

**Proposed Amendments to the Local Rules of Court  
effective January 1, 2010**

**CHAPTER 3 – JUVENILE DEPARTMENT**

**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 effective October 1, 1998; Amended effective 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 effective October 1, 1998; Amended effective January 1, 2010.)

**CHAPTER 4 - PROBATE DEPARTMENT**

**4.05 MATERIAL TO BE INCLUDED IN PROBATE ORDERS**

- a) Complete in Themselves. Orders shall contain the name of the judge presiding, the date of hearing and the department. 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 so drawn that 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. All pages of the Order shall include the case name and number in a footer or header.
- b) 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.
- c) Whenever an Order shall be submitted to the Court, it will be accompanied by two complete, legible copies, along with copies of all documents attached to the proposed Order. (Adopted effective October 1, 1998; Amended effective January 1, 2002; Rule 4.04 Renumbered as 4.05 and Amended effective January 1, 2009; Amended January 1, 2010.)

#### 4.26 BONDING OF PERSONAL REPRESENTATIVES

- a) Waiver of Bond in Will. The fact that bond has been waived in the will should be alleged. Bond may be required for an executor who resides outside California even though waived in the will.
- b) Waiver of Bond Ineffective. Where bond has been waived as to specifically named individuals and those individuals do not act, the waiver of bond is ineffective.
- c) Two or More Executors. If the will names two or more executors but all do not wish to serve or cannot serve in such capacity and the will does not specifically waive bond as to less than the number specified, a bond may be required of those who do qualify.
- ~~d) Separate Bonds for Individuals. A corporate representative cannot assume responsibility for the acts of any individual co-representative. An individual must provide separate bond as required by law unless the assets are to be held solely by the corporate co-representative, pursuant to Court order.~~
- (d) 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.
- e) Increase or Reduction of Bond. When the bond must be increased, the Court favors the filing of an additional bond rather than a substitute bond; when the bond may be reduced, the Court favors the use of an order reducing the liability on the existing bond rather than the filing of a substitute bond. All petitions for reduction of bond must be noticed and set for hearing.
- f) Duty to Petition to Increase. It is the duty of an estate representative, or counsel, if counsel becomes aware of facts evidencing that the bond should be increased, to petition the Court for an ex parte order increasing the bond to the total appraised value of personal property on hand plus one year's estimated annual income from real and personal property. See also Local Rule 4.46 for required statement of counsel on "Inventory and Appraisal."
- 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.
- h) Bond for Sale of Real Property. In all cases where independent powers to sell real property are granted (i.e., full power), the Court will require a bond covering the value of the real property, unless bond is statutorily waived. When an additional bond is required upon an order confirming sale of real property the additional bond should be submitted with the proposed order. The order will not be signed until the additional bond is filed. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Amended effective January 1, 2008; Rule

4.23 Renumbered as 4.26 and Amended effective January 1, 2009; Amended effective January 1, 2010.)

#### **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 90 days after the date on which letters are first issued to a general personal representative. (Adopted effective October 1, 1998; Rule 4.52 Renumbered as 4.55 effective January 1, 2009; Amended effective January 1, 2010.)

#### **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 addresses 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.~~

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 effective October 1, 1998; Rule 4.66 Renumbered as 4.69 effective January 1, 2009; Amended effective January 1, 2010.)

#### **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 effective January 1, 2010.)

#### **MEDIATION PROGRAM**

##### **4.73-4.74 PROBATE MEDIATION PROGRAM RULES**

(See rule 6.12, Court-Directed Mediation Program Rules.)  
(Adopted effective October 1, 1998; Rule 4.70 Renumbered to 4.73 effective January 1, 2009; Rule 4.73 renumbered to 4.74 effective January 1, 2010)

## CHAPTER 5 - CONSERVATORSHIPS AND GUARDIANSHIPS

### 5.01 FILINGS

a) With the exception of Judicial Council Forms, all separately filed Pleadings must include in the caption, the date, time, and place of hearing.

