Superior Court of California
In and for
County of Monterey

Local Rules of Court

Effective January 1, 2009

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

Superior Court of California, County of Monterey
Local Rules of Court

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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. (Adopted effective October 1, 1998)

1.02 CALENDAR ASSIGNMENTS

In December the Presiding Judge-elect shall designate the calendar assignments for the coming calendar year in accordance with the California Rules of Court. (Adopted effective October 1, 1998; Amended effective July 1, 1999)

1.03 MASTER AND DIRECT CALENDAR

1. Master Calendar. All civil trials pending in the Superior Court of the County of Monterey shall be assigned under the master calendar system. The master calendar in Monterey will be presided over by the Supervising Judge of the Monterey Branch.

2. Direct Calendar. All misdemeanor and felony trials shall be assigned under the Direct Calendar system. Any changes to the assigned calendar will be presided over by the Presiding Judge in Salinas.

(Adopted effective October 1, 1998; Amended effective January 1, 2001; (Amended effective January 1, 2004)

1.04 JUDICIAL ASSIGNMENTS

2009 JUDICIAL ASSIGNMENTS

SALINAS COURT COMPLEX	
DEPARTMENT 1 Building 1	**Hon. Adrienne M. Grover** *Presiding Judge* Felony Arraignment Department Grand Jury Legal Advisor Jury Pool Orientation
DEPARTMENT 2 Building 1	**Hon. Russell D. Scott** *Past Presiding Judge* Felony Criminal Department Appellate Division, Presiding

DEPARTMENT 3 Building 1	**Hon. Terrance R. Duncan** Felony Criminal Department
DEPARTMENT 4 East Wing – 2nd Floor	**Hon. Larry E. Hayes** Felony Criminal Department Criminal Mental Health Department
DEPARTMENT 5 Building 3	**Hon. Mark E. Hood** Misdemeanor Criminal Department *[3rd misdemeanor dept. beginning 1-20-09]
DEPARTMENT 6 Building 5	**Hon. Thomas W. Wills** Misdemeanor Criminal Department *[Includes DV cases beginning 1-20-09]
DEPARTMENT 7 Building 5	**Hon. Efren N. Iglesia** Misdemeanor Criminal Department
DEPARTMENT 8 East Wing – 2nd Floor [**DEPARTMENT 8 A** – Prison Video Arraignments - Every other Thursday – Department 4, East Wing]	**Hon. Timothy P. Roberts** Felony Criminal Department Prison Cases (Criminal) Appellate Division
DEPARTMENT 9 West Wing – 3rd Floor	**Hon. Sam Lavorato, Jr.** Drug Court (Including Prop. 36) Criminal Writ Department
DEPARTMENT 10 West Wing – 3rd Floor	**Hon. Robert A. Burlison** Criminal Domestic Violence Court *[DV trial dept. beginning 1-20-09] Civil DV/Harassment Restraining Orders
DEPARTMENT 11 118 W. Gabilan Street Salinas	**Hon. Richard M. Curtis** Drug Treatment Court Juvenile Dependency Department Civil Mental Health Calendar

DEPARTMENT 12 1422 Natividad Road Salinas	**Hon. Jonathan R. Price** Juvenile Delinquency Department
MONTEREY COURTHOUSE	
DEPARTMENT 13 3rd Floor	**Hon. Marla O. Anderson** Family Law Department
DEPARTMENT: [**Department 16**, Child Support Services Calendar Tuesdays - 1st Floor] [**Department 13**, Family Law & Motion (Self-Represented) & Civil Domestic Violence Calendars–Thursdays - 3rd Floor]	**Commissioner Diana C. Baker** Child Support Services Calendar Self-Represented Family Law & Motion Civil Domestic Violence Restraining Orders
DEPARTMENT 14 2nd Floor	**Hon. Robert O'Farrell** *Supervising Judge, Civil Department* Master Civil Calendar Civil Trial Department Civil Law & Motion Calendar
DEPARTMENT 15 2nd Floor	**Hon. Susan M. Dauphiné** Civil Trial Department
DEPARTMENT 16 1st Floor	**Hon. Lydia M. Villarreal** Civil Trial Department
DEPARTMENT 17 1st Floor	**Hon. Kay T. Kingsley** Civil Trial Department Probate Department Appellate Division, Alternate
DEPARTMENT TBD [Monday Afternoons]	**Commissioner Christopher R. Martin** Small Claims Calendar

KING CITY COURTHOUSE	
DEPARTMENT 18 [Tuesdays, Wednesdays, Thursdays]	**Hon. Albert H. Maldonado** Criminal Department Appellate Division [Available for assignment Mondays & Fridays]
DEPARTMENT 19 [Thursdays]	**Commissioner Christopher R. Martin** Traffic Court
MARINA COURTHOUSE	
DEPARTMENT 20	**Commissioner Christopher R. Martin** Traffic Court Truancy Calendar

*Current Judicial Assignments can be viewed on the Court's website at www.monterey.courts.ca.gov

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

1.05 COURT HOLIDAYS

New Year's Day **2009**	January 1 – Thursday
Dr. Martin Luther King, Jr. Day	January 19 – Monday
Lincoln's Day	February 12 – Thursday
President's Day	February 16 – Monday
Cesar Chavez Day	March 31 – Tuesday
Memorial Day	May 25 – Monday
Independence Day	July 3 – Friday
Labor Day	September 7 – Monday
Columbus Day	October 12 – Monday
Veterans Day*	November 11 – Wednesday
Thanksgiving Day	November 26 – Thursday
Day After Thanksgiving Day	November 27 - Friday
Christmas Day	December 25 – Friday

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, pursuant to California Rules of Court, rule 1.11. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective January 1, 2000; Amended effective January 1, 2001; Amended effective January 1, 2002; Amended effective July 1, 2003; Amended effective January 1, 2004; Amended effective January 1, 2005; Amended effective January 1, 2007; Amended effective January 1, 2008; Amended effective January 1, 2009)

1.06 JUDICIAL LEAVE DAY DEFINED

For purposes of recording judicial leave under CRC 10.603(c)(2)(H), leave shall be reported and recorded in half day increments. Whenever a judge will be unavailable to handle court calendars and other court business for an entire morning session (8:00 a.m.-12:00 p.m.) or an entire afternoon session (1:00 p.m. – 5:00 p.m.), leave will be recorded against that judge's accrual for each such half day absence. For leave totaling seven hours or more in a single day, the Presiding Judge shall have the discretion to direct such leave to be recorded as either one half day or a full day. (Adopted effective January 1, 2009)

CHAPTER 2

MONTEREY BRANCH

2.01 DAILY MONTEREY SESSION

A daily session of this Court, which shall be called the Monterey Session, shall be held in the County Courthouse in the City of Monterey, California, commencing July 1, 1969, and such session shall be presided over by judges who shall be designated by the Presiding Judge.

The courthouse in Monterey is located at 1200 Aguajito Road, Monterey, California 93940. (Adopted effective October 1, 1998)

2.02 VENUE - MONTEREY BRANCH

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

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

2. 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 effective October 1, 1998; Amended effective January 1, 2001; Amended effective January 1, 2004; Amended effective July 1, 2005; Amended effective January 1, 2008)

2.03 TRANSFER TO OR FROM MONTEREY SESSIONS

Any action or proceeding may, for good cause, be transferred from the Monterey Session to the Session at the County Seat or vice versa, on motion by any party or the Court. (Adopted effective October 1, 1998; Amended (renumbered) effective January 1, 2001)

2.04 COURT CALENDAR

The Presiding Judge at the Monterey Session 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 effective October 1, 1998; Amended (renumbered) effective January 1, 2001)

2.05 COURT DROP BOX

In order to accommodate the need for alternative filing methods, the Court has established a Drop Box at the Monterey Division. The Drop Box is available 24 hours a day for depositing documents for filing with the Court Clerk's Office and is located at the curb directly adjacent to the parking area closest to the building.

The contents of the drop box are retrieved each business day at 8:00 a.m. and are deemed filed the prior business day, if accepted for filing after review by the clerk.

Documents should be placed in an envelope so they are intact after depositing in the drop box. **Please do not deposit cash**. All documents with filing deadlines of less than two court days should be filed at the Clerk's Office Window(s) and any documents requiring expeditious processing should be filed at the Clerk's Office Window(s) during regular business hours, Monday through Friday, 8:00 a.m. to 4:00 p.m. (Adopted effective January 1, 2009)

CHAP TER 3

JUVENILE DEPARTMENT

3.01 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 court 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 effective October 1, 1998; Amended effective January 1, 2004)

3.02 SESSIONS

JUVENILE DELINQUENCY

Juvenile Delinquency court sessions are held in the Superior Court Juvenile Branch located at the Probation Department Building, 1422 Natividad Road, Salinas, California 93906. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

JUVENILE DEPENDENCY

Juvenile Dependency court sessions are held at the Salinas Courthouse, 240 Church Street, Salinas, California 93901. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

3.03 FILING OF PAPERS

All papers are to be filed and maintained in the Clerk of the Court Office at the courthouse in Salinas. (Adopted effective October 1, 1998)

3.04 CALENDAR

See Chapter 3, Appendix – Juvenile Court Calendars (Amended effective July 1, 2002; Amended effective July 1, 2005; Amended effective January 2, 2006; Amended effective January 1, 2008)

3.05 RELEASE OF JUVENILE CASE INFORMATION

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

IT IS HEREBY ORDERED:

I. The Monterey County District Attorney's Office and County Counsel's Office, probation officers, Child Protective Services workers, adoption workers and law enforcement officials within Monterey County when the best interest of the child will be served, and for

governmental purposes only, may release limited information in their possession as outlined in Section II of this order to the following:

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

II. Such information shall be limited to the following:

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

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

a) the person provides diagnostic, assessment or treatment services to the parents or minors in furtherance of the service plan for the parents or minors,

b) the person, in the judgment of the social worker, needs to know the information to be disclosed in order to facilitate the provision of such services, and

c) the person is subject to statutory, contractual, or professional rules of confidentiality that would protect the information from further dissemination.

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

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

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

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

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

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

This Rule does not prohibit release of information by district attorneys, probation officers or law enforcement agencies about crimes or the contents of arrest reports except insofar as it discloses the minor's identity. (Adopted effective October 1, 1998; Amended effective July 1, 1999)

3.06 COURT APPOINTED SPECIAL ADVOCATE PROGRAM

A. The Superior Court may appoint child advocates to represent and report to the court on the interests of dependent children. In order to qualify for appointment the child advocate must be trained by and function under the auspices of a Court Appointed Special Advocate Program, formed and operating under the guidelines established by the National Court Appointed Special Advocate Association. (W & I 1356.5)

The advocate program shall report regularly to the Presiding Judge of the Courts and Judges of the Juvenile Dependency and Juvenile Delinquency Courts with evidence that it is operating under the guidelines established by the National Court Appointed Special Advocate Association and the California State Guidelines for child advocates. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective January 1, 2000; Amended effective July 1, 2002)

3.07 CHILD ADVOCATES

A. ADVOCATES' FUNCTIONS

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

1) to support the child throughout the Court proceedings;
2) to establish a relationship with the child to better understand his or her particular needs and desires;
3) to communicate the child's needs and desires to the Court in written reports and recommendations;
4) to identify and explore potential resources which will facilitate early family reunification or alternative permanency planning;
5) to provide continuous attention to the child's situation to ensure that the Court's plans for the child are being implemented;
6) to the fullest extent possible, to communicate and coordinate efforts with the case manager (probation officer/social worker);
7) to the fullest extent possible, to communicate and coordinate efforts with the child's attorneys; and
8) to investigate the interests of the child in other judicial or administrative proceedings outside Juvenile Court; to report to the Juvenile Court concerning same; and, with the approval of the Court, offer his/her services on behalf of the child to such other courts or tribunals.
9) to be present in court for all hearings when the case is present in court.

B. SWORN OFFICER OF THE COURT

An advocate is an officer of the Court and is bound by these rules. Each advocate shall be sworn in by a Superior Court Judge/Referee/Commissioner before beginning his/her duties, and shall subscribe to the written oath set forth in the Appendix attached hereto. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

3.08 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 3.05 above. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

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 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

Rev. 01-01-00

3.09 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 effective October 1, 1998)

3.10 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 effective October 1, 1998)

3.11 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 effective October 1, 1998)

3.12 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 effective October 1, 1998)

3.13 FAMILY LAW ADVOCACY

Should the Juvenile Court dismiss dependency and create family law orders pursuant to Welfare & 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 effective October 1, 1998)

3.14 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 effective October 1, 1998; Amended effective January 1, 2008)

APPENDIX

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

Date:_____

APPLICATION FOR
JUVENILE COURT RECORDS

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

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

I am:

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

Address: _____

I will use this information for the following purpose(s):
_____
I understand these records are confidential and can be used only for the purposes stated herein.

_____
Signed

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

Rev. 1-1-08

3.15 REPRESENTATION IN JUVENILE DEPENDENCY PROCEEDINGS CALIFORNIA RULES OF COURT, RULE 1438(a)

A. ATTORNEYS FOR CHILDREN

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

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

1) The child understands the nature of the proceedings;
2) The child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and
3) Under the circumstances of the case, the child would not gain any benefit by being represented by counsel.

b) If the court finds that the child would not benefit from representation of counsel, the court must make a finding on the record as to each criteria in (a) and state the reasons for each finding.

c) If the court finds that the child would not benefit from representation by counsel, the court must appoint a Court Appointed Special Advocate for the child, to serve as guardian ad litem as required in Welfare and Institutions Code §326.5.

B. GENERAL COMPETENCY REQUIREMENT

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

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

3.16 SCREENING FOR COMPETENCY

Effective July 1, 1996, all attorneys who represent parties in Juvenile Court proceedings shall meet the minimum standards of training and/or experience set forth in these rules. Any attorney appearing in a dependency matter for the first time shall complete and submit a Certification of Competency to the Court within 10 days of his or her first appearance in a dependency matter.

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

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

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

3.17 MINIMUM STANDARDS OF EDUCATION, TRAINING AND EXPERIENCE

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

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

   A) Participated in at least eight hours of training or education in juvenile dependency law which in addition to a summary of dependency law and related statutes and cases, must include information on child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation and reasonable efforts, or,

   B) At least six months of recent experience in dependency proceedings in which the attorney has demonstrated competence in the attorney's representation of his or her clients in said proceedings. In determining whether the attorney has demonstrated competence, the Court shall consider whether the attorney's performance has substantially complied with the requirements of these rules.

   C) 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 January 31st of the third year after the year in which the attorney is first certified and then every third year thereafter. The attorney shall attach to the renewal Certification of Competency evidence that he or she has completed at least eight hours of continuing training or education directly related to dependency proceedings since the attorney was last certified. Evidence of completion of the required number of hours of training or education may include a copy of a certificate of attendance issued by a California MCLE provider; a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is a MCLE provider; a copy of the training or educational program

schedule together with evidence of attendance at such program; or such other documentation as may reasonably be considered to demonstrate the attorney's attendance at such program. Attendance at a court sponsored or approved program will also fulfill this requirement.

