hearing in a timely manner may result in the imposition of sanctions.

E. The judicial signature line shall be included following the text of an order~~, it~~Signature lines may not be inserted on a blank page .~~Orders may not include a blank judicial signature page following the text on an order.~~ Use footers on the signature page which would include the case name, case number and title of the document.

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F. California Rules of Court, rule 5.125(f), provides that "before signing a proposed order submitted to the court without the other party's approval, the court must first compare the proposed order after hearing to the minute order, official transcript, if available, or other court record." In cases when the Department of Child Support Services has made an appearance, a signature by the court on the finding and order after hearing constitutes notice that the court has complied with rule 5.125(f) of the California Rules of Court.

(Adopted July 1, 2012; Amended July 1, 2013; Amended July 1, 2014; Amended July 1, 2016)

CHAPTER 18

JURY RULES

18.01 JURY COMMISSIONER

~~In the opinion of a majority of the judges, the business of the court requires the appointment of a "Jury Commissioner" to perform the functions of Jury Commissioner provided for by law and these rules.~~ The Superior Court Executive Officer ~~shall act as Jury Commissioner~~~~as determined by a judicial majority and~~ is designated as the "attache" of the court to perform the functions of Jury Commissioner. The ~~Said functions may be performed by such deputies as may be designated by the~~ Court Executive Officer may appoint deputies to perform these functions.

(Adopted October 1, 1998; Amended July 1, 2016)

18.02 JURY SELECTION PROGRAM

A. Source Lists. The Jury Commissioner shall prepare and keep a consolidated, master list of eligible juror candidates. The master list shall include the name and address of persons who reside in the county, and who are 18 years of age or older who are registered to vote~~r~~ and/or have been licensed or issued an identification card pursuant to Article 3 (commencing with § 12800) and Article 5 (commencing with § 13000) of Chapter 1 of Division 6 of the Vehicle Code. ~~shall be drawn from a source list comprised of the name and address of persons who reside in the county, and who are 18 years of age or older, shall include those who are registered voters, and those who have been licensed or issued an identification card pursuant to Article 3 (commencing with § 12800) and Article 5 (commencing with § 13000) of Chapter 1 of Division 6 of the Vehicle Code.~~ The master list shall be prepared to exclude those persons who completed jury service in the prior two (2) calendar years. ~~so as to avoid as much as possible duplication of eligible juror candidates and to exclude those persons who completed jury service in the prior two (2) calendar years~~.

B. Consolidated Master List. A consolidated, countywide master list shall be utilized by the Jury Commissioner in summoning jurors for the courts in the Salinas, Monterey, and Marina courthouse locations. The selection of the master jury list shall be at random from the jury source lists.

C. Preparation of Prospective Juror Lists. Except for a person nominated by the court pursuant to statutory authority therefore, the name of each prospective trial juror shall be taken by random selection from the most current master jury list.

D. Drawing of Names; Summons. The Jury Commissioner will draw from the master jury list a sufficient number of names of prospective jurors as he or she determines to be required to provide adequate jury services to the courts for a particular time period, and each person shall be summoned by first class mail to attend the court for service as a member of a trial jury panel. Once a juror has appeared for service, and prior to his or her discharge as a juror as heretofore provided, such juror may be required to report back to the court for further service upon either personal or telephonic oral direction of the court, or of the Jury Commissioner or Deputy Jury Commissioner, acting on behalf of the court.

E. Combined Jury Panels. The courts will utilize a combined, countywide jury panel for superior court trials at all court locations.

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(Adopted October 1, 1998; Amended January 1, 2003; Amended July 1, 2016)

18.03 JURY UTILIZATION PROGRAM

A. Excuse from Jury Service. The Jury Commissioner shall determine the statutory qualifications of each prospective trial juror. He or she shall exclude from the certified jury lists any person he or she shall find is not statutorily competent to serve, and may excuse from jury service such prospective trial juror who in his or her determination requests and qualifies for excuse under section 204, subdivision (b), and section 218 of the Code of Civil Procedure, provisions of the Standards of Judicial Administration, California Rules of Court, and of these rules and policies adopted by the superior court.

B. Procedure for Excuse from Jury Service. The Jury Commissioner may, upon request, defer the service of a prospective juror for good cause, transfer a juror to any court location within the county for good cause, or may excuse a prospective juror from service altogether, for either of the following reasons:

1. The prospective juror qualifies for excuse from service on the basis of one (1) of the categories set forth in the Standards of Judicial Administration, California Rules of Court as interpreted by superior court policies.

2. Other circumstances constituting undue hardship within the meaning of the statutes, Standards of Judicial Administration, or rules or policies of this court apply to the prospective trial juror, as determined by the Jury Commissioner and/or presiding judge of the court.