b) In all case types, Petitioners must provide information related to their personal residential address, home telephone number, work address, work telephone number, and cell phone number, if any. This information may be filed as a confidential document

c) A copy of all documents filed in a conservatorship proceeding must be served on the Court Investigator at the Monterey Branch of the Superior Court located at 1200 Aguajito Road, Monterey, CA 93940. Service may not be made to the Court investigator via facsimile without prior authorization from the Investigator's assistant. Service on the Investigator ~~Such service~~ shall be reflected on the appropriate Proof of Service or Notice of Hearing filed with the Court.

d) In accordance with the Information Practices Act of 1977 (Civil Codes sections 1798-1798.97), all files that contain any "personal information" identifying or describing an individual by means of those which include, but are not limited to, social security number, home address or telephone number, financial matters, maiden name, medical or employment records, drivers license, or statements made by, or attributed to, the individual, shall be filed with the Court as confidential documents. The information contained in these files shall only be disclosed where and how the Information Practices Act of 1977 permits.

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

f) The Court Investigator fee 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. (Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2004; Amended effective January 1, 2007; Amended effective January 1, 2010.)

### 5.33 ASSESSMENTS (Probate Code section 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.

- ~~a) Assessments for court investigations are due and payable at the time of filing an accounting or request for waiver of accounting and at the time of filing a petition to appoint successor conservator, unless deferred by order of the Court on the basis of hardship. Additionally, assessments previously deferred under prior law are now due and payable at the time of the next scheduled Court Review, unless deferred by order of the Court on the basis of 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 effective October 1, 1998; Amended effective July 1, 2004; Rule 5.27 Renumbered as 5.33 effective January 1, 2009; Amended effective January 1, 2010.)

## **GUARDIANSHIPS**

### **5.35 APPOINTMENT OF GENERAL GUARDIANS**

- a) Petition. Petitions for appointment of guardians of minors are generally set for hearing. Bond and/or blocked accounts will be required for all estate guardianships.
- b) Supporting Declarations. The petition for appointment of guardian must be accompanied by:
- 1) The Declaration Under Uniform Child Custody Jurisdiction Act (Clerk's Form 770), Judicial Council Form GC 212 "Confidential Guardian Screening Form" and;
  - 2) A Declaration setting forth the following:
    - a. The reason for establishing the proposed guardianship;
    - b. The relationship of the proposed ward to the proposed guardian, including the duration and character of the relationship and what responsibilities for care, if any, the proposed guardian has had regarding the proposed ward. (Probate Code section 1513(a)(3))
    - c. The circumstances under which the proposed guardian acquired physical custody of the proposed ward, if the proposed guardian has physical custody

of the proposed ward at the time the petition is filed. (Probate Code section 1513(a)(3))

- d. Any developmental, emotional, psychological, or educational needs of the proposed ward that have been identified and the capability of the proposed guardian to meet these needs. (Probate Code section 1513(a)(2))
  - e. The anticipated duration of the proposed guardianship and the plans of both the natural parents and the proposed guardian for a stable and permanent home for the child. (Probate Code section 1513(a)(4))
  - f. The criminal history, if any, of the proposed guardian or a statement that the proposed guardian has no criminal history.
  - g. For each proposed guardian:
    - Date of birth;
    - Social security number;
    - Maiden name, if applicable;
    - Any aliases;
    - Home and work telephone numbers.
  - h. The name, age, relationship and social security number of any person, living in the household who is sixteen (16) years of age or older must also be provided.
- c) Notice. Fifteen (15) days notice by personal service must be given to non-petitioning parents, to the minor, if 12 years of age or older, and to the person or persons having custody. Fifteen (15) days notice by mail must be given to all second degree relatives.

See also Probate Code section 1461 and 1516 for other persons or entities that may require notice by mail.

In some cases notice may be dispensed with, as where waivers of notice and consents have been obtained from both of the minor's parents or from the minor, if 12 years of age or older. Notice may also be dispensed with upon a proper showing, where the Court determines it to be "in the interests of justice."