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

E) When a certified attorney fails to submit evidence that he or she has completed at least the minimum required training and education to the Court by the due date, the Court shall notify the attorney that he or she will be decertified. That attorney shall have 20 days from the date of the mailing of the notice to submit evidence of his or her completion of the required training or education. If the attorney fails to submit the required evidence or fails to complete the required minimum hours of continuing training or education, the Court shall order, except in cases where a party is represented by retained counsel, that certified counsel be substituted for the attorney who fails to complete the required training. In the case of retained counsel, the Court shall notify the party that his or her counsel has failed to meet the minimum standards required by these rules. The determination whether to obtain substitute counsel shall be solely within the discretion of the party so notified. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

3.18 STANDARDS OF REPRESENTATION

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

a) Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child's legal representation. (Adopted effective July 1, 2002)

b) The attorney shall thoroughly and completely investigate the accuracy of the allegations of the petition or other moving papers and the Court reports filed in support thereof. This shall include conducting a comprehensive interview with the client to ascertain his or her knowledge of and/or involvement in the matters alleged or reported: contacting social workers and other professionals associated with the case to ascertain if the allegations and/or reports are supported by accurate

evidence and reliable information; consulting with and, if necessary, seeking the appointment of experts to advise the attorney or the Court with respect to matters which are beyond the expertise of the attorney and/or the Court; and obtaining such other facts, evidence or information as may be necessary to effectively present the client's position to the Court.

c) The attorney shall determine the client's interests and the position the client wishes to take in the matter. Except in those cases in which the client's whereabouts is unknown, this shall include a comprehensive interview with the client. If the client is a minor child who is placed out of home, in addition to interviewing the child, the attorney shall also interview with the child's caretaker. The attorney or the attorney's agent shall make at least one visit to the child at the child's placement prior to the jurisdiction hearing. Thereafter, the attorney or the attorney's agent should make at least one visit to the child at the child's placement prior to each review hearing.

d) The attorney shall advise the client of the possible courses of action and of the risks and benefits of each. This shall include advising the client of the risks and benefits of resolving disputed matters without the necessity for a hearing and of the necessity for adhering to court mandated time limits.

e) The attorney shall vigorously represent the client within applicable legal and ethical boundaries. This shall include the duty to work cooperatively with other counsel and the Court, to explore ways to resolve disputed matters without hearing if it is possible to do so in a way which is consistent with the client's interests, and to comply with local rules and procedures as well as with statutorily mandated timelines. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

3.19 PROCEDURES FOR REVIEWING AND RESOLVING COMPLAINTS

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.

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

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

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.

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.

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

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 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.

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

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

3.20 COURT APPOINTED SPECIAL ADVOCATE AS GUARDIAN AD LITEM

If the court makes the findings as outlined in 3.15, 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 volunteers is set forth in California Rules of Court 1424

b) The caseload of a CASA volunteer acting as a guardian ad litem must be limited to 10 cases. A case may include siblings, absent a conflict.
c) CASA volunteers must not assume the responsibilities of attorneys for children.
d) The appointment of an attorney to represent a child does not prevent the appointment of a CASA volunteer for that child. (Adopted effective July 1, 2002)

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

a) At any time following the filing of a petition under Welfare and Institutions Code §300 and until juvenile court jurisdiction is terminated, any interested person may advise the Court of information regarding an interest or right of the child which needs to be protected or pursued in other judicial or administrative forums. If the attorney for the child, or a Court Appointed Special Advocate (CASA) acting as a guardian ad litem 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 JV-100 or Modification Petition Attachment JV-180 or by the filing of a declaration. The person giving notice shall set forth the nature of the interest or right which needs to be protected or pursued, the name and address, if known, of the administrative agency or judicial forum in which the right or interest may be affected and the nature of the proceedings being contemplated or conducted there.

c) If the person filing the notice is the counsel for the minor, the motion shall state what action on the child's behalf the attorney believes is necessary, whether the attorney is willing or able to pursue the matter on the child's behalf, whether the association of counsel specializing in practice before that agency or court may be necessary or appropriate, whether the appointment of a guardian *ad litem* may be necessary to initiate or pursue the proposed action, whether joinder of an administrative agency to the Juvenile Court proceedings pursuant to Welfare and Institutions Code section 362 may be appropriate or necessary to protect or pursue the child's interests and whether further investigation may be necessary.

d) If the person filing the notice is not the attorney for the child, a copy of the notice shall be served on the attorney for the child, or, if the child is unrepresented, the notice shall so state.

e) The Court may set a hearing on the notice if the Court deems it necessary in order to determine the nature of the child's right or interest or whether said interest should be protected or pursued.

f) If the Court determines that further action on behalf of the child is required to protect or pursue any interests or rights, the Court must appoint an attorney for the child if the child is not already represented by counsel, and do one or all of the following:

1) Refer the matter to the appropriate agency for further investigation, and require a report to the court within a reasonable time;
2) Authorize and direct the child’s attorney to initiate and pursue appropriate action;

3) Appoint a guardian *ad litem* for the child, who may be the CASA already appointed as guardian *ad litem* or a person who will act only if required for to initiate and pursue appropriate action ; or
4) Take any other action the Court may deem necessary or appropriate to protector pursue the welfare, interests and rights of the child. (Adopted effective October 1, 1998; Amended effective July 1, 2002)

3.22 DISCOVERY IN JUVENILE DELINQUENCY PROCEEDINGS

A. PURPOSES OF THIS RULE

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

1. To promote the ascertainment of truth in juvenile delinquency proceedings by requiring timely discovery prior to the jurisdictional hearing.

2. To save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested.

3. To save court time in juvenile delinquency proceedings and avoid the necessity for frequent interruptions and postponements.

4. To protect victims and witnesses from danger, harassment, and undue delay of the proceedings.

5. To provide that no discovery shall occur in juvenile delinquency proceedings except as provided by this rule, other express statutory provisions, or as mandated by the Constitution of the United States.

B. INFORMATION TO BE DISCLOSED BY PROSECUTION

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

1. The names and addresses of persons the prosecutor intends to call as witnesses at the jurisdictional hearing.

2. Statements of the minor.

3. All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.

4. The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the jurisdictional hearing.

5. Any exculpatory evidence.

6. Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the jurisdictional hearing, including any reports or statements or experts made in conjunction with the case, including the results

of physical or mental examinations, scientific test, experiments, or comparisons which the prosecutor intends to offer in evidence at the jurisdictional hearing.

7. Any additional discovery as set forth in California Rules of Court, Rule 1420.

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

1. Except as provided in paragraph 2, no attorney may disclose or permit to be disclosed to a minor, members of the minor's family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Penal code Section 1054.1 and California Rules of Court, Rule1420 unless specifically permitted to do so by the court after a hearing and a showing of good cause.

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

3. Willful violation of this subdivision by an attorney, persons employed by the attorney, or persons appointed by the court may be punishable as contempt.

D. INFORMATION TO BE DISCLOSED BY MINOR

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

1. The names and addresses of persons, other than the minor, he or she intends to call as witnesses at the jurisdictional hearing, together with any relevant written or recorded statements of those persons, or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the jurisdictional hearing.

2. Any real evidence which the minor intends to offer in evidence at the jurisdictional hearing.

3. Any Additional discovery as set forth in California Rules of Court, Rule 1420.

E. OBTAINING OF NONTESTIMONIAL EVIDENCE BY PROSECUTION

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

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

1. No order requiring discovery shall be made in juvenile delinquency proceedings except as provided in this rule. This rule shall be the only means by which the minor may compel the disclosure or production of information from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the minor, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties.

2. Before a party may seek court enforcement of any of the disclosures required by this chapter, the party shall make an informal request of opposing counsel for the desired materials and information. If within 7 calendar days the opposing counsel fails to provide the materials and information requested, the party may seek a court order compelling disclosure.

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

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

G. DISCLOSURE OF WORK PRODUCT OR PRIVILEGED INFORMATION

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

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

1. The disclosures required under this chapter shall be made at least 7 calendar days prior to the jurisdictional hearing, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 7 days of the jurisdictional hearing, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.

2. Upon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera. A verbatim record shall be made of any such proceeding. If the court enters an order granting relief following a showing in camera, the entire record of the showing shall be sealed and preserved in the records of the court, and shall be made available to an appellate court in the event of an appeal or writ. In its discretion, the juvenile court may after jurisdictional hearing unseal any previously sealed matter for appeal or writ review.

I. REQUIRED IDENTIFICATION FOR INTERVIEW

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

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

J. CHILD PORNOGRAPHY EVIDENCE

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

2. Notwithstanding paragraph 1 above, an attorney may disclose or permit to be disclosed copies of child pornography evidence to persons employed by the attorney. (Adopted effective July 1, 2004; Amended effective July 1, 2007)

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. 1438(a)

Name: _____
State Bar Number:
_____
Office Address:
_____

Telephone: _____

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

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

Court Title	Date Completed	Hours / Provider

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

Case #	# Contested Hearings	Date of Last Appearance	Party Represented

Date: _____

_____
Signature

APPENDIX

3.04 CALENDAR

JUVENILE DELINQUENCY:

a) Welfare and Institutions Code, section 602:

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

b) Jurisdictional hearings

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

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

JUVENILE DEPENDENCY:

All Welfare and Institutions Code Section 300 proceedings:

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

(Revised 1-1-08)

CHAPTER 4

PROBATE DEPARTMENT

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 effective October 1, 1998)

4.02 OTHER PROBATE LAW AND COURT RULES

The provisions of the within chapter are not intended to embody all law or proceedings applicable to the situations described herein. Furthermore, while reference may be made to statutory and case law current at the time these Rules were revised, counsel are advised to take such steps as may be necessary to become familiar with the law in existence at the time their matters are before the Court. Unless otherwise inconsistent with this chapter as indicated herein, all other Monterey County Superior Court Local Rules are applicable to Probate Cases. (Adopted effective October 1, 1998)

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 effective October 1, 1998)

4.04 CONSOLIDATION OF RELATED CASES

Whenever it appears that two 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 effective October 1, 1998; Amended January 1, 2002; Renumbered as 4.05 and New Rule 4.04 Adopted effective January 1, 2009)

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. (Adopted effective October 1, 1998; Amended effective January 1, 2002; Rule 4.04 Renumbered as 4.05 and Amended effective January 1, 2009)

4.06 APPLICATIONS FOR EX PARTE ORDERS, CONTENT OF ORDER

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

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

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

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 effective October 1, 1998; Rule 4.06 Renumbered as 4.07 and Amended effective January 1, 2009)

4.08 PROBATE CALENDAR

Probate matters are heard in Monterey at 10:00 a.m. on Friday mornings. Please see the Court website at http://www.montereycourts.org, or call the Court at (831) 647-5800, for specific times. If Friday falls on a courthouse holiday, Probate may be heard on the preceding

judicial day at the discretion of the Presiding Judge. Matters shall be calendared at least 30 days prior to the hearing date. The petitioner shall include an appropriate date and time on 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 effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Amended effective July 1, 2004; Rule 4.07 Renumbered as 4.08 and Amended effective January 1, 2009)

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, two weeks prior to the hearing, the Petitioner or attorney for petitioner may access case information by utilizing the "View Probate Notes" on the Probate section of the Court's website at http://www.montereycourts.org/Probate. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2004; Rule 4.08 Renumbered as 4.09 and Amended effective January 1, 2009)

4.10 PROPOSED ORDERS—TIMING, FORM AND CONTENT

a) With the exception of sales of property, Orders After Hearing in all uncontested matters must be submitted no later than twenty-one calendar days prior to the hearing date.

b) Where matters have been continued, new Orders reflecting the continued hearing date must be submitted no later than twenty-one calendar days prior to the hearing date.

c) The attorney preparing a formal order following a contested Court hearing must provide opposing counsel an opportunity to review and approve a proposed order as to form and content before submitting the order to the Court for signature. Objections to form or content relating to orders prepared by counsel for signature by the Court must be in pleading form. Letter objections will be disregarded.

d) In all conservatorships where Conservator is represented by counsel, counsel must approve the proposed Order as to form and content.

e) Orders must be separate documents. Orders may not be included in the body of a Petition.

f) 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 effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2001; Amended effective January 1, 2002; Amended effective January 1, 2006; Amended effective January 1, 2007; Rule 4.09 Renumbered as 4.10 and Amended effective January 1, 2009)

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, for example, 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 effective October 1, 1998; Renumbered as 4.13 effective January 1, 2009; New Rule 4.11 Adopted effective 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 Superior Court Clerk's Office 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 effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2002; Rule 4.10 Renumbered as 4.12 and Amended effective January 1, 2009)

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

An executor, administrator, trustee, guardian or conservator is an officer acting pursuant to Court order. All accounts, petitions and other pleadings made in an official capacity must be signed and verified by such officer. The code provision allowing attorneys to verify certain pleadings in civil matters is not applicable to probate proceedings when the representative is acting in his or her official capacity. (Adopted effective October 1, 1998; Rule 4.11 previously Adopted effective October 1, 1998; Renumbered as 4.13 effective January 1, 2009)

4.14 AMENDMENT OF PLEADINGS

a) Amended/Amendment to. An amended pleading, or an "amendment to" a pleading, as distinguished from a "supplement," requires the same notice (including publication) as the pleading which it amends. When a Judicial Council Form was used for the original pleading, the amended pleading shall also use a Judicial Council Form on which the word "Amended" is added to the caption.

b) Supplemental Pleading. A supplement to a petition should be captioned "Supplement To..." A properly captioned supplement does not require additional notice, but service of a copy of the supplement is still required in appropriate cases. In general, a supplement provides additional or clarifying information in support of the prayer of a petition.