A request for excuse from jury service shall be addressed to and determined by the Jury Commissioner. The Jury Commissioner shall fairly weigh and consider all relevant information and he or she may personally interview the prospective trial juror when he or she deems it desirable or necessary to do so. The Jury Commissioner may refer any request to the presiding judge for his or her determination. In the event the Jury Commissioner should deny a request for excuse the prospective trial juror may request and shall be entitled to review and reconsideration by the presiding judge. The disposition of the request and the reasons therefor shall be noted upon appropriate records maintained by the Jury Commissioner.

(Adopted October 1, 1998)

18.04 SPECIAL VENIRE

Nothing contained in the foregoing rules shall preclude the Jury Commissioner, upon order of the court, from drawing from the master jury list and summoning to the court pursuant to law, a special venire for jury service in a particular case.

(Adopted October 1, 1998)

CHAPTER 19

MISCELLANEOUS RULES

19.01 CONFORMING COPIES

The court clerk will conform a maximum of two (2) copies of any document at the time of filing. Additional copies will be provided by photocopying and the standard superior court clerk fee for copies will be charged.

A. CONFORMING COPIES – CIVIL DIVISION

If a conformed copy is desired an additional copy or copies must be submitted. The court clerk will conform a maximum of two (2) copies at the time of filing. Parties requesting that the clerk's office mail them conformed copies of their filings must provide a self-addressed stamped envelope of proper size and with sufficient postage.

If the envelope provided or the postage is insufficient to mail the entire conformed copy, only the face of the pleading will be mailed and the conformed copy will be placed in the attorney/pro per pick up box for thirty (30) days.

If no envelope is provided, the conformed copy or copies will be placed in the attorney/pro per pick up box for thirty (30) days. The pickup area is located in the lobby of the first floor clerk's office.

(Rule 19.01 peremptory challenge repealed July 1, 2010; New rule 19.01 adopted July 1, 2012; Amended July 1, 2013)

19.02 SANCTIONS

Failure to comply with these rules and the California Rules of Court may result in the imposition of sanctions in the discretion of the court, including but not limited to:

A. The matter being dropped from the calendar;

B. A fine ordered paid to the clerk of the court by the responsible party and/or counsel;

C. Costs, actual expenses, counsel fees or any or all thereof arising therefrom.

(Adopted October 1, 1998)

19.03 RECORDING IN COURTS

No electronic recording of court proceedings other than by the official court reporting methods shall be permitted without approval of the court.

(Adopted October 1, 1998; Amended July 1, 2004)

19.04 PROPOSED ORDERS

(Adopted October 1, 1998; Repealed July 1, 2013)

19.05 EXHIBITS

Evidence admitted in any case before any court shall be only those items required in the case and shall be retained by the court for the minimum time required by law, unless good cause is shown to retain the evidence. No exhibit shall be received by any court if the exhibit poses a security, storage, safety, or health problem. (Pen. Code, § 1417.)

A. Exhibits which will not be received include, but are not limited to:

1. Any type of explosive powder;

2. Explosive chemicals, toluene, ethane;

3. Explosive devices, such as grenades or pipe bombs;

4. Flammable liquids such as gasoline, kerosene, lighter fluid, paint thinner, ethyl-ether;

5. Canisters containing tear gas, mace;

6. Rags which have been soaked with flammable liquids;

7. Liquid drugs such as phencyclidine (PCP), methamphetamine, corrosive liquids, pyrrolidine, morpholine, or piperidine; and

8. Samples of any bodily fluids, liquid or dried.

B. No exhibits shall be accepted by the exhibits custodian unless:

1. All containers with liquid substances are clearly marked and identified as to type and amount;

2. All containers of controlled substances are clearly marked, identified, weighed, and sealed;

3. All cash is specifically identified, whether individually or packaged, as to the total amount and number of each denomination;

4. All firearms are secured by a nylon tie or trigger guard; and

5. All hypodermic needles are placed in containers that will safeguard personnel.

C. Unless otherwise ordered, unidentified liquids, containers, controlled substances, or other suspect substances shall be returned to the party offering them.

D. A court, in its discretion, <u>may</u> admit any exhibit in the interest of justice. However, the following rules will be taken into consideration prior to approval.

1. Photographs. Original photographs shall be substituted for any photographically enlarged exhibits. A court, in its discretion, may order a photograph substituted for large or bulky exhibits which might pose a storage problem.

2. Diagrams and Charts. Diagrams and charts shall not exceed twenty-seven (27) inches by forty (40) inches without prior order of the court. Attorneys are encouraged to use the court's overhead projector and video cassette recording equipment when presenting evidence in the courtroom.