- d) 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 minor, if the minors are siblings. In all other instances separate applications must be filed.
- e) 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 effective October 1, 1998; Amended effective July 1, 2001; Rule 5.29 Renumbered as 5.35 effective January 1, 2009; Amended effective January 1, 2010.)

## CHAPTER 6 - CIVIL DEPARTMENT

### 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.

Civil Harassment cases may be considered eligible for this program if the case involves issues normally subject to civil litigation. The determination of suitability can be made either at the time of the submission of a Temporary Restraining Order or upon hearing of the matter.

- b) Mediators.

1. Appointment. If the parties accept the Court's determination and agree to mediation, the Court will assign the case for mediation before one of two mediators, one of whom shall be the assigned mediator and other shall be the alternate mediator who shall take the case in the event of a conflict of interest with the assigned mediator. At the case management conference, the Court shall issue to the parties a Notice of Referral to Mediation having the form set forth in Appendix E to these rules. The Court shall select the assigned and alternate mediators from the Mediator Panel compiled by the Mediator Credentials Committee of the Mandell-Gisnet Center for Conflict Resolution, Monterey College of Law. Membership on that panel shall be approved by the Court, and the list of panel members shall be published on the Court's web site. If both the assigned and alternate mediators have conflicts of interests, the parties shall stipulate to mediation before a mediator willing to serve who is a member of the Mediator Panel.

Since there is no requirement for Case Management in Civil Harassment cases, the Notice of Referral will be issued when the determination is made by the court and the terms of such notice may be modified as appropriate to accommodate the different procedural structure for Harassment cases.

2. Compensation. Mediators shall volunteer their preparation time and the first two (2) hours of mediation. After two 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 procedure 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 hours in one 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 10 days of their appearance at the Case Management Conference at which mediation is ordered, the parties shall confer with the assigned mediator and, if necessary, the alternate mediator, to determine whether conflicts of interest exist. They shall also deliver complete copies of their Case Management Statements and a copy of the Notice of Referral to Mediation to the mediator.

2. Scheduling by Mediator. Promptly after being appointed to a case, the parties shall contact the mediator who shall inform counsel of the dates on which the mediator can be available for mediation ("potential dates"). Counsel shall then confer with their clients and each other, and counsel representing plaintiff shall then inform the mediator which of the potential dates is 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, or in the Notice of Referral to Mediation. 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 held within 90 days after the Court orders the matter to mediation.

d) Written Mediation Statements.

1. Time for Submission. No later than 10 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. Prohibiting 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:

i. 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;

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

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

iv. 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

v. 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 unless excuse under paragraph 4, below. 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 hear first hand. Mediation also enables parties to collaborate in the search for mutually agreeable solutions.

i. 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.

ii. 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 or more individuals, at least one 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 unless excused under paragraph 4, below.

4. Request to be Excused. 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.

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 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:

- i. disclosed to anyone not involved in the litigation’
- ii. disclosed to the Court; or
- iii. 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:

- i. disclosures as may be stipulated by all parties and the mediator;
- ii. a report to or any inquiry by the Court regarding a possible violation of these Mediation Program rules;
- iii. 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
- iv. 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 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], and shall serve a copy of the Statement of Agreement or Non-Agreement on the Monterey County Bar Association.

k) Membership on the Mediator Panel.

1. The Court has established an Alternative Dispute Resolution (ADR) Committee pursuant to California Rules of Court 10.782 and 10.783. The Committee is

responsible for overseeing the ADR programs for general civil cases, including the responsibilities specified in 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 Presiding 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 attorney or retired judge may apply to the ADR Committee for membership on the Court directed mediation panel by submitting a letter application to the ADR Coordinator at the Monterey County Superior Court. The application shall state the applicant's mediation training and experience, and include at least three references from individuals who have participated in a mediation conducted by the applicant. 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.

#### I) Procedures for Handling Complaints 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 3.865–3.862 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:

(1) "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.