Judicial Council Forms may be used to "amend" pleadings. They should not be used as an "Amendment To..." or "Supplement To..." a pleading, as these forms are complete in themselves. (Adopted effective October 1, 1998 (Adopted effective October 1, 1998; Rule 4.12 Renumbered as 4.14 effective January 1, 2009)

4.15 FILING DEADLINE

a) Initial pleadings for trust matters filed per Probate Code section 17200, initial guardianship petitions, pretrial conservatorship petitions, petitions for appointment of successor conservatorship, and any other petitions requiring the participation of the Court Investigator shall be filed and served a minimum of thirty (30) calendar days prior to the desired hearing date.

b) Probate matters, conservatorship matters that do not require the participation of the Court Investigator, and any other petitions that do not require the participation of the Court Investigator shall be filed and served a minimum of thirty (30) calendar days prior to the desired hearing date.

c) 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 effective October 1, 1998; Amended effective January 1, 2001; Amended effective January 1, 2007; Amended effective January 1, 2008; Rule 4.13 Renumbered as 4.15 and Amended effective January 1, 2009)

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 which have been set by the Court shall not be continued at any time without authorization from the Court. (Adopted effective October 1, 1998; Rule 4.14 Renumbered as 4.16 effective 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 this chapter. Counsel must consult the specific rules relating to such petitions or matters and the relevant statutes to assure proper notice is given. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 4.15 Renumbered as 4.17 effective January 1, 2009)

4.18 ADDITIONAL NOTICE REQUIREMENTS

a) When Additional Notice is Required. Under the provisions of Probate Code section 1202, the Court may require additional notice in any matter. Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised by the pleadings. The Court will require notice in such cases to include not only the time and place of hearing but also a summary of the matters to be determined, or it may require a copy of the petition to be served with the notice.

b) Termination of Guardianship and Conservatorship. This rule also applies in termination of guardianships and conservatorships. Notice and a copy of the petition must be given to a former minor, or a former conservatee on the settlement of the final account. Notice and a copy of the petition must also be given to the representative of the estate of a deceased ward or conservatee. (Adopted effective October 1, 1998; Rule 4.16 Renumbered as 4.18 effective January 1, 2009)

APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

4.19 NOTICE RE: SPECIAL LETTERS

Petitions for Special Letters will ordinarily not be granted without notice to the surviving spouse, the person nominated as executor, and any other person who on examination of the petition appears to be equitably entitled to notice. In making the appointment, preference is given to the person entitled to letters testamentary or of administration. If a proper petition has been filed and it appears that a bonafide contest exists, the Court will consider the advisability of appointing a neutral person or corporation as Special Administrator. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 4.17 Renumbered as 4.19 effective January 1, 2009)

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 effective October 1, 1998; Amended effective January 1, 2001) Rule 4.18 Renumbered as 4.20 effective January 1, 2009)

4.21 SUBSEQUENT PETITIONS FOR PROBATE

Any other wills or codicils not specifically mentioned in the original petition must be presented to the Court by way of an amended petition or a second petition, and a new notice thereon must be published. Attaching a copy of any instrument without specific reference to it in the petition is insufficient (Est. of Olson (1962) 200 Cal.App.2d 234.) Where a will has been previously admitted and a Petition for Letters Testamentary or of Letters of Administration With-Will-Annexed is filed, the same notice is required as on the original petition. (Adopted effective October 1, 1998 Rule 4.19 Renumbered as 4.21 effective January 1, 2009)

4.22 NOTICE BY MAIL -- BY WHOM GIVEN

a) Petitioner to Give Notice. Probate Code section 1041 requires the clerk to cause a hearing to be set on petitions, accountings, etc. The burden is upon the petitioner, or his/her attorney, to give notice of the hearing, or cause it to be given, and to file the proper proof of service. (See Probate Code sections 1041, 8003, 8100, 8110.)

b) Notice to a Minor. Notice to a minor heir or minor beneficiary shall be sent to any legally-appointed Guardian, and if none, to any adult having legal custody of such minor. (Adopted effective October 1, 1998; Rule 4.20 Renumbered as 4.22 effective January 1, 2009)

4.23 HEIRS WITHOUT KNOWN ADDRESSES

The Court will require an affidavit or declaration stating specifically what efforts were made to locate an heir, devisee or legatee whose whereabouts is unknown before it will accept notice mailed to him or her at the County Seat under Probate Code section 1220. Addressed as follows:

General Delivery
Post Office
Salinas, CA 93902

(See also Judicial Council comments on Code of Civil Procedure section 413.30 as to what efforts are necessary.) (Adopted effective October 1, 1998; Amended effective January 1, 2008; Rule 4.21 Renumbered as 4.23 effective January 1, 2009)

4.24 CONTINUANCE TO PERMIT FILING OF WILL CONTEST

If an interested party appears in person or by attorney when a petition for the probate of will is called for hearing and declares that he/she desires to file a written contest, the Court will ordinarily continue the hearing with the understanding that whether or not a contest is actually on file at the new hearing date, the hearing will nevertheless proceed. (Adopted effective October 1, 1998; Rule 4.22 Renumbered as 4.24 effective January 1, 2009)

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 pursuant to Probate Code Section 8404 (b). (Rule 4.25 previously Adopted effective October 1, 1998; Amended effective January 1, 2008; Renumbered as 4.28 effective January 1, 2009; New Rule 4.25 Adopted effective January 1, 2009)

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.

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)

4.27 BOND FOR SPECIAL ADMINISTRATORS

Pursuant to Probate Code section 8481(b), unless sufficient allegations are set forth to warrant waiver, the Court will require a special administrator to post bond. (Adopted effective October 1, 1998; Rule 4.24 Renumbered as 4.27 effective January 1, 2009)

4.28 ISSUANCE OF LETTERS

a) Duties and Liabilities Form. To assure that his/her duties are understood, each Personal Representative of a decedent's estate must file with the Court, before Letters are issued, "Duties and Liabilities of Personal Representative" signed by him/her. All Personal Representatives shall complete and file the “Confidential Statement of Birth Date and Driver’s License Number.” This form is confidential and is sealed before being placed in the Court file.

b) Filing Bond. If a bond has been ordered, it must have been previously filed or must be presented along with the Letters to be issued. (Adopted effective October 1, 1998; Amended effective January 1, 2008; Rule 4.25 Renumbered as 4.28 effective January 1, 2009)

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 Procedure section 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 or more executors is filed, and one 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 effective October 1, 1998; Rule 4.26 Renumbered as 4.29 effective 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 effective October 1, 1998; Rule 4.27 Renumbered as 4.30 effective January 1, 2009)

PETITIONS TO SET ASIDE SPOUSAL PROPERTY

4.31 SPOUSAL PROPERTY PETITIONS

a) Probate Referee. Appointment of a probate referee is optional in accordance with the Probate Code.

b) Wills. If decedent died testate, a copy of the Will must be attached to the petition.

c) Proof of Community Property Claim. Where there is no Will and no written Community Property Agreement, the petition to determine and/or confirm community property must contain the following allegations:

1) Date and place of marriage.

2) Whether or not decedent owned any real or personal property on date of marriage. If so, describe and give approximate values.

3) Whether or not decedent ever received any property after date of marriage by gift, bequest, devise, decent, proceeds of life insurance or joint tenancy survivorship. If so, describe and give approximate values and date of receipts.

4) If any property was received by decedent under 3 above, whether or not it is still a part of this estate. If so, identify.

5) Any additional facts upon which the claim of community property is based.

6) If the claimed community character of the property is based on any document, a photocopy of that document, showing signatures, should be attached to and authenticated by the petition or by a supporting affidavit or declaration. (Adopted effective October 1 1998; Rule 4.28 Renumbered as 4.31 effective January 1, 2009)

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 effective October 1, 1998; Rule 4.29 Renumbered as 4.32 effective 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 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 effective October 1, 1998; Rule 4.30 Renumbered as 4.33 effective January 1, 2009)

PETITIONS FOR INSTRUCTIONS GENERALLY

4.34 LIMITATIONS ON USE OF PETITIONS FOR INSTRUCTIONS

a) Available Only Where No Other Procedure Provided. The use of petitions for instructions by executors or administrators pursuant to Probate Code section 9611 is limited to those matters where no other or different procedure is provided by statute.

b) Specification of Instructions. The petitioner shall set forth in the petition and prayer the specific instructions which petitioner believes the Court should give, rather than asking the Court to select among a choice of options.

c) No Instruction as to Distribution. The Court is without power to "instruct" as to the manner in which an estate should be distributed. Such direction can only be furnished on a petition for distribution or by a petition to determine heirship. (Estate of Thramm (1945) 67 Cal App. 2d 657; Estate of Hoffman (1968) 265 Cal. App. 2d 135.) (Adopted effective October 1, 1998; Rule 4.31 Renumbered as 4.34 effective January 1, 2009)

4.35 PETITIONS TO DETERMINE TITLE TO REAL OR PERSONAL PROPERTY PURSUANT TO PROBATE CODE SECTION 9860.

a) Caption. Such petitions shall be captioned in such a manner as to alert the clerk that the petition is one filed pursuant to Probate Code sections 9860 et seq., so the clerk can assure proper posting and setting for the hearing.

b) Notice of Hearing. The notice of hearing must contain a description of the property to which the petition pertains sufficient to give adequate notice thereof to any party who might be interested in the property, including, with respect to real property, the street address of the property, or if none, a description of the location of the property. Thirty (30) day notices of hearing are required.

c) "Answer." All notices of hearing given on such petitions must contain a statement advising that any person interested in the property, which is the subject of the petition, may file an answer to the petition. The Court prefers that an answer or answers be filed to assist the Court in its trial of the issues. (Adopted effective October 1, 1998; Rule 4.32 Renumbered as 4.35 effective January 1, 2009)

CREDITORS' CLAIMS

4.36 FILING, APPROVAL, REJECTION AND PAYMENT OF CLAIMS

a) Use of Forms. Creditors' claim forms are available for use by claimants and should be used to avoid any ambiguity as to whether or not a claim has in fact been filed within the statutory period. Notice to the estate of a debt must be given in the form of a claim filed as a demand against the estate and in a form sufficient to apprise the

representative of the estate of the nature of the claim or demand. *(*Nathanson v. Superior Court (1974) 12 Cal. 3d 355*.)* Creditors' claims must be on the Judicial Council Form, filed with the Court, and mailed to the personal representative by the creditor. The name and address of the attorney for the estate should appear on the claim.

b) Approval and Rejection. All claims filed must be acted on by the representative. It is the duty of the attorney for the representative to see that all claims filed are ultimately allowed or rejected on the proper Judicial Council Form. (Adopted effective October 1, 1998; Amended effective July 1, 2004; Amended effective January 1, 2008; Rule 4.33 Renumbered as 4.36 effective January 1, 2009)

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 60 days after the date of death. (Adopted effective October 1, 1998; Rule 4.33 Renumbered as 4.36 effective 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 (Probate Code section 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 10:30 a.m. 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 effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2002; Rule 4.35 Renumbered as 4.38 effective January 1, 2009)

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 §10398, requires that notice be given "to the purchasers named in the petition…" (Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 4.36 Renumbered as 4.39 effective 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 of 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 effective October 1, 1998; Rule 4.37 Renumbered as 4.40 effective 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 effective October 1, 1998; Rule 4.38 Renumbered as 4.41 effective 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 effective October 1, 1998; Rule 4.39 Renumbered as 4.42 effective 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 effective October 1, 1998; Rule 4.40 Renumbered as 4.43 effective 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 10% of the sale price. (Adopted effective October 1, 1998; Rule 4.44 Renumbered as 4.47 effective January 1, 2009)

4.45 SALE OF SPECIFICALLY DEVISED OR BEQUEATHED PROPERTY

On a sale of specifically devised or bequeathed real or personal property, 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 effective October 1, 1998; Rule 4.42 Renumbered as 4.45 effective January 1, 2009)

INVENTORY, ACCOUNTS AND REPORTS

4.46 "INVENTORY AND APPRAISAL" TO SHOW SUFFICIENCY OF BOND

The "Inventory and Appraisal" filed with the clerk shall contain a statement, signed by the attorney, indicating whichever of the following is applicable:

- Bond waived.
- Bond filed $_____insufficient.

- Bond filed $_____sufficient.

If the bond is insufficient the estate representative shall immediately submit an ex parte petition for an order increasing the bond to the amount required by statute; that is, an amount equal to the value of all personal property and one year's income from all sources. (Adopted effective October 1, 1998; Amended effective July 1, 2004; Rule 4.43 Renumbered as 4.46 effective January 1, 2009)

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

A certification pursuant to Probate Code Section 8800(d) shall be filed concurrently with the filing of the "Inventory and Appraisal". (Adopted effective October 1, 1998)
Rule 4.44 Renumbered as 4.47 effective January 1, 2009)

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, 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 which is the sole or a primary beneficiary of the estate. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 4.45 Renumbered as 4.48 effective January 1, 2009)

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 effective October 1, 1998; Rule 4.46 Renumbered as 4.49 effective January 1, 2009)

4.50 FEES MUST BE STATED EVEN THOUGH ACCOUNT WAIVED

In accounts, per Probate Code section 10810, the accompanying report must state the amount of administrator's or executor's commissions and the amount of attorney's fees sought and must set forth the estate accounted for and the calculation of commissions and fees in substantially the following form:

FEE BASE

Inventory and Appraisal	$_____
Receipts/Income During Admin.	$_____
Gains on Sales	$_____
Losses on Sales	($_____)
Fee Base	$_____

FEE COMPUTATION

4% on first $100,000	(_____)	$_____
3% on next $100,000	(_____)	$_____
2% on next $800,000	(_____)	$_____
1% on next $9,000,000	(_____)	$_____
1/2% on next $15,000,000	(_____)	$_____
Above $25,000,000(Rate: __%)	(Amount: _____)	$_____
		==========
	Total:	$_____

[Note: Where a petition for distribution is accompanied by a waiver of accounting, detailed schedules of receipts and gains or losses on sale are required for the computation of the statutory fee unless the Inventory and Appraisal value is used as the basis for the fee. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective January 1, 2007; Rule 4.47 Renumbered as 4.50 effective January 1, 2009)

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 effective October 1, 1998; Amended effective July 1, 2001; Rule 4.48 Renumbered as 4.51 effective 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 effective October 1, 1998; Rule 4.49 Renumbered as 4.52 effective 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 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 interest in the community property, the Court has no jurisdiction to order distribution of such interest. (Adopted effective October 1, 1998; Rule 4.50 Renumbered as 4.53 effective 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 effective October 1, 1998; Rule 4.51 Renumbered as 4.54 effective 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. (Adopted effective October 1, 1998; Rule 4.52 Renumbered as 4.55 effective January 1, 2009)

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 Local 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 the present tense and in the third person instead of quoting the will verbatim. (Adopted effective October 1, 1998; Rule 4.53 Renumbered as 4.56 and Amended effective 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 4.56(a) and 4.52.) (Adopted effective October 1, 1998; Rule 4.54 Renumbered as 4.57 and Amended effective January 1, 2009)

TAXES -- SPECIAL REQUIREMENTS

4.58 INCOME TAX CERTIFICATE

a) Franchise Tax Board Certificate. If the inventoried estate is appraised at more than $400,000 and more than $100,000 in the aggregate has been distributed or is distributable to beneficiaries or heirs who do not reside in California, final distribution will not be permitted unless there is first filed with the clerk a state income tax certificate issued by the Franchise Tax Board pursuant to Revenue and Taxation Code section 19513 certifying that all state personal income taxes imposed upon the decedent or the estate have been paid or payment is secured. Such certificate is issued upon the condition that the decree of distribution will be signed by the Court on or before a specified date.

b) Expiration Date of Certificate. Decrees of final distribution will not be signed after the expiration of the date specified in the certificate. Although such certificate is not required and will not be issued by the Franchise Tax Board on a preliminary distribution, attorneys are cautioned that adequate funds must be withheld on preliminary distribution to pay or secure payment of such taxes on final distribution. Final distribution will not be allowed in the absence of such a certificate.

c) Application to Distributions to Trustees. This section also applies to all non-resident trustees, irrespective of place of residence of the beneficiaries. (Adopted effective October 1, 1998; Rule 4.55 Renumbered as 4.58 effective January 1, 2009)

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 effective October 1, 1998; Rule 4.56 Renumbered as 4.59 effective January 1, 2009)

4.60 FEES TAKEN IN ADVANCE

There is no authority for the payment of fees in decedents estates in advance of a Court order authorizing the same. (Adopted effective October 1, 1998; Rule 4.57 Renumbered as 4.60 effective January 1, 2009)

4.61 ALLOWANCE 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, e.g., 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 effective October 1, 1998; Rule 4.58 Renumbered as 4.61 effective January 1, 2009)

4.62 APPORTIONMENT OF FEES

Ordinarily, if apportionment of statutory fees between multiple attorneys is necessary, the Court will not allow partial payment but will defer all statutory fees until the final account is settled. (Adopted effective October 1, 1998; Rule 4.59 Renumbered as 4.62 effective January 1, 2009)

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 Rule 4.50) (Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 4.60 Renumbered as 4.63 and Amended effective 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 which 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 effective October 1, 1998; Rule 4.61 Renumbered as 4.64 effective January 1, 2009)

4.65 FORMAT FOR REQUESTING EXTRAORDINARY FEES

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.