E. Upon completion of trial in any traffic case, the court shall order the immediate return of all exhibits to the offering party. The offering party shall assume total responsibility and custody of any exhibit offered or received into evidence once returned. The offering party shall not change or alter any exhibit once returned. The offering party shall provide copies of all exhibits to the opposing party if he or she has not already received copies. The offering party shall retain custody of all exhibits and make all exhibits readily available to the court within the following limits:

1. Until 60 days following judgment if no appeal is filed.

2. If an appeal is filed and the judgment is affirmed, until 30 days following the date of the the remittitur.

3. If an appeal is filed and a new trial granted, until 60 days following judgment on the new trial.

(Adopted October 1, 1998; Amended July 1, 2000, Amended January 1, 2016)

19.06 REPEALED

(Adopted October 1, 1998; Amended January 1, 2002; Amended July 1, 2007; Amended January 1, 2011 Use of Correction Fluid or Tape on Documents and Papers – Repealed July 1, 2016)

19.07 TAPING AND EDITING RULES FOR VIDEO DEPOSITIONS

In addition to the requirements of Civil Code of Procedure section 2025.340, the following rules shall be followed regarding the recording and editing of video depositions.

A. TAPING OF VIDEO DEPOSITION:

1. Head and shoulders view of witness only;

2. No split screen allowed;

3. A plain background shall be used; no photographs or pictures shall be in the background;

4. Only normal room lighting shall be used; no additional lighting shall be used without court permission or agreement of opposing counsel; and

5. The running time for the video shall be displayed at the bottom of the picture.

B. EDITING OF VIDEO DEPOSITION:

1. Full questions and answers are required;

2. Pauses shall remain in questions and answers;

3. Pauses at end of answer and before next question may be edited out;

4. Introduction of subject matter for a section of video by non-argumentative description is allowed (e.g., voice over of trial counsel or character display);

Objections and comments of counsel on record shall be edited out;

5. An edited version of the video deposition shall be exchanged with counsel thirty (30) days before the pre-trial or settlement conference;

6. Sections of the video deposition offered for impeachment must comply with these recording and editing rules, but exchange between counsel is not required before trial; and

7. At the time of the use of impeaching material, opposing counsel and the court must be provided with marked transcript pages or pages and line numbers.

(Adopted October 1, 1998; Amended January 1, 2008)

19.08 COPIES OF PLEADINGS, JUDGMENTS AND ORDERS

Attorneys and self-represented litigants must comply with the requirements for submission of pleadings, orders, and judgments. ~~and the required number of copies as set forth in rule 17.06.~~

(Adopted July 1, 2009; Amend July 1, 2016)

19.09 LEGAL DOCUMENT ASSISTANTS

All legal document assistants as defined by Business & Professions Code section 22440 et. seq. (Immigration Consultants), or Business & Professions Code section 6400 et. seq. (Legal Document Assistants and Unlawful Detainer Assistants) shall comply with the requirements of Business & Professions Code section 6408.

Failure to comply with Business & Professions Code section 6408 will be treated the same as failure to comply with Rule 2.100-119 of the California Rules of Court.

(Adopted July 1, 2000; Amended January 1, 2007; Amended July 1, 2015)

19.10 ONLINE AND HOME STUDY TRAFFIC SCHOOL COURSES

Court-approved online and home study courses are authorized only in adult cases and not in juvenile traffic matters.

(Adopted March 26, 2001; Amended January 1, 2008; Amended July 1, 2010; Amended July 1, 2013)

19.11 COURT REPORTING SERVICES

Pursuant to California Rules of Court 2.956, and Government code Section 68086, the Court hereby adopts the following policy as a local rule. (Amended effective January 1, 2007)

The Court provides services of official court reporters in all criminal and juvenile matters as required by law during regular court hours.

In addition, the chart reflects hearing types where the court does not provide services of an official court reporter.

Hearing Types	Official Reporter provided by the Court?
Civil settlement conference	Yes
Civil harassment	Yes
Civil ex-parte	Yes
Civil court trials	No
Civil jury trials	No
Civil collection – Rule of Court 3.740	No
Civil unlawful detainer	No
Civil labor appeal	No
Family Law domestic violence restraining order	Yes
Family Law attorney-represented law & motion	Yes
Family Law self-represented law & motion	Yes
Family Law court trials/hearings – under one day*	Yes
Family Law court trials/hearings – over one day*	No
Family Law settlement conference	Yes
Family Law evidentiary/trial – domestic violence	Yes
Family Law nullity, special setting under one day	Yes
Child Support – Department of Child Support	No
Probate law & motion	Yes
Probate/Civil – Compromise Claim of Minor	Yes
Small claims motions	No
Small claims court trials	No
Small claims appeals	No

*The "day" is the date that the family law trial or hearing begins.