(2) "Court-program mediator" means a mediator who:

(a) 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

(b) 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.

(3) "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.

(4) "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.

(5) "Complainant" means the person who makes or presents a complaint.

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

(7) "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.

(8) "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.

(b) 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.

(1) 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.

(2) 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.

(3) With the consent of the supervising civil judge, 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.

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

(D) 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 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.

### (a) 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 (c).

### (b) 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:

- (1) A copy of the complaint;
- (2) A copy or summary of any response from the mediator;
- (3) A list of any violation of the rules of conduct that it appears may have occurred; and
- (4) Copies of any previous complaints about the mediator and any written summaries of inquiries that are relevant to the current complaint.

### (c) 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.

### (d) Mediator's notice and opportunity to respond.

(1) 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).

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

### (e) 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 or more actions that are permissible under rule 3.870 of the California Rules of Court.

(f) 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.

(g) 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 6.15(h) or for designating another judicial officer or a committee that includes a judicial officer to perform this function.

(b) Acting on recommendation.

(1) Within 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.

(2) If the supervising civil judge or designee does not submit a decision within 30 days after the complaint committee's recommendation is forwarded, as provided in (1), 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 presiding 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 presiding civil judge or the designee regarding such a suspension. (Adopted effective January 1, 2006; Amended effective January 1, 2008; Subd. f (6) Added and Rule Amended effective January 1, 2009; (Amended effective January 1, 2010.)

## **CHAPTER 9 - APPELLATE DEPARTMENT**

### **9.01 JURISDICTION**

The Appellate Department of the Superior Court of California, County of Monterey has jurisdiction over all appeals and writs in infraction, misdemeanor and limited civil (not small claims) cases arising out of Courts in Monterey County.

General rules applicable to Appellate Department proceedings are set forth in California Rules of Court, Rule 8.800, et seq. (Adopted effective October 1, 1998; Amended effective July 1, 2003, Amended effective January 1, 2006; Amended effective January 10, 2010.)

### **9.02 JUDICIAL ASSIGNMENT AND SESSIONS**

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

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

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

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

### **9.03 RECORD ON APPEAL**

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

Use of an official electronic recording as the record of the oral proceedings in the trial court is permitted by stipulation of the parties or by application to the court for an order permitting its use. (California Rules of Court, rules 8.835, 8.864, 8.915.) (Adopted effective October 1, 1998; Amended effective January 1, 2006; Amended effective January 1, 2007; Amended effective January 1, 2010.)

### **9.04 BRIEFS**

The original brief submitted for filing must be accompanied by three copies. (Amended effective January 1, 2007; Amended effective 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 effective October 1, 1998; Amended effective January 1, 2007; Amended effective January 1, 2010.)

## **CHAPTER 10 – FAMILY LAW DEPARTMENT**

### **10.08 DEPARTMENT OF CHILD SUPPORT SERVICES**

#### **A. APPEARANCES BY TELEPHONE**

##### **1. General Provisions**

In Department of Child Support Services' cases, a party who resides outside California may request permission of the court to appear by telephone in any hearing or conference. Any party who resides within California may, on the basis of hardship, request permission of the court to appear by telephone in any hearing or conference.

Requests for appearance by telephone will not be granted unless the requesting party has filed with the court and served on the other parties a complete Income and Expense Declaration or Financial Statement (Simplified) including attachments (W-2

forms or 1099 forms and last three pay stubs, copy of Unemployment Insurance Benefit checks, etc.). If self-employed, a copy of the party's last Income Tax Return should be served on the parties and a copy submitted to the court.

The determination as to whether a party may appear by telephone will be made on a case-by-case basis. The Court shall ensure that the appearance of one or more parties by telephone does not result in prejudice to the parties appearing in person.

At any time before or during a proceeding or hearing, the court may determine that a personal appearance would materially assist it in deciding the proceeding or hearing and order the matter continued. .