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. The standards by which extraordinary fees and commissions will be determined for personal representatives and attorneys are reasonableness and benefit to the interested parties. The Court will take into consideration, among other things, the mandatory statement of facts, as required in California Rules of Court, Rule 7.702. (Adopted effective October 1, 1998; Rule 4.62 Renumbered as 4.65 and Amended effective January 1, 2009)

4.66 USE OF PARALEGALS

Pursuant to Probate Code sections 10811(b), 2642(a), 8547(d), and 10953(d), the use of paralegals to perform services of an extraordinary nature is permitted. The Court will require an itemized statement of services rendered by each paralegal, accompanied by allegations relating to the qualifications of the paralegal, both as to experience and training. (Adopted effective October 1, 1998; Rule 4.63 Renumbered as 4.66 effective January 1, 2009)

4.67 PERSONAL REPRESENTATIVE COMMISSIONS

Local Rules 4.61, 4.62, 4.63, 4.64 and 4.65, are also applicable to requests for commissions for personal representatives in decedents' estates. (Adopted effective October 1, 1998; Rule 4.64 Renumbered as 4.67 and Amended effective January 1, 2009)

TRUSTS

4.68 TRUSTEES' ACCOUNTS

Accounts filed by trustees under authority of Probate Code section 16062 should conform to the requirements set out in Local Rule 4.48 as well as Probate Code sections 1060 through 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 Probate Code sections 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. (Probate Code section 17200(b)(5).) (Adopted effective October 1, 1998; Amended effective July 1, 2001; Rule 4.65 Renumbered as 4.68 and Amended effective 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 addresses of all beneficiaries, whether their interests are vested of 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)

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 3/4 of 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 3/4 of 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. (Adopted effective October 1, 1998; Rule 4.67 Renumbered as 4.70 effective January 1, 2009)

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. (Adopted effective October 1, 1998; Rule 4.68 Renumbered as 4.71 effective January 1, 2009)

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 effective October 1, 1998; Rule 4.69 Renumbered as 4.72, effective January 1, 2009)

MEDIATION PROGRAM

4.73 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**)**

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 effective October 1, 1998; Amended effective 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) 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. Such service shall be reflected on the appropriate Proof of Service or Notice of Hearing filed with the Court. (Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2004)

c) 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.

d) The filing of original bank statements is required where necessary. The submit-ting 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. (Amended effective January 1, 2007)

5.02 EX PARTE PETITIONS

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

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

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

1. Powers relating to medical consent under Probate Code sections 2355, 2357 and 3200.

2. Independent Powers under Probate Code sections 2590 and 2591 relating to real property or transfers of personal property.

3. Petitions authorizing sales, transfers or encumbrances of personal property in an amount exceeding $5,000 in the aggregate annually. (Probate Code section 2545(b))

4. Proposed action to exercise Substituted Judgment. (Probate Code section 2580)

5. Authorization for gifts from excess income. (Probate Code section 2423.)

6. Authorization to purchase real property.

7. Petitions for approval of a compromised claim.

8. Petitions for fees.
(Adopted effective October 1, 1998; Amended effective January 1, 2008)

APPOINTMENTS

PETITIONS FOR CONSERVATORSHIP

5.03 PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON ONLY

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.

a) 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;

b) 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:

1. The identify of the named agent;

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

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

c) The Petitioner shall attach copies of any and all documents identified, including any revoked instruments and/or state why copies are not available. (Rule 5.03 previously Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Amended effective January 1, 2002; Amended effective January 1, 2007; Renumbered as 5.04, 5.05, 5.06, 5.07, and 5.08 effective January 1, 2009; New Rule 5.03 Adopted effective January 1, 2009)

5.04 CONSERVATOR OF DEVELOPMENTALLY DISABLED PERSON

If the proposed conservatee is a developmentally disabled person (Probate Code section 1420), a "Petition for Limited Conservatorship" is mandatory. For further guidance relating to the requirements and procedures of Probate Code section 1471©, 1827.5, 1828.5, 1830, 1830(b) and 2351.5 see Local Rule 5.09. For those who do not have a developmental disability, a petition for a standard probate conservatorship is appropriate. (Rule 5.03(a) previously Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Amended effective January 1, 2002; Amended effective January 1, 2007; Renumbered to 5.04 and Amended effective January 1, 2009)

5.05 SUPPLEMENTAL INFORMATION

All petitions must be accompanied by supplemental information pursuant to Probate Code section 1821(a). The supplemental information shall be on the Judicial Council form. (Rule 5.03(b) Renumbered as 5.05 and Amended effective January 1, 2009)

5.06 NOTICE

1. a) Notice to Conservatee. The Probate Code requires that conservatees receive notice of the hearing of conservatorship petitions. The Court will, however, accept a waiver of notice by the conservatee if the conservatee is competent to make such a waiver.

2. b) The petition requires a list of all relatives within the 2nd degree (parents, grandparents, children, grandchildren, and siblings). Notice of Hearing must be given to all such relatives and proposed conservatee's spouse in accordance with Probate Code section 1822. The list shall include the relationship of each person listed to the Conservatee.

If there are no relatives within the second degree and no spouse, the relatives described in Probate Code section 1821(b) must be listed and provided notice pursuant to Probate Code section 1822.

3. c) Notice may also be required to the Director of Mental Health, Director of Developmental Services, and/or the Veterans' Administration where appropriate in accordance with Probate Code section 1822.

4. d) 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 effective January 1, 2009)

5.07 REQUIRED DOCUMENTS

The following documents are required to be filed with the petition for appointment of conservator regardless of whether proposed conservatee is the petitioner or will attend the hearing:

1. The supplemental information described in 5.03(b), above and Judicial Council Form GC 312 "Confidential Conservator Screening Form."

2. Notice of Hearing (issued by Clerk's Office). A minimum of thirty (30) days notice to the Court Investigator is required.

3. Citation, to be issued by Clerk's Office, except where the proposed conservatee is the petitioner. Notice shall be given at least fifteen (15) days prior to hearing.

4. "Referral for Court Investigator-Conservatorship" (See Court website: www.montereycourts.org) reflecting confidential information, present location of conservatee, telephone number; names of conservators, attorney of record, addresses, telephone number, and relationship of all the parties, relatives, friends, and neighbors.

5. If conservatee is medically unable to attend the hearing, a declaration from a licensed medical practitioner is required. Emotional or psychological instability is generally not sufficient cause. (Probate Code sections 1825(b) and (c).)

6. If the proposed conservatee is found unable to attend the hearing after filing of the petition, petitioner shall promptly file a Declaration from a licensed medical practitioner (Clerk's Form 269) and provide a copy to the Court Investigator.

7. 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.

8. Following service of the petition and prior to the hearing, the Proof of Service (Clerk's Form 211) or Order Dispensing with Notice (Clerk's Form 225) must be filed. (Rule 5.03(e) Renumbered as 5.07 and Amended effective January 1, 2009)

5.08 THE PETITION FOR PERMANENT CONSERVATORSHIP

a) There shall be a separate proceeding for each person for whom conservatorship is sought, and each petition shall provide the proposed conservatee's Social Security number.

b) Independent powers may not be requested except upon a noticed hearing, either as part of the initial petition or in a subsequently filed petition. (Probate Code sections 2592(c), 1460, et seq.) If Independent Powers under sections 2590 and 2591 are requested, an attachment to the petition shall specify the powers requested, and must state the reasons requiring the powers requested. Only those powers necessary and proper shall be granted.

Proposed restrictions or limitations on the Independent Powers must also be included. The Court will not grant Independent Powers to sell real property or to borrow money with real property as security, unless the bond includes the value of the real property and there are sufficient restrictions to guarantee conservatee's rights regarding the sale of a residence or former residence as contained in Probate Code section 2540(b).

c) That portion of the petition relating to inherent powers and duties of the conservator (sections 2351-2358) need not be completed unless petitioner wishes to limit or modify the conservator's powers. Unless restricted by the Court, the Conservator of the Person has the power to fix conservatee's residence inside the State of California (Probate Code section 2352), and the power to consent to or withhold consent for medical treatment, though not over conservatee's objection. (Probate Code section 2354)

d) If exclusive authority to consent to medical treatment is requested, that portion of the petition asking that conservatee be adjudged to lack capacity to consent to any form of medical treatment should be completed. Such powers are granted under Probate Code sections 1880, 1890, 2355 and 2357.

All petitions pursuant to Probate Code section 1880, including requests for those powers in the initial petition for conservatorship, must be accompanied by the declaration of a licensed physician, or a licensed psychologist within the scope of his or her licensure, indicating the conservatee or proposed conservatee lacks the capacity to give informed consent to any form of medical treatment and the reasons therefore in compliance with Probate Code section 1890(c). Declarations attesting only inability to attend the hearing for medical reasons do not comply with this requirement.

e) If Dementia Powers are sought, that portion of the petition asking that orders be issued relating dementia placement or treatment should be completed. Judicial Council Form GC-355 “Capacity Declaration-Conservatorship” must also be completed and filed.

f) For conservatorship of estates:

i. The character and estimated value of the property of the estate must be provided;

ii. The petition must state whether property proposed to be included is community or separate.

g. When a petition is granted, the petitioner shall file the following documents prior to the issuance of Letters of Conservatorship:

i. The Order Appointing Conservator (Judicial Counsel Form) and attachments;

ii. Proof of Service of Order Appointing Conservator, including service on the Court Investigator and the Conservatee;

iii. Bond or receipts from financial institutions per Probate Code section 2328;

iv. Conservator's Acknowledgment of Duties & Responsibilities, including his or her date of birth and driver's license number.

v. Community Property. Notwithstanding any provisions of law which provide that the spouse of a proposed conservatee may exclude all or a portion of the community assets from the conservatorship estate, the Court will not ordinarily approve a conservatorship of the estate which does not include all of the community assets (not just conservatee's one-half). (Adopted effective October 1, 1998; Amended effective January 1, 2001; Amended effective July 1, 2001; Amended effective January 1, 2002; Amended effective January 1, 2007; Rule 5.03(e) Renumbered as 5.08, Relettered and Amended effective January 1, 2009)

5.09 PETITION FOR APPOINTMENT OF PROFESSIONAL CONSERVATOR

Where petitioner seeks to appoint a professional conservator, petitioner must allege that the proposed conservator is a professional conservator. The petitioner shall also allege whether the private professional conservator is registered in the Statewide Registry (Probate Code sections 2850 through 2856) and whether a current professional conservator's statement is on file with the Court and provide the registration number. (Probate Code sections 2340, 2341, 2342, 2343.) (Adopted effective October 1, 1998; Amended effective July 1, 2001;Rule 5.04 Renumbered as 5.09 and Amended effective January 1, 2009)

5.10 LIMITED CONSERVATORSHIPS

a) If the proposed conservatee has a "developmental disability", as defined in Probate Code section 1420, the petition must be for a Limited Conservatorship.

b) An assessment by the nearest regional center pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, as required by Probate Code section l827.5, obviates the necessity of filing a "Confidential Supplemental Information", so long as such assessment provides the same information as that required by Probate Code section 1821(a).

c) An ex parte order for appointment of 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. (Probate Code section 1471(c).)

d) The petition must specify what powers are requested for the conservator and which are proposed for retention by the conservatee. (Probate Code section 1830(b) and 2351.5.)

e) The Court may exercise its discretion only at the hearing. (Probate Code section 1828.5(d)) Where the Court finds, at the hearing, that the proposed conservatee lacks the capacity to perform all tasks necessary to provide for his/her needs, it may impose a standard probate conservatorship, instead of a limited conservatorship. (Adopted effective October 1, 1998; Amended effective January 1, 2008; Rule 5.05 Renumbered as 5.10 effective January 1, 2009)

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 effective October 1, 1998; Rule 5.05 Renumbered as 5.10 effective January 1, 2009)

5.12 TEMPORARY CONSERVATORSHIPS

a) A petition for temporary conservatorship shall not be granted unless a petition for permanent conservatorship is on file and noticed for hearing.

b) 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.

c) The Court will appoint a temporary conservator of the person and/or estate ex parte and without notice as required in Probate Code section 2250(c) only upon a factual showing that an urgent situation requires immediate attention. In all other situations 5 days personal notice is required.

d) Independent Powers pursuant to Probate Code sections 2590 and 2591 will not be granted under a temporary conservatorship without a noticed hearing as required by Probate Code sections 2592(c) and 1460.

e) 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. Conservatee must attend the hearing unless unwilling or unable. If the Conservatee will not attend, a personal interview and report by the Court Investigator pursuant to Probate Code sections 1892-1894 is required.

f) A temporary conservator may not fix a temporary conservatee's residence at a place different from where he/she resided prior to the commencement of the proceedings without a noticed hearing (Probate Code section 2253), except in the case of an emergency and pursuant to Probate Code section 2254. The proposed conservatee must attend the hearing, or the Court Investigator shall personally interview the

proposed conservatee and report to the Court. Procedures required by Probate Code section 2253 shall be strictly followed.

g) A temporary conservator shall not sell or relinquish any lease or estate in real or personal property used as or within the conservatee's place of residence without a noticed hearing and specific approval of the Court. (Probate Code section 2252(e).)

h) Attorney and conservator fees are not payable under a temporary conservatorship, unless Probate Code section 2640 is satisfied.

I) An "Inventory and Appraisal" and an account must be filed within ninety (90) days after appointment of the temporary conservator, not the issuance of Letters. However, if the temporary conservator is appointed permanent conservator, the accounting for the period of temporary conservatorship may be included in the first annual account. (Probate Code sections 2255 and 2256.)

j) 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.

k) Bond shall be required for a temporary conservatorship of the estate, except for estate assets deposited in an account requiring Court authorization to remove funds and where appropriate receipts are filed in the proceeding pursuant to Probate Code section 2328. Only under extraordinary circumstances will this requirement of a bond be waived. (Adopted effective October 1, 1998; Rule 5.07 Renumbered as 5.12 and Amended effective January 1, 2009)

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 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(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. (Probate Code section 2640) (Adopted effective October 1, 1998; Rule 5.08 Renumbered as 5.13 and Amended effective January 1, 2009)

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 effective October 1, 1998; Rule 5.09 Renumbered as 5.14 and Amended effective January 1, 2009)

5.15 BOND

At the time of appointment of a Conservator of the Estate, the Court must fix a bond. If the conservatee is the petitioner and has waived the requirement of a bond, the Court has the

power to appoint the conservator without bond. It is the general policy, however, that a bond will be required if an individual is appointed. The Court will generally not waive the bond or set it in an amount less than is customary unless the conservatee is present at the hearing and is found competent to waive bond.

a) Unless for good cause the Court orders otherwise, the amount of the bond shall include the total value of the personal property plus the total annual income, plus the recovery amount pursuant to Probate Code section 2320(c)(4)**.**

   1. Annual income includes that derived from real and personal property.

   2. If the conservatee is a beneficiary under a trust which requires all or a fixed portion of the income of the trust to be distributed to the conservatee, the bond must include that income. However, if the trust provides that the trustee merely applies trust income for the conservatee's needs of care and maintenance, etc., and provides for excess income to be held in the trust and accrued to principal, a bond need not include the trust income.

b) If Independent Powers (Probate Code sections 2590 and 2591) are granted to include the sale of real property (Probate Code section 2591(d)), or to encumber real property as security for a loan, (Probate Code section 2591(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(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(d), the sale price may not be less than 90% of the appraised value determined by the Probate Referee within one (l) year prior to sale, unless otherwise authorized by the Court.

c) With specific prior Court approval, bond may be reduced by the amount of estate assets deposited in an institution described in Probate Code section 2328, if appropriate receipts are filed with the Court verifying that such assets shall not be released without Court authorization. Receipts shall be signed by an officer of the institution.