(Adopted January 1, 2003; Amended April 1, 2003; Amended January 1, 2005; Amended January 1, 2007; Amended July 1, 2015)

19.12 FILING OF CASES

Cases subject to mandatory e-filing shall be filed as provided in Rule 1.06. Otherwise, ~~C~~cases within the jurisdiction of the Superior Court of California, County of Monterey may be delivered to the Salinas, Marina, or Monterey courthouse, but will be filed only in the location of appropriate jurisdiction. Cases delivered to a court location that does not have current jurisdiction shall be date stamped as "received" and transported by court courier to the appropriate division location. Any such case shall be deemed "filed" at the date and time it is "received" stamped at any authorized courthouse. All new complaints and/or documents submitted for filing shall be deemed not filed if after careful review are found to be incomplete and/or filings fees were not submitted and will be returned unprocessed to the submitting party.

(Adopted January 1, 2006; Amended July 1, 2016)

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19.13 INTERPRETER SERVICES

~~Interpreters will not be provided for civil or small claims matters, unless required by law or court order.~~ Any party requiring the services of an interpreter shall be responsible for notifying the court of the requested services. The court retains discretion to provide interpretation services. ~~arranging and paying for the services of such interpreter.~~

(Adopted January 1, 2005; Amended July 1, 2016)

19.14 MEDIA COVERAGE OF COURT PROCEEDINGS

A. Requests for Coverage.

Requests for media coverage are governed by California Rules of Court, rule 1.150. The rules, forms, and policy are available on the court's public website at www.monterey.courts.ca.gov under the Media tab or through the clerk's office.

B. Limitations on Recording:

Consistent with the limitations set forth in the California Rules of Court, the video or audio recording in the courtroom of any victim or witness, other than a defendant in a criminal case, is prohibited unless specifically authorized by the court. This rule shall apply to all images and statements of a victim or witness in court, whether live or prerecorded.

(Adopted January 1, 2010)

19.15 JUDICIAL DISQUALIFICATION

When a judicial officer is disqualified, either on peremptory challenge or for cause, the matter will be referred for reassignment by the Presiding judge or designee.

(Adopted July 1, 2012; Amended July 1, 2013; Amended July 1, 2015)

19.16 COURT FORMS

Forms adopted by the Monterey County Superior Court are indexed on the public website. Those adopted for mandatory use are marked with an asterisk. All other forms are for optional use.

Forms are available on the Court's public website at:
http://www.monterey.courts.ca.gov/Documents/Forms/

* Forms marked with the asterisk are adopted for mandatory use by Monterey County Superior Court

Form	Date Revised	Description
CI-115	July 2013	Request For Record Search and Copies
CI-116	July 2013	Request For Court File
CI-117	July 2013	Request For Electronic Recording of Court Proceedings
CI-118	September 2013	Application for an Order for Publication of Summons or Citation
CI-119	September 2013	Order for Publication of Summons or Citation
CI-120 *	September 2013	At-Issue Memorandum, Certificate of Readiness
CI-121 *	September 2013	Declaration in Support and Order for Warrant of Attachment
CI-122 *	September 2013	Warrant of Attachment
CI-123 *	September 2013	Request for Referral to Court Investigator - Confidential
CI-124	September 2013	Petition to Examine Confidential or Sealed Records
CI-125	September 2013	Order on Petition to Examine Confidential or Sealed Records
CI-126 *	September 2013	Financial Documents Caption Sheet
CI-128	September 2013	Request to Vacate or Continue Initial Case Management Conference and Order
CI-129	September 2013	Declaration of Due Diligence
CI-130 *	September 2013	Confidential Declaration Regarding Household Members
CI-132	January 2014	Declaration of Judgment Debtor Regarding Satisfaction of Judgment (Small Claims)
CI-133 *	April 2014	Request to Set Hearing
CI-134 *	March 2015	Conservator Viewing Receipt
CI-135 *	July 2015	Notice Of Status Conference
CI-137	July 2015	Legal Steps for Filing a Parentage Case
CI-138	July 2015	List of Local Resources
CR-109	July 2011	Request for Record Search and Copies
CR-113	December 2014	Petition For Recalling of Sentence and Resentencing
CR-114	December 2014	District Attorny's Response
CR-115	December 2014	Order Pursuant To Penal Code 1170.18
CR-180	January 2015	1203.4 Petition for Dismissal - Additional instrctions are provided on the criminal records page, and in the Instruction Packets section see below
CR-181	January 2015	1203.4 Order for Dismissal
GEN-116	April 2014	Request for Court File
GEN-117	April 2014	Request for Electronic Recordings
MCR-4	April 2010	Application for Modification of Sentence/Probation
SCR-203	January 2011	Request for Transcripts