## 2. Requests

Requests for appearance by telephone and opposition to such requests shall be made in compliance with California Rules of Court, Family Law Rules, Chapter 7, section 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 effective January 1, 2007)

## 3. Court Order on Application

All requests and opposition papers must include a day time telephone number capable of accepting collect calls. For notification purposes, the party may also supply a fax number, if available. At least five (5) court days before the hearing, the court will notify the parties, a parent who has not been joined to the action, and attorneys, if any, of its decision on the request for a telephone hearing. This notice may be given by telephone, in person, by fax, express mail, e-mail, or other reasonable means to ensure notification no later than five (5) court days before the hearing date. (Amended effective January 1, 2007)

## 4. Court Order on Application

All requests and opposition papers must include a day time telephone number capable of accepting collect calls. For notification purposes, the party may also supply a Fax number, if available. If no opposition is filed, the court will rule on the application at least eight (8) days before the hearing. If the court has not ruled on the application by that time, the application is deemed granted. If opposition is filed, the parties will be notified of the judicial officer's decision at least 48 hours before the hearing.

## 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 there order provides for payment of a percentage or ration of child care costs (Monterey County form to parallel the Medical Reimbursement form).

#### C. 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. (Adopted effective January 1, 2005; Amended effective January 1, 2007; **Amended effective January 1, 2010**)

#### ~~D. PARTY DESIGNATION~~

~~For the sake of clarity in DCSS cases the terms "Father" and "Mother" rather than "Petitioner" and "Respondent" shall be used in all declaration (other than Judicial Council forms) and in argument in court~~

### 10.09 MISCELLANEOUS RULES

#### A. DUPLICATE FILING

Copies of previously filed pleadings, declarations or other documents should not be attached as exhibits to subsequent documents. Reference to the previous documents is sufficient. (Previously Rule 10.08, B, Adopted effective July 1, 2000; Re-lettered as 10.08 A effective January 1, 2009)

#### B. CONFIDENTIAL RECORDS

It is the responsibility of the filing party to identify any documents that may be considered confidential and to seal such documents when filed with the Court. Such documents may include tax returns, medical reports, 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 sealed, the Clerk of the Court will not act to seal the documents. Unless sealed by the filing party, the documents will be considered as open and public, upon filing with the Clerk. **Refer to Local Rule 10.08.G.** Sealed Documents listed below, for instruction in filing confidential documents.

#### C. PLEADING FOR ADVERSE PARTY

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 the 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. (Amended effective January 1, 2007)

#### 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 180 calendar days from the date the case is dropped from the trial calendar.

#### F. SEALED DOCUMENTS

Any confidential documents shall be submitted for filing in a clasped envelope not smaller than 7 inches by 10 inches nor larger than 8 1/2 by 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. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2000; Amended effective July 1, 2001; Amended effective January 1, 2002; Amended effective January 1, 2007; **Amended effective January 1, 2010.**)

### **CHAPTER 16 – MENTAL HEALTH DEPARTMENT**

#### **16.03 JURY TRIALS**

If a jury trial is demanded, the trial date will be set by the Mental Health Judge. ~~The case will then be transferred to the Presiding Judge for assignment on the master calendar.~~ (Adopted effective October 1, 1998; **Amended effective January 1, 2010.**)

### **CHAPTER 19 – MISCELLANEOUS**

#### **19.14 MEDIA COVERAGE OF COURT PROCEEDINGS**

##### **A. Requests for Coverage.**

Requests for media coverage are governed by California Rules of Court (CRC) Rule 1.150. The rules, forms and policy are available on the court's Public Website ([www.monterey.courts.ca.gov](http://www.monterey.courts.ca.gov)) under the Media tab or through the Clerk's office.

##### **B. Limitations on Recording:**

In addition to the limitations set forth in the California Rules of Court, the video or audio recording 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, whether live or prerecorded. Nothing in this rule shall limit a judicial officer's discretion to impose lesser or greater restrictions than those set forth here. (Adopted effective January 1, 2010.)