   Letters of conservatorship shall not issue until the receipts are filed with the Court. Otherwise, a bond will be required for the full amount, to be reduced upon the subsequent filing of appropriate receipts.

d) A family relationship between the conservator and conservatee, in itself, is <u>not</u> sufficient cause to reduce or eliminate the bond requirement.

e) If upon the filing of the "Inventory and Appraisal", or at any time when counsel for the conservator concludes that the bond is not sufficient, the conservator shall cause a sufficient bond to be filed or shall petition the Court to approve the existing bond upon the filing of appropriate receipts pursuant to Probate Code sections 2328 or 2456. (Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2008; Rule 5.10 Renumbered as 5.15 and Amended effective January 1, 2009)

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 effective October 1, 1998; Rule 5.11 Renumbered as 5.16 effective January 1, 2009)

5.17 CONSERVATEE'S RESIDENCE-CONSERVATEE'S REAL PROPERTY

a. If the Court determines it appropriate and necessary, based upon information contained in the Court Investigator's report or obtained from any other source, the Court may order that a conservatee's residence not be changed without prior Court authorization.

b. A sale of conservatee's residence or former residence must comply with Probate Code section 2540(b) and 2543(b). The Independent Power to sell a residence or former residence will not be granted. Compliance with Probate Code section 2540(b) is required in all instances. See also Local Rule 4.38

c. In no case is the conservator of the person authorized to fix conservatee's residence out of state without prior Court approval.

1. 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.

2. 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.

3. The Court Investigator is not authorized to conduct any Court investigation or review through a third person out of state.

. d. A Court Review is not required where there is a conservatorship of the estate only, and the conservatee resides out of state and is not present in this state. (Probate Code section 1850(d)(2)). Timely accountings are still required. (See Local Rule 5.23 et seq.)

e. A "Referral for Court Investigator-Conservatorship" (See Court website: www.montereycourts.org) shall be filed:
   1. With the initial petition;
   2. Each time either the conservatee or conservator has a change of address; and,
   3. With each accounting, or petition to dispense with an accounting pursuant to Probate Code section 2628, after receipt of the "Notice of Court Review."

f. Sales of conservatee's real property must also comply with 2540, 2543, and Local Rule 4.38 (Adopted effective October 1, 1998; Amended effective January 1, 2002; Amended effective July 1, 2004; Amended effective January 1, 2008; Rule 5.13 Renumbered as 5.17 and Amended effective January 1, 2009)

5.18 PLACEMENT ASSESSMENT EVALUATION

A placement assessment evaluation, pursuant to Probate Code Section 2352.5, shall be filed within 60 days of the establishment of all conservatorships, including those cases where only a conservatorship of the estate is established. (Rule 5.18 Adopted effective October 1, 1998; Amended effective January 1, 2001; Renumbered as 5.24 effective January 1, 2009; New Rule 5.18 Adopted effective January 1, 2009)

5.19 INVENTORY AND APPRAISAL

a) An "Inventory and Appraisal" shall be filed within 120 days from the hearing appointing the conservator in all cases where there is a conservatorship of the estate, even where there are no assets. When the value of the individual items to be listed is small, such items may be listed in broad categories, such as Clothing, Tools, Furniture, etc. However, items unique in nature or of substantial value must be itemized and appraised separately. In addition, all securities must be itemized and appraised separately. It is not acceptable merely to indicate the value of a brokerage or similar account.

b) After-acquired or newly discovered property shall be inventoried and appraised pursuant to Probate Code section 2613, in a Supplemental "Inventory and Appraisal." (Adopted effective October 1, 1998; Rule 5.14 Renumbered as 5.19 and Amended effective January 1, 2009)

5.20 SUBSTITUTED JUDGMENT (Probate Code section 2580)

a) Prior Court approval is required for any action specified in Probate Code sections 2580 or 2423, such as making gifts or establishing, amending or funding a trust.

b) A noticed hearing is ordinarily required, as specified in Probate Code sections 2581 and 1460, et seq.

c) 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.

d) Petitions requesting Substituted Judgment, which potentially have an affect 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.

e) 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.

f) 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 year, shall be made without prior Court approval. (Adopted effective October 1, 1998; Rule 5.15 Renumbered as 5.20 effective January 1, 2009)

5.21 NOTICE OF CHANGE OF ADDRESS

Conservators and guardians shall file with the Court and serve upon the Court Investigator written notice of any change of their address, or the address of their conservatees, within thirty (30) days of the change of address. Failure to comply may result in suspension or removal. (Adopted effective October 1, 1998; Rule 5.16 Renumbered as 5.21 effective January 1, 2009)

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. (Rule 5.22 Adopted effective October 1, 1998; Renumbered as 5.28 effective January 1, 2009; New Rule 5.22 Adopted effective January 1, 2009)

5.23 ACCOUNTS AND ACCOUNTING

COURT REVIEWS, ACCOUNTS AND STATUS REPORTS

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

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

b) All Conservators who have not obtained a copy of the "Handbook for Conservators" or who have not viewed the video "With Heart - Understanding Conservatorship", must do so prior to the time of the Court Review. The accounting will not be approved by the Court until this requirement has been complied with.

c) A “Confidential Status Report,” as formerly required by Probate Code section 2620.1, shall be filed by the conservator at each Court Review. The “Confidential Status Report” shall be a separate document from the petition and account and shall be confidential. This document is required of a conservator and is also required with any petition to waive the account.

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

d) The supporting documentation required by Probate Code Section 2620 shall be “lodged” with the Court pending approval of the Conservator/Guardian's accounting. 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 as 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.

2. The Court Investigator is required to personally visit the conservatee, review the "Account" and "Status Report", and file a written report fifteen (15) days prior to the hearing. (Probate Code section 1851.)

f) In years when a Court Review is required, a "Notice of Court Review" will be filed by the Court Investigator and copies shall be served by mail on conservator(s), attorney for conservator(s) and attorney for conservatee.

1. The "Notice of Court Review" shall be filed and mailed thirty (30) days prior to the anniversary date of appointment of conservator, or successor conservator;

2. The "Notice of Court Review" will require the upcoming "Account" and "Status Report" to cover the period through, and end on, the anniversary date of appointment;

3. The "Notice of Court Review" shall state the date by which the "Account" and "Status Report" must be filed, which shall be no later than sixty (60) days following the anniversary date;

4. The "Notice of Court Review" shall state the date of hearing on the petition for approval of "Account" and "Court Review"; and

5. If the "Account" and "Status Report" are not filed and no appearance is made at the hearing noticed for "Court Review", the Court shall issue an Order to Show Cause citing the Conservator(s) and Conservator(s)' attorney.

g) Findings of the Court Investigator pursuant to Probate Code section 1851, shall be submitted to the Court in writing not less than 15 days prior to the hearing on the "Court Review" and "Account". A copy of the report shall also be mailed by the Court Investigator to the conservator(s) and to the attorney of record for the conservator and conservatee. This report and its contents shall be kept confidential. (Adopted effective October 1, 1998; Amended effective January 1, 2007; Amended effective January 1, 2008; Rule 5.17 Renumbered and Re-lettered as 5.23; subd. (d) added, Amended effective January 1, 2009)

5.24 ACCOUNTING FORMAT/SUPPORTING SCHEDULES/PETITION FOR APPROVAL

The accounting format must comply with the requirements of Probate Code §§1061, 1062, and 1063. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 5.18 Renumbered as 5.24 effective January 1, 2009)

5.25 ACCOUNT - SUPPORTING DOCUMENTS REQUIRED

The following must be filed with each accounting:

1. The "Account" of a conservator of the estate who is also the conservator of the person must be accompanied by a "Confidential Status Report" (Probate Code section 2620.1). If the conservator of the estate is not the conservator of the person, the conservator of the person must file the status report in conjunction with the accounting filed by the conservator of the estate. Failure to comply with this rule may result in suspension or removal.

2. "Notice of Hearing"

3. "Notice to Court of Addresses" (Clerk's Form 212, rev. 1987) reflecting names, addresses and telephone numbers of conservatee, conservator, attorney for conservator and attorney for conservatee.

4. "Order Appointing Court Investigator" executed to "Monterey County Court Investigator", unless ongoing authority has been provided for in the initial "Order Appointing Court Investigator". (Local Rule 16.02(d)(7).) (Adopted effective October 1, 1998; Rule 5.19 Renumbered as 5.25 effective January 1, 2009)

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.

f) Bank statements and other such documents from mutual funds and brokerage accounts, etc. to support ending assets on hand, are now statutorily required. (Adopted effective October 1, 1998; Amended effective July 1, 2001; Rule 5.20 Renumbered as 5.26 effective January 1, 2009)

5.27 FEES

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. (Probate Code section 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, the Court will consider those factors referred to in Local Rule 4.33. 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.

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 effective October 1, 1998; Rule 5.21 Renumbered as 5.27 effective January 1, 2009)

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

a) If a conservatorship estate qualifies under Probate Code section 2628, the Court may grant an ex parte petition to dispense with the filing of an account.

b) The petition shall state:

   1. The value of the estate at the beginning and end of the account period, exclusive of conservatee's residence. It is not sufficient to allege that the total net value, exclusive of the residence, is less than $5,000.

   2. The amount and nature of the "public benefit payments". It is not sufficient to allege that monthly payments, exclusive of public benefit payments, were less than $750.

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

c) The petition shall be presented each time an "Account" would otherwise be due. This assures the Court that the estate continues to qualify. A "Status Report" as required by Probate Code section 2620.1 is also required.

d) Veteran's Benefits are not "public benefit payments".

e) The Order waiving an accounting must be served on the Court Investigator at least thirty (30) days prior to the hearing on the Court Review. (Adopted effective October 1, 1998; Rule 5.22 Renumbered as 5.28 effective January 1, 2009)

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 Rule l6.08) (Adopted effective October 1, 1998; Rule 5.23 Renumbered as 5.29 effective 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) The petition for a successor conservator may be submitted on the same form approved by The Judicial Council of California for initial petitions, deleting those portions which are not applicable.

d) The Notice of Hearing shall be substantially the same as required on an initial petition, including all relatives designated in Probate Code section 1821(b), other governmental agencies where appropriate, and the Court Investigator. Probate Code section 2683.)

e) Attendance. Conservatee is not required to attend the hearing for appointment of successor conservator. If the conservatee will not attend the hearing, the Court Investigator must personally visit the conservatee and file a written report to the Court at least five (5) days prior to the hearing. (Probate Code section 2684.)

f) 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.

g) A successor conservator's "First Account", as in the case of a predecessor, shall be presented to the Court one (l) year after appointment in the same manner as required in Local Rules 5.24 and 5.25.

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

i) 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 effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2002; Rule 5.24 Renumbered as 5.30 and Amended effective January 1, 2009)

5.31 ABSCONDING CONSERVATORS (Probate Code section 2632)

a) For the purpose of this section an "Absconding Conservator" shall include:

1. A conservator whose whereabouts are unknown, and who has not filed an "Account" that is due;
2. A conservator whose whereabouts are known, but who refuses to cooperate in presenting an account to the Court; and
3. A conservator who has removed the conservatee and/or his assets from the state without prior Court authorization.

b) In the case of an absconding conservator, the Court may compel the attorney for the conservator or the attorney of record in the conservatorship proceeding to render an account to the extent that information or records are available to the attorney. The account need not be verified. (Probate Code section 2632)

c) An absconding conservator may be removed and surcharged an amount deemed appropriate by the Court. An action against the surety may be initiated, on the basis of the amount surcharged, by appointed counsel for the conservatee. (Adopted effective October 1, 1998; Rule 5.25 Renumbered as 5.31 effective January 1, 2009)

5.32 TERMINATION OF CONSERVATORSHIP

a) A conservatorship is terminated by either:

1. The death of the conservatee (petition to terminate not necessary). The conservator must file a Notice of Death of the conservatee and serve a copy on the Court Investigator within 10 days of learning of the conservatee's death; or

2. By Court Order where the reason for establishing the conservatorship no longer exists. This must be established by an evidentiary showing. (Probate Code sections 1860-1863)

b) The filing of a certification of competency issued by the superintendent of a state hospital pursuant to Welfare and Institutions Code section 7357, or other provisions of law, does not of itself terminate a conservatorship.

c) The Court retains jurisdiction over the conservatorship to enforce orders, review the final account, and to grant discharge. (Probate Code section 2630) (Adopted effective October 1, 1998; Amended effective July 1, 2004; Rule 5.26 Renumbered as 5.32 effective January 1, 2009)

5.33 ASSESSMENTS (Probate Code section 1851.5)

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)

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 effective October 1, 1998; Rule 5.28 Renumbered as 5.34 effective January 1, 2009)

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. (Adopted effective October 1, 1998; Amended effective July 1, 2001; Rule 5.29 Renumbered as 5.35 effective January 1, 2009)

5.36 DEFINITION OF CONSANGUINITY

Probate Code section 1510(c)(3) requires relatives of the proposed ward within the second degree to be listed in the petition. Those relatives include: children, parents, grandchildren, grandparents, brothers and sisters. (NOTE: nephews, nieces, uncles, aunts, and great-grandparents are relatives of the third degree and are not entitled to notice under this

section.) (Adopted effective October 1, 1998; Rule 5.30 Renumbered as 5.36 effective January 1, 2009)

5.37 APPOINTMENT OF TEMPORARY GUARDIANS

a) Petition. On or after filing a petition for appointment of a general guardian, any person entitled to petition may be appointed temporary guardian of the person or estate or both, in the discretion of the Court.

b) Notice. If the minor is 12 years of age or older, petitions for temporary letters will require five (5) days notice to the proposed ward. The Court may grant temporary letters, ex parte, where immediate need for letters can be shown, and the Court deems it to be in the best interests of the minor to waive notice requirements.

c) Bond. The Court will require temporary guardians of estates to post bond. (Adopted effective October 1, 1998; Rule 5.31 Renumbered as 5.37 effective January 1, 2009)

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 effective October, 1, 1998; Rule 5.32 Renumbered to 5.38 effective January 1, 2009)

5.39 APPRAISALS AND ACCOUNTS

The Probate Code provides that an "Inventory and Appraisal" shall be filed within ninety (90) days after appointment. (Probate Code section 2610(a))

a) Valuation. The original appraisal in guardianship estates shall set forth the assets and values as of the date of appointment. Appraisals of after acquired property, by inheritance or gift, shall fix the value as of the date of acquisition. Assets purchased by the guardian are carried in the account at the cost of acquisition.

b) Periodic Payments. If the ward receives Veterans, Social Security, Welfare, or other periodic benefits, the initial inventory must indicate the amount received each month.

c) Accounting. A verified "Account" is required one (1) year after the date of appointment, not the date of issuance of Letters. Biennial "Accounts" will be required thereafter. "Accounts" must be filed no later than sixty (60) days following the end of the accounting period.

d) Form of Account. See Local Rules 5.24 and 4.48

e) Multiple Wards. When a guardian accounts for the assets of more than one minor, the accounting for each minor must be set forth individually. (Adopted effective October 1, 1998; Amended effective January 1, 2001; Rule 5.33 Renumbered and Amended as 5.39 effective January 1, 2009)

5.40 ANNUAL REVIEW OF GUARDIANSHIPS

Each guardian shall file with the Court a completed Confidential Guardianship Status Report (GC-251) one year after the anniversary date of appointment of the Guardianship. A hearing on the status report shall be set one (1) month after the anniversary date of appointment. (Adopted effective January 1, 2009)

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 effective October 1, 1998; Rule 5.34 Renumbered as 5.41 effective January 1, 2009)

MINOR OR INCOMPETENT'S CLAIM

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

a) Petition. A petition to compromise the claim of a minor or incompetent must be filed as a civil proceeding, not a probate proceeding. The petition must set forth jurisdictional facts and state the amount to be paid, by whom, and what disbursement for costs and/or fees is requested. The petition must also request the deposit of the balance of the proceeds in a blocked account in a federally insured bank, credit union or savings and loan association in the manner provided by law, with receipts filed. Although filed at the Civil proceeding, hearing shall be held in the Probate department.

b) Order. The order shall provide for the person or entity holding funds to make a check payable to the person or persons entitled to costs and fees and shall provide for the issuance of a check for the remaining funds made payable to the proposed trustee AND the bank, credit union or savings and loan association.

c) Duty of Attorney. The attorney for the petitioner is responsible for assuring that the funds are deposited in accordance with the order and receipts filed.

d) Attorney's Fees. Pursuant to California Rules of Court 7.955, in all cases under Code of Civil Procedure 372 or Probate Code sections 3600-3601, the Court shall use a reasonable fee standard when approving and allowing the amount of attorney fees payable from money or property paid or to be paid for the benefit of a minor or incompetent person. Such fees, however, shall not exceed 25 percent of the recovery, except for good cause shown. The Court may approve and allow attorney fees under a contingency fee agreement made in accordance with law, provided that the amount of fees is reasonable under all the facts and circumstances. (Adopted effective October 1, 1998; Amended effective January 1, 2004; Amended effective January 1, 2007; Rule 5.35 Renumbered to 5.42 and Amended effective January 1, 2009)

MEDIATION PROGRAM

5.43 CONSERVATORSHIP AND GUARDIANSHIP MEDIATION PROGRAM RULES (See rule 6.12, Court-Directed Mediation Program Rules)

(Rule 5.36 Renumbered as 5.43 effective January 1, 2009)

CHAPTER 6

CIVIL DEPARTMENT

6.01 ORGANIZATION AND DISTRIBUTION OF BUSINESS

a) The Civil Division shall be comprised of the Civil Supervising Judge and a minimum of two other judges as assigned by the Presiding Judge. The Presiding Judge may assign additional judges as needed.

b) The Supervising Judge shall have the responsibility of assigning cases, monitoring case and trial management, and supervising the functions of the Civil Division. (Adopted effective 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 appeals, creditors examinations, minor's compromises, probate matters, civil settlement conferences, civil writs, civil case and trial management, and law and motion.

b) Location. The Civil Division shall be located in the Monterey Branch Courthouse at 1200 Aguajito Road, Monterey, California. All civil cases shall be processed and tried by the Civil Division except as otherwise authorized by these rules, specially assigned, or as directed by the Presiding Judge.

c) All Temporary Restraining Orders brought on behalf or against an elder person, as defined by Probate Code Section 2952(b), shall be initially heard in the Probate Department. (Adopted effective October 1, 1998, Amended effective January 1, 2006; Subd.(c) added and Rule Amended effective January 1, 2009)

6.03 CALENDARS

a) Civil Jury Trials: Calendar call on Monday at 8:30 a.m. to be assigned by the Civil Supervising Judge.

b) Court Trials, Long Cause and Short Cause: Tuesday, Wednesday, and Thursday, at 8:30 a.m. as assigned by the Civil Supervising Judge.

c) Creditor's Examinations and Prove-up Default hearings, Tuesday, Wednesday, and Thursday, 8:30 a.m., as assigned by the Civil Supervising Judge.

d) Adoptions are heard on Wednesday at 9:00 a.m. in the Family Law Court.

e) Civil Harassment matters and Civil Domestic Violence matters are heard Thursdays at 8:30 a.m. in the Family Law Court.

f) Case Management.

1. Order to Show Cause: Tuesday, Wednesday and Thursday, 8:30 a.m. or as otherwise ordered by the Court.

2. Case Management Conferences: Thursday at 9:00 a.m., or as specially set or assigned by the Court.

g) Law & Motion.

1. Time: Friday, 9:00 a.m.

2. Department: Except when sufficient judges are not available, Law & motion shall be divided and heard in two departments. The Court shall assign the appropriate department.

h) Probate and Minor's Compromise hearings: Friday, 10:00 a.m.

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

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

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

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

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

(Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2003; Amended effective July 1, 2003; Amended effective July 1, 2004; Amended effective July 1, 2005; Amended effective July 1, 2007; Amended effective January 1, 2009)

6.04 DETERMINATION AND DESIGNATION OF JURISDICTIONAL AMOUNTS IN CONTROVERSY

a) The party filing an action shall designate the "filing jurisdiction" in the court title.

b) Superior Court unlimited matters shall be titled: The Superior Court of California, County of Monterey.

c) Superior Court limited matters shall be titled: The Superior Court of California, County of Monterey.

d) At the Case Management Conference or any other noticed motion, the Court may, on its own motion or the motion of any party, designate the jurisdiction in accordance with applicable law. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2001; Amended effective January 1, 2003)

6.05 CASE AND TRIAL MANAGEMENT RULES - GENERAL

a) This section shall apply to all civil cases except domestic relations, adoption, probate, and unlawful detainer.

b) The setting of all civil cases for trial shall be in accordance with Rules for Trial Courts 3.713-3.735 of the California Rules of Court and these rules. (Adopted effective October 1, 1998; Amended effective January 1, 2003; Amended effective January 1, 2008)

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 adversary process. (Adopted effective October 1, 1998; Amended effective 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) It is the policy of this Court that all matters be resolved within 2 years of the filing of the complaint. Except for good cause shown, all matters will be set for trial within 3 to 5 months from the initial Case Management Conference. If for good cause shown it appears to the Court that the matter will not be ready for trial during this period, the Court will set further Case Management or Status Conferences as necessary.

c) 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 12 months. Generally, these cases would have an estimated length of trial of two days or less and/or present no complex issues. These cases will be assigned a trial and mandatory settlement conference date and will be required to file a Trial Management Report and Brief, Friday prior to trial.

CATEGORY TWO: Category two cases are defined as cases that are expected to reach disposition in no more than 12 to 18 months. Generally, these cases would have an estimated length of trial of four days or less and/or present significant legal issues. These cases will be assigned a trial, a status conference as necessary, a mandatory settlement conference date, and will be required to file a Trial Management Report and Brief four (4) court days prior to trial.

CATEGORY THREE: Category three cases are defined as cases that are expected to reach disposition in 18 to 24 months. Generally, these cases would have an estimated length of trial of over four court days and/or present complex legal or factual issues. These cases may be assigned a trial, status conference as necessary, and will be required to file a Trial Management Report and Brief four (4) court days prior to trial. In addition, these cases may be pre-assigned to a trial department for all purposes.

d) The Court may in the interest of justice exempt a general civil case from the case disposition time goals under California Rule of Court 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 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 years.

e) 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.

f) 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 effective October 1, 1998; Amended effective January 1, 2007; Amended effective January 1, 2008; Subd. (e) Repealed, Rule Relettered effective January 1, 2009)

6.08 FROM CASE FILING TO CASE MANAGEMENT CONFERENCE

a) On the filing of every complaint, including cases transferred in from another court, the clerk shall issue a CIVIL CASE MANAGEMENT NOTICE [Appendix A], a REQUEST TO VACATE OR CONTINUE INITIAL CASE MANAGEMENT CONFERENCE AND ORDER [Appendix D] and an ALTERNATIVE DISPUTE RESOLUTION INFORMATION PACKET to the filing party. The Clerk shall set a date for an initial CASE MANAGEMENT CONFERENCE and include that date in the Civil Case Management Notice. The date shall be set no later than 180 days from the filing of the complaint.

b) A copy of the Civil Case Management Notice shall be served on opposing parties in addition to all other documents required to be served. A declaration of service of the Civil Case Management Notice shall be included in the proof of service.

c) It is the policy of the Court that all complaints and cross-complaints be filed and served per California Rules of Court, Rule 3.110.

d) Unless otherwise ordered by the Court, responsive pleadings filed after demurrer, motion to strike, quash service, change venue, stay or dismiss the action shall be filed within 10 days following the notice of ruling.

e) All parties shall file and serve the CASE MANAGEMENT STATEMENT (CM-110, Appendix B) no later than 30 days before the date set for the initial Case Management Conference, no later than 15 days before the date set for any subsequent Case Management Conference and/or as otherwise ordered by the Court.

f) The attorneys and/or parties shall meet and confer no later than 30 days before the date set for the Case Management Conference as to all matters required to be contained therein. They shall attempt to resolve potential disputes, establish a time schedule for completion of discovery consistent with the time standards contained in these rules, and determine which, if any, alternative dispute resolution procedure is appropriate and when it should be scheduled.

g) The parties may request that the initial Case Management Conference be vacated or continued by filing the 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

h) Based on its review of the Case Management Statements, the written submissions of the parties, and any such other information as is available, the Court may determine that appearances at a Case Management Conference are not necessary, issue a Case Management Order, and notify the parties that no appearance is required. In its review, the Court will consider the following factors:

1. Is the matter at issue? If not, why not?

2. Is the matter a complex case and/or one that may be protracted?

3. Are there disagreements between the parties concerning the status of the case, expected length of trial, discovery, complexity of the issue, or other relevant matters?

4. Is the matter one that may be amenable to early settlement or other alternative dispute resolution procedures?

5. Has a Request to Vacate or Continue Initial Case Management Conference and Order been filed by the parties?

i) Discovery Referee Program Rule

1. Description.

To provide prompt, informal and expeditious resolution of discovery disputes that otherwise would consume court time and impose unnecessary attorney's fees and costs on litigants, the Court adopts a discovery referee program that gives parties the opportunity to elect in their Case Management Statement or by stipulation the appointment of an on call discovery referee pursuant to the Code of Civil Procedure §638 et seq. and these rules.

2. Referees.

(a) Appointment. By written stipulation or in their first Case Management Conference Statement, the parties may agree to the appointment of a discovery referee to be on call to resolve discovery disputes pursuant to these rules. The Court shall assign the case for reference using a Notice of Reference, having the form set forth in Appendix I, which shall direct the parties to the membership list of the Panel of Referees to be delivered to the parties at the Case Management Conference or as the Court otherwise directs.

(b) Terms of Compensation. The parties shall negotiate the terms of referee compensation with the discovery referee they select from the Panel of Referees.

(c) Payment. The parties may agree in writing to pay the discovery referee's fee in other than equal portions. The parties shall pay the discovery referee directly.

3. Timing and Scheduling of Reference.

(a) Parties' Duty to Determine Discovery Referee Conflicts of Interest and to Deliver Documents. Within ten (10) days of the issuance of a Notice of Reference (Appendix I), the parties shall select a referee from the Panel of Referees and contact the referee to negotiate the terms of compensation in the event a party requests reference services of the referee.

(b) Reference Process. *Initiation of the reference shall be made by a party* by faxing or e-mailing a written request for reference to the referee accompanied by a letter brief, which shall also be served on all other parties in the action. Within three (3) court days of service, the responding party(ies) shall serve a reply letter brief on the referee, the initiating party and all other parties in the action by fax or e-mail.

(c) Referee Responsibilities. Promptly after receiving letter briefs, the referee shall contact the parties by conference call: (1) to announce a ruling based on the letter briefs, (2) where appropriate, to request further argument, or (3) to ascertain before announcing the ruling whether the parties agree to accept the referee's recommendation resolving the discovery dispute or whether the recommendation must be ruled on by the Court. Within five (5) days of the conference call, the referee shall file a Report of Referee in the form set forth in Appendix J.

(d) Deadline for Conducting Reference. *The resolution of the discovery dispute* by the referee shall occur within ten (10) days after the *initiation of reference proceedings before the discovery referee*.

4. Written Letter Briefs.

(a) Filing Prohibition. Letter briefs shall not be filed with the Court.

(b) Content of the Letter Brief. Letter briefs shall be concise, include any information that may be useful to the discovery referee, and

(1.) Identify by date, title or other concise description the discovery items in dispute; and

(2.) State concisely the party's position(s) in the discovery dispute.

5. Contact with the Discovery Referee before Reference Proceedings.

Except as provided herein, before the conference call provided for in these rules, the parties shall not individually contact the discovery referee.

6. Informality.

The reference procedure shall be conducted informally by unreported conference calls, written letter briefs, and by means of written final orders or recommendations by the discovery referee.

7. Report of Referee.

Following the reference proceeding, *unless waived by the parties*, the referee shall prepare a Report of Referee in the form set forth in Appendix J. The report shall state (1) the date on which the reference proceeding took place; (2) whether the parties accepted the ruling of the referee as resolving the discovery dispute and; or in the alternative (3) that at least one party objected and required that the Report of Referee be forwarded to the Court. The Report of Referee shall concisely state the referee's recommendation.

8. Implementing Referee Recommendations.

If the parties have agreed to accept the referee's recommendation, the referee shall serve the report only on the parties. If the Report of Referee reflects that at least one party objected and required that the Report be forwarded to the Court, the referee shall serve the report on the parties and file the report with the Court. The recommendation of the referee shall be subject to adoption by the Court as an order after fifteen (15) days have elapsed from the date of service, unless the party who objected and required the forwarding of the Report files and serves a motion objecting to the entry of the order within fifteen (15) days of the date of service.

9. Membership on the Discovery Referee Panel.

Any member of the Monterey County Bar Association with five (5) years of civil litigation experience may submit a written application to the Executive Director of the Monterey County Bar Association. The list of qualified Referee Panel members will be posted on the Superior Court and County Bar Association websites. (Adopted effective October 1, 1998; Amended effective January 1, 2003; Amended effective July 1, 2004; Amended effective January 1, 2007; Amended effective January 1, 2008)

6.09 CASE MANAGEMENT CONFERENCES

a) Case Management Conferences may be set at a time and date different than that set forth in 6.03(f)(2) as determined by the Supervising Judge of the Civil Department.

b) 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. Failure to attend or to participate effectively may result in appropriate sanctions.

c) At or before the Case Management Conference, the Court may determine the appropriate jurisdictional level and/or take any of the following actions:

1. Determine the potential complexity and/or length of the matter and assign it to a CASE CATEGORY;

2. Refer the matter to arbitration, voluntary settlement conference, private mediation, court-directed mediation, or other alternative dispute resolution procedure;

3. Order that the rules for Economic Litigation shall apply, CCP 90 and 91;

4. Assign the case to a particular judge for all purposes;

5. Make orders establishing discovery schedules including but not limited to a discovery cut-off, exchange of expert witness information, and a schedule for completion of expert depositions;

6. Set the matter for mandatory settlement conference as provided in these rules;

7. Assign a trial date;

8. Make appropriate Trial Management Orders in accordance with these rules; and/or

9. Make any other orders to achieve the interests of justice and the timely disposition of the case.

d) If it appears for good cause that the matter will not be ready for trial within 3 to 5 months of the Case Management Conference, the Court shall set additional Case Management or Status Conferences as necessary.

e) 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 effective October 1, 1998; Amended effective January 1, 2003; Amended effective January 1, 2007)

6.10 TRIAL MANAGEMENT ORDERS, REPORTS AND CONFERENCES

a) Case Management Conferences shall be set at a time and date determined by the Supervising Judge of the Civil Department.

b) If Case Management Statements are ordered to be filed they shall be filed 15 days prior to the date of the hearing per California Rules of Court, Rule 3.725.

c) Counsel and/or parties attending the conference shall be familiar with the case and fully prepared to discuss all matters contained in the Case Management Statements. Failure to attend or to participate effectively may result in appropriate sanctions.

d) At or before the Case Management Conference, the Court may make any of the orders indicated above, and, determine the appropriate jurisdictional level. If it appears for good cause that the matter will not be ready for trial within 3 to 5 months of the Case Management Conference, the Court shall set additional Case Management or Status Conferences as necessary. (Adopted effective October 1, 1998; Amended effective January 1, 2003; Amended effective July 1, 2004; Amended effective January 1, 2008)

6.11 MANAGEMENT OF THE TRIAL

a) 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.

b) On review of the Case Management Statements, at the Case Management Conference, or at any time thereafter as it appears appropriate to the Court, the Court shall determine or modify trial management procedures and assign cases and Trial Management requirements as follows:

1. CATEGORY ONE cases will be required to comply with the Court's orders, meet and confer with other Counsel and/or parties, and prepare a Trial Management Report and Brief [Appendix C] to be filed Friday before trial.

2. CATEGORY TWO cases will be required to comply with the Court's orders, meet and confer with other counsel and/or parties, and prepare a Trial Management Report and Brief [APPENDIX C], which shall be filed and personally served, no later than 3:00 p.m., four (4) court days prior to trial.

3. CATEGORY THREE cases will be required to comply with the Court's orders, meet and confer with other counsel and/or parties, prepare a Trial Management Report and Brief [APPENDIX C], and attend a Trial Management Conference as necessary. Trial Management Conference Reports shall be prepared in the format indicated in APPENDIX C and shall be served and filed (4) four court days prior to trial. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective January 1, 2003)

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 complied 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 with in 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. (Adopted effective January 1, 2006; Amended effective January 1, 2008; Subd. f (6) Added and Rule Amended effective January 1, 2009)

6.13 SETTLEMENT CONFERENCES

a) A mandatory Settlement Conference will be set by the Court approximately seventeen (17) 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 it's sole discretion, continue the conference and order that person to personally attend.

d) Per California Rules of Court, Rule 3.1380(c) each party shall prepare, file and serve (5) five 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 parties 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;

5. Any perceived impediments to settlement. Settlement Conference statements shall not be confidential unless ordered by the Court.

e. 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.

f. 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. These rules shall apply to all settlement conferences whether considered mandatory or voluntary. (Adopted effective October 1, 1998; Amended effective January 1, 2003; Amended effective January 1, 2008)

6.14 TELEPHONE APPEARANCE

a) 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 effective October 1, 1998; Amended effective July 1, 1999; Amended effective January 1, 2003; Amended effective July 1, 2007)

6.15 MISCELLANEOUS RULES

a) Notice of Settlement. The Court shall be notified of the settlement of any case immediately. If the notice is oral it shall be followed by written notification received by the Court within (2) days. If a case is reported as settled all dismissals shall be filed with the Court within 45 calendar days. This time may be extended by written ex parte request, for good cause, on court order. If nothing is received by the Court during this period of time and no extensions have been granted, the court will presume the matter is completed and dismiss the case after 45 days pursuant to California Rule of Court 3.1385.

b) Orders. If a party is required to prepare any order it shall be prepared, forwarded to all other parties for written approval as to form, and returned to the Court within 14 days. Signature blocks indicating approval of all attorneys and/or parties shall be incorporated into the order. Any party not responding to the request for approval within 5 days shall be deemed to have waived any objection. Proof of mailing shall be provided with the order. If there is an objection to the order the attorneys and/or parties shall meet and confer within five days. If there are any remaining objections each party shall prepare a proposed order and brief letter explaining their objection. It is the responsibility of the attorney/party ordered to prepare the order to forward all objections to the Court in a single package.

c) Delay in Prosecution. It is the intent of the Court to monitor the process of cases to ensure final resolution within the time guidelines set by the Judicial Council. Where appropriate, the Court shall, on it's own motion, calendar all cases that have not

been brought to final judgment within two years from the date of filing of the complaint, for dismissal under applicable California law and Rules of Court. Failure to file timely objections shall be deemed a consent to dismissal.

d) Pursuant to California Rule of Court 3.740 qualified collection actions 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. [Appendix K]

**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 {CMC) will be set within 60-90 days of the filing of the answer/denial/ response.

e) Stayed Cases. The attorneys shall promptly notify the Court if a case is stayed by operation of law (bankruptcy, removal to Federal Court, coordination proceedings, conditional settlement agreement, etc.) If a stay is lifted the attorneys shall notify the Court within ten (10) days.

f) 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 90 days if no other date is set by the Court.

g) 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 effective October 1, 1998; Amended effective January 1, 2003, Amended effective January 1, 2007; Amended effective July 1, 2007; Amended effective January 1, 2008; Subd. (d) added, Rule Amended effective January 1, 2009)

APPENDIX A

CASE MANAGEMENT NOTICE

Case Management Conference Date: _____

1. NOTICE is hereby given that a CASE MANAGEMENT STATEMENT shall be filed with the Court and served on all parties NO LATER THAN: 30 days before the above date of the initial CASE MANAGEMENT CONFERENCE..

2. No party may stipulate to extend the date set above.

3. At the CASE MANAGEMENT CONFERENCE, it is expected that trial counsel for each party and each self-represented party shall attend and be fully prepared to participate effectively in the conference.

4. On receipt of the CASE MANAGEMENT STATEMENT and at or before the CASE MANAGEMENT CONFERENCE the Court may make the following orders:

   a. refer the matter to arbitration, the court-directed mediation program, or other alternative dispute resolution procedures;

   b. identify the case as one which may be protracted and in need of special attention'

   c. assign case to a particular judge for all purposes;

   d. assign a mandatory settlement conference and trial date;

   e. make orders establishing discovery schedules and cut-offs, including expert witness disclosure and discovery;

   f. make appropriate TRIAL MANAGEMENT ORDERS; and/or

   g. make any other orders to achieve the interests of justice and the timely disposition of the case, including the setting of additional STATUS CONFERENCES.

5. It is the policy of this Court that all complaints are served, all challenges to the pleadings be heard, and the matter be at-issue no later than 180 days from the filing of the complaint. It is also the policy of this Court that all civil matter be resolved in no more than 12 to 24 months of the filing of the complaint.

6. Failure to file the CASE MANAGEMENT STATEMENT, attend a CASE MANAGEMENT CONFERENCE and participate effectively, or comply with any CASE AND TRIAL MANAGEMENT RULES may result in sanctions.

7. It is the responsibility of the parties and/or their attorneys to be familiar with Monterey County Case and Trial Management Policies and Rules and to comply therewith.

BY ORDER OF THE PRESIDING JUDGE

(APPENDIX A, Adopted effective October 1, 1998; Amended effective January 1, 2003.)

SEE JUDICIAL COUNCIL FORM CM-110 (JULY 1, 2002)

APPENDIX B, ADOPTED EFFECTIVE October 1, 1998; Amended effective January 1, 2003; Amended January 1, 2006.)

APPENDIX C

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

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

1. 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, including but not limited to the exclusion or limitation of evidence, monetary sanctions, dismissal of the case, or entry of a default judgment.

2. The attorneys shall prepare a Trial Management Report and Brief and submit the Report as follows:

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 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 days prior to the Conference, otherwise (4) four court days prior to trial.

TRIAL MANAGEMENT REPORT AND BRIEF

1. 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, 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 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.

2. ATTORNEY AND CASE INFORMATION

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

3. 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.

4. 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.

5. 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.

6. 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.

7. STIPULATIONS

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

8. 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. 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 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.

9. 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.

10. 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.

11. 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 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.

12. VOIR DIRE

The Report shall indicated 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.

13. 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 instructions shall be submitted in duplicate. One 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.

14. 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.

15. OTHER REQUESTS: [list all additional requests]

(APPENDIX C, Adopted effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2003; Amended effective January 1, 2005;)

APPENDIX D

REQUEST TO VACATE OR CONTINUE INITIAL CASE MANAGEMENT CONFERENCE AND ORDER

Counsel and the parties certify that the initial Case Management Conference should be vacated or continued for the following reasons [circle one]:

1. All parties have appeared and agree to engage in the below ADR program [check ☑ one]:

   ☐ Court-Directed mediation ☐ Private mediation
   ☐ Nonbinding judicial arbitration ☐ Private arbitration
   ☐ Other:

   THE PARTIES AGREE TO COMPLETE THE ALTERNATIVE DISPUTE RESOLUTION PROGRAM WITHIN 90 DAYS OF THE FILING OF THIS FORM. Further Case Management Conference is requested

2. Case is concluded and judgment or dismissal has been entered as to all parties.
3. Case has settled; dismissal shall be filed on or before _____.
4. Case is at-issue and all parties agree that matter may be set for trial without the necessity of a Case Management Conference.
5. All defendants have not been served and the plaintiff has been granted an extension by the court until _____ to complete service on all defendants. Further Case Management Conference is requested.
6. A defendant has filed bankruptcy; case should be stayed pending the completion of bankruptcy. Plaintiff shall file a Supplemental Case Management Statement within ten (10) days of any action by the debtor or the Bankruptcy Court that would act as a lifting of said stay.
7. Case has been removed to Federal Court. Plaintiff shall file a Supplemental Case Management Statement within ten (10) days of any remand back to Superior Court or of any judgment or dismissal filed in the Federal Court.
8. Plaintiff has obtained a default as to all defendants and will perfect the default by entry of court or clerk judgment in timely manner. Further Case Management Conference is requested.
9. All defendants have appeared and discovery is proceeding in a timely manner. For reasons set forth in the parties' Case Management Statements, the case should be designated (circle one) Category I, Category II or Category III. Parties anticipate case will be ready to set for trial as of _____. Further Case Management Conference is requested.
10. Other: _____

    _____

    _____

    _____. Further Case Management Conference is requested.

_____	_____
Counsel for Plaintiff (*print name)*	Counsel for Defendant (*print name)*
_____	_____
Signature	Signature
_____	_____
Counsel for Plaintiff (*print name)*	Counsel for Defendant (*print name)*
_____	_____
Signature	Signature

For additional parties, attach additional signature pages as needed.

Good Cause appearing, IT IS SO ORDERED that the Case Management Conference set for _____ is vacated.

☐ Supplemental Case Management Statements shall be filed as set forth in 6 or 7 above.

☐ Receipt of Dismissal is set for _____.

☐ Further Case Management Conference is set for _____.
Parties shall file Case Management Statements prior to said hearing per Local Rule 6.08(e).

PLAINTIFF MUST SERVE A COPY OF THIS ORDER ON ALL PARTIES.

Dated: _____ _____
Judge of the Superior Court

(APPENDIX D; Adopted effective January 1, 2006)

APPENDIX E

NOTICE OF REFERRAL TO MEDIATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

_____, Plaintiff(s), v. _____, Defendant(s).	Case No. M_____ **NOTICE OF REFERRAL TO MEDIATION**

TO COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that the Court refers the above-entitled case to the following members of the Mediation Panel, pursuant to the Mediation Program Rules and Local Rules 6.07(d) and 6.09(b)(2).

1. Assigned Mediator: _____

2. Alternate Mediator: _____

Within 10 days of the date below, all counsel shall confer with the assigned mediator or, if necessary, the alternate mediator, to determine whether conflicts of interest exist. Counsel shall also deliver complete copies of their case management statements and a copy of this Notice of Referral to Mediation to the mediator. Thereafter, the parties shall comply with the Mediation Program Rule. Mediation shall be completed 90 days from date of this Notice of Referral to Mediation.

A Conference is set for _____ .

Dated: _____ _____
JUDGE OF THE SUPERIOR COURT

(APPENDIX E, Adopted effective January 1, 2006; Amended effective January 1, 2007.)

APPENDIX F

MEDIATION AND CONFIDENTIALITY AGREEMENT

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 §§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 effective 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.

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:

a. 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;

b. 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 hours will commence after the parties have signed the Mediation Agreement and at the time of the Mediator's Opening Statement. The two 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.

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.**

a. **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 more hour, two more hours, etc.)

b. **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 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 effective January 1, 2006)

APPENDIX G

STATEMENT OF AGREEMENT OR NONAGREEMENT

SEE JUDICIAL COUNCIL FORM ADR-100 (January 1, 2003)

APPENDIX H

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

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

SUPERIOR COURT OF THE STATE 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 effective January 1, 2007)

APPENDIX I

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

_____, Plaintiff(s), v. _____, Defendant(s).	Case No. M_____ **NOTICE OF REFERENCE**

TO COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that the Court refers the above-entitled case to the Discovery Referee Panel, pursuant to Local Rule___ and ____.

Dated: _____, 20___

_____
JUDGE OF THE SUPERIOR COURT

APPENDIX J

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

_____,	Case No. M_____
Plaintiff(s),	**REPORT OF REFEREE**
v.	
_____,	
Defendant(s).	

This will confirm that reference in the above-entitled matter was completed on _____ _____.

At reference proceedings:

___ the parties accepted the ruling of the ***referee*** as resolving the discovery dispute.

___ at least one party objected and required that the ***Report of Referee*** be forwarded to the Court. That recommendation is the following:

_____

_____

Dated: _____, 20___

_____
REFEREE

ORDER

More than fifteen days having elapsed from the service and filing of the Report of Referee and no objection having been filed, the Court herewith adopts the recommendation of the referee as its order.

Dated: _____, 20__

_____
JUDGE OF THE SUPERIOR COURT

Superior Court of California, County of Monterey
Local Rules of Court

APPENDIX K

COLLECTION CASE NOTICE

Pursuant to California Rule of Court 3.740 this collection action has been assigned to the Court's Case Disposition Calendar: A Non-Appearance Hearing* is set _____**at 10:00 a.m.**

The complaint in a collections case must be served on all named defendants, and proofs of service on those defendants must be filed, or the plaintiff must obtain an order for publication of the summons, within 180 days after the filing of the complaint.

Upon the filing of a response/denial/answer by the defendant(s) this action will be changed to a civil fast track/delay reduction case and a Case Management Conference set; Notice of Setting will sent to the parties by the Clerk of the Court.

Effect of failure to serve within required time

If proofs of service on all defendants are not filed or the plaintiff has not obtained an order for publication of the summons within 180 days after the filing of the complaint, the court may issue an order to show cause why reasonable monetary sanctions should not be imposed. If proofs of service on all defendants are filed or an order for publication of the summons is filed at least 10 court days before the order to show cause hearing, the court must continue the hearing to 360 days after the filing of the complaint.

Effect of failure to obtain default judgment within required time

If proofs of service of the complaint are filed or service by publication is made and defendants do not file responsive pleadings, the plaintiff must obtain a default judgment within 360 days after the filing of the complaint. If the plaintiff has not obtained a default judgment by that time, the court must issue an order to show cause why reasonable monetary sanctions should not be imposed. The order to show cause must be vacated if the plaintiff obtains a default judgment at least 10 court days before the order to show cause hearing.

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

BY ORDER OF THE PRESIDING JUDGE

Date: By: _____
Deputy Clerk

Alternative Dispute Resolution
OPTIONS FOR RESOLVING YOUR DISPUTE

There Are Alternatives to Going to Trial
Did you know that 95 percent of all civil cases filed in court are resolved without going to trial? Many people use processes other than trial to resolve their disputes. These alternative processes, known as Alternative Dispute Resolution or ADR, are typically less formal and adversarial than trial, and many use a problem-solving approach to help the parties reach agreement.

Advantages of ADR
Here are some potential advantages of using ADR:

- **Save Time**: A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.
- **Save Money**: When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, and expert's fees.
- **Increase Control over the Process and the Outcome**: In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.
- **Preserve Relationships**: ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.
- **Increase Satisfaction**: In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.
- **Improve Attorney-Client Relationships**: Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

Because of these potential advantages, it is worth considering using ADR early in a lawsuit or even before you file a lawsuit.

What Are the ADR Options?
The most commonly used ADR processes are mediation, arbitration, neutral evaluation, and settlement conferences.

Mediation

In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties. The Monterey County Superior Court offers a Court-Directed Mediation Program.

Cases for Which Mediation May Be Appropriate: Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use.

Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate: Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed.

Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision in binding arbitration. *Nonbinding arbitration* means that the parties are free to request a trial if they do not accept the arbitrator's decision. The Monterey County Superior Court offers a nonbinding judicial arbitration program.

Cases for Which Arbitration May Be Appropriate: Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate: If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation

In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is nonbinding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate: Neutral evaluation may be most appropriate in cases in which there are technical issues that require expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate: Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conference

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial. (Adopted effective January 1, 2009)

CHAPTER 7

LAW AND MOTION

7.01 LAW AND MOTION JUDGES

The Law and Motion Judges shall be designated by the Presiding Judge. (Adopted effective October 1, 1998)

7.02 LAW AND MOTION CALENDAR

FAMILY LAW

Family Law and Motion matters are heard in Monterey, at 9:00 a.m., on Fridays.

Family Law and Motion matters ***in pro per*** are heard in Monterey, at 9:00 a.m., on Thursdays.

MEET AND CONFER FOR DOMESTIC 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.

CIVIL

Civil Law and Motion matters are heard in Monterey, at 9:00 a.m., on Fridays.

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

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, non-family law restraining orders, writs of prohibition, ex parte provisional remedies, such as attachments and appointment of receivers, shall be presented to the Civil Law and Motion Departments. (Adopted effective October 1, 1998)

7.04 CONTINUANCES

a) It is the policy of the Court not to continue law and motion matters, whether civil, domestic or probate, without good cause. The parties may, with good cause, stipulate twice to continue a law and motion matter for a reasonable amount of time not to exceed 60 days. The Clerk's Office must be notified of such stipulations at least two court days prior to the scheduled hearing.

b) All other 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 effective July 1, 2003)

7.05 LONG MATTERS

Upon calling a Law and Motion matter, if it should appear that more than one-half hour will be required, the Court may refer the matter to the Presiding Judge for resetting or reassignment. (Adopted effective October 1, 1998)

7.06 FILING OF PAPERS

No uncontested civil matter shall be heard unless application is filed with the Clerk at least forty-eight (48) hours in advance thereof, 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 effective October 1, 1998; Amended effective July 1, 1999)

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 effective July 1, 1999; Amended effective July 1, 1999; Amended effective July 1, 2004; Amended effective July 1, 2007)

7.08 OBTAINING AN EXPEDITED ORDER AFTER HEARING OR STIPULATION

If the attorneys or self-represented parties settle a matter at the time of the hearing or the judge makes a ruling, the parties may use the form entitled, “Stipulation and Order” to obtain an expedited Order After Hearing. The parties shall complete the form, sign it, and submit it to the Judge for signature. The clerk will file it and return the copies to the parties at the time of the hearing. This form is optional. The form is available either at the Clerk’s office, Court’s website or in the courtroom where the hearing is held. Child support orders must be accompanied by a Child Support Registry Form. (Adopted effective January 1, 2004)

7.09 PAGE LIMITATIONS FOR POINTS AND AUTHORITIES

a) No memorandum of points and authorities filed in support of any motion, application, petition, etc., or in opposition thereof, in any type of case shall exceed 15 pages without prior approval of the court. [Except for motions for summary judgment or summary adjudication of issues.] The page limitation does not include declarations or exhibits incorporated by reference, indices, table of contents, table of authorities, documents required by California Rules of Court, Rule 3.1020, the first page or proof of service.

b) Applications for relief from the page limitation shall be in writing and shall be directed to the judge who will hear the motion, etc. The application must be accompanied by counsel's declaration showing good cause, including stating why more than 15 pages are needed for the argument. Application for relief shall be granted for good cause only. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective January 1, 2008)

7.10 SUMMARY JUDGMENT AND SUMMARY ADJUDICATION OF ISSUES

A. APPLICABILITY OF RULE; SANCTIONS

All motions for summary judgment or summary adjudication of issues must conform to the requirements of Code of Civil Procedure section 437c, the California Rules of Court and this and other applicable local rules. These requirements shall be strictly enforced by the Court. Sanctions shall be imposed for non-compliance. Sanctions may include monetary sanctions payable by counsel to the Court, to opposing counsel, or to both.

There is no procedure for a summary judgment or partial summary judgment on a single cause of action of a multi-cause of action complaint or cross-complaint. Summary adjudication of issues is the appropriate procedure for such relief.

B. MOTION FOR SUMMARY JUDGMENT

1) Burden on Moving Party Plaintiff. To prevail, a plaintiff or cross-complainant moving for summary judgment must establish by material facts as to which there is no substantial controversy every essential element of the moving party's claim(s) or cause(s) of action. These uncontroverted facts must establish that as a matter of law, the moving party is entitled to prevail.

2) Summary Judgment - Burden of Moving Party Defendant. To prevail, a defendant moving for summary judgment must establish by material facts as to which there is no substantial controversy that at least one essential element of plaintiff's claim(s) or cause(s) of action cannot be proven, or by such proof establish that a defense to plaintiff's cause(s) of action is perfected as a matter of law.

3) Documents in Support of Motion for Summary Judgment. The motion for summary judgment must contain and be supported by the following documents which are to be filed at the same time in this order:

    1) Notice of Motion for Summary Judgment.

    2) Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment in the format prescribed by this rule;

    3) Separate Declaration with Evidence in Support of Motion for Summary Judgment in the format prescribed by this rule;

    4) Separate Request for Judicial Notice in Support of Motion for Summary Judgment (if appropriate);

5) Separate Memorandum of Points and Authorities in Support of Motion for Summary Judgment.

4) Separate Statement in Support of Motion for Summary Judgment. The separate statement of undisputed material facts in support of a motion for summary judgment must separately identify each claim, cause of action or defense, and each supporting material fact said to be without substantial controversy. In the side-by-side format illustrated below, the statement must set forth in numerical sequence the undisputed material facts and the evidence which establishes those undisputed facts. The material facts must be listed on the left-hand side of the page and the supporting evidence immediately opposite on the right-hand side of the page. Citation to the evidence in support of each material fact shall include reference to the exhibit, title, page and line number as shown in the example. The format for the separate statement in support of motion for summary judgment shall be as set forth on the following page.

5) Opposition to a Motion for Summary Judgment. Contents of Separate Statement. The opposition to a motion for summary motion must contain a separate statement, the format for which is described below at paragraph N., which responds to the moving party's Separate Statement of Undisputed Material Facts. Each material fact said by the moving party to be without substantial controversy must be set out verbatim on the left-hand side of the page. On the right-hand side of the page, directly opposite the recitation of the moving party's statement of material facts, the response must unequivocally indicate whether it is "disputed" or "undisputed" that the fact is without controversy. Where the opposing party contends that the fact is disputed, the party must state the nature of the disagreement and describe the admissible evidence which supports its position that the disagreement exists, citing exhibit, title, page and line number of the evidence so submitted.

EXAMPLE

SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PLAINTIFF JONES' MOTION FOR SUMMARY JUDGMENT

Plaintiff Jones submits the following undisputed material facts with reference to supporting evidence pursuant to CCP 437c(b). By reason of these facts, every essential element of plaintiff's case is established, and it is shown that the defendant's defense(s) cannot prevail. Plaintiff is entitled to judgment as a matter of law.

UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
First Cause of Action: Breach of Contract: Essential Elements	
1. Plaintiff Jones and defendant Smith reached an agreement whereby Smith would construct a house for Jones in exchange for Jones' payment to Smith for $130,000. The contract called for Smith to complete construction of the house by March 11, 1987.	Admitted in defendant Smith's answer at 2:3-4. Declaration Plaintiff Jones, Exh. 1 at 2:1-13. Contract attached as Exh. 1(a).
2. On December 15, 1986, prior to completion of the house's exterior framing, Smith stopped all construction on the house.	Declaration of Jones, Exh. 1 at 3:1-15 Depositions of Smith Exh. 3(b) at 31:4-14.
3. Smith never returned to the jobsite, despite numerous requests from Jones.	Declaration of Jones Exh. 1 at 3:16-28.
First Affirmative Defense: Mitigation of Damages	
4. Jones contacted five general contractors and solicited bids before contracting with Brown, whose bid was the lowest of the three bids submitted.	Declaration of Jones, Exh. 1 at 4:1-13.

6) Documents in Support of Opposition to Motion for Summary Judgment. The opposition to a motion for summary judgment must consist of the following documents:

    1) Separate Statement of Undisputed Material Facts in Opposition to Motion for Summary Judgment in the format prescribed below;

    2) Separate Declaration with Evidence in Support of Opposition to Motion for Summary Judgment in the format prescribed by this rule;

    3) Separate Request for Judicial Notice in Opposition to Motion for Summary Judgment;

    4) Separate Memorandum of Points and Authorities in Opposition to Motion for Summary Judgment.

7) Format for Separate Statement in Opposition to Motion for Summary Judgment. The format for separate statement in opposition to motion for summary judgment shall be as set forth on the following page.

8) Moving Party's Failure to Meet Its Burden. Where in opposition to a motion for summary judgment it is contended that the moving party has failed to meet its burden of proof, either because the material facts stated by the moving party fail to establish an essential element or issue, or because the evidence fails to establish the material facts, this position should be stated on the right hand side of the page opposite the paragraph or paragraphs where such material facts or deficient evidence are set out in the moving party's separate statement.

9) Additional Disputed Facts. The opposing party's separate statement in opposition shall set forth any other material facts which the opposing party contends are disputed. Where the opposition is to a summary judgment motion, the additional disputed facts shall be set forth at the conclusion of the treatment of the moving party's facts. The additional disputed facts shall be supported by evidentiary references in the format previously described.

EXAMPLE

SEPARATE STATEMENT OF DISPUTED FACTS OF DEFENDANT GEORGE SMITH IN OPPOSITION TO PLAINTIFF JONES' MOTION FOR SUMMARY JUDGMENT

Defendant George Smith submits this separate statement in opposition to plaintiff Jones' separate statement of undisputed material facts pursuant to CCP Section 437(b).

PLAINTIFF JONES' MATERIAL FACTS AND SUPPORTING EVIDENCE:	DEFENDANT SMITH'S MATERIAL FACTS AND SUPPORTING EVIDENCE:
<u>First Cause of Action: Breach of contract - Essential Elements</u>	
1. Plaintiff Jones and defendant Smith reached an agreement whereby Smith would construct a house for Jones in exchange for Jones' payment to Smith of $130,000.00. The Contract called for Smith to complete construction of the house by March 11, 1987.	Undisputed.
2. On December 15, 1986, prior to completion of the house's exterior framing, Smith stopped all construction on the house.	Disputed. Plaintiff's evidence was taken out of context. Later portions of the Smith disposition show that Smith began to complete the exterior framing on December 18, 1986, but was instructed by plaintiff to leave the property and not return. Deposition of Smith, defendant's Exh. 2(a) at 31:15-27 and 32:1-15.
3. Smith never returned to the jobsite, despite numerous requests from Jones.	Disputed. Smith returned to the jobsite on December 18, 1986, in an effort to complete the job. Plaintiff told him to leave and not return. Smith also returned to the jobsite on December 21, 1986, but plaintiff told him he was "off the job for good." Declaration of Smith, defendant's Exh.1 at 3:1-28 and 4:1-15.

C. MOTION FOR SUMMARY ADJUDICATION OF ISSUES

1) Generally. A motion for Summary Adjudication of Issues may be made either separately or as an alternative to the motion for summary judgment. Where the motion is made as an alternative to the motion for summary judgment, the notice of motion and other required documents must state in their titles that the motion is one for summary judgment or in the alternative a motion for summary adjudication of issues. In either case, the notice of motion must specifically identify and number those issues said to be without substantial controversy.

Where the motion for summary adjudication is made independently, and not as an alternative to a motion for summary judgment, the motion must be supported by the same documents: as required for the summary judgment motion.

2) Identification of Issues. If summary adjudication of issues is sought, whether separately or as an alternative to the motion for summary judgment, the issues said to be without substantial controversy must be stated with care and precision in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts.

The Court will not summarily adjudicate issues of fact.

3) Format for Separate Statement in Support of Motion for Summary Adjudication of Issues. The format for the separate statement in support of a motion for summary adjudication of issues shall be the same as for the motion for summary judgment (See Example on next page).

4) Opposition Motion for Summary Adjudication of Issues: Contents of Separate Statement. In the separate statement opposing a motion, or alternative motion for summary adjudication of the issues, the moving party's statement of issues must be set out verbatim.

Each material fact specified by the moving party as without controversy, together with the evidence said by the moving party to support that proposition, shall be set out on the left hand side of the page. On the right hand side of the page, directly opposite each statement of material fact, the opposing party must unequivocally indicate whether it is "disputed" or "undisputed" that the fact is without controversy. Where the opposing party contends that the fact is disputed, the party must state the nature of the disagreement and describe the admissible evidence which supports its position that the disagreement exists. The evidence should be set out on the right hand side of the page directly opposite the moving party's evidence and must be supported by citation to exhibit, title, page and line number of the evidence submitted.

5) Format for Separate Statement in Opposition to Motion (or Alternative Motion) for Summary Adjudication of Issues. The format for the separate statement in opposition to motion (or alternative motion) for summary adjudication of issues shall be the same as for the Motion for Summary Judgment.

6) Moving Party's Failure to Meet its Burden. Where in opposition to a motion for summary adjudication of issues, it is contended that the moving party has failed to meet its burden of proof, either because the material facts stated by the moving party fail to establish an essential element or issue, or because the evidence fails to

establish the material facts, this position should be stated on the right hand side of the page opposite the paragraph or paragraphs where such material facts or deficient evidence are set out in the moving party's separate statement.

7) Additional Disputed Facts. The opposing party's separate statement in opposition shall set forth any other material facts which the opposing party contends are disputed. Where the additional disputed facts are in opposition to a motion or alternative motion for summary adjudication of issues, they should be set forth at the conclusion of the treatment of the moving party's facts in support of the particular issue said to be without substantial controversy. The additional disputed facts shall be supported by evidentiary references in the format previously described.

EXAMPLE

SEPARATE STATEMENT UNDISPUTED MATERIAL FACTS IN SUPPORT OF DEFENDANT JONES' MOTION FOR SUMMARY ADJUDICATION OF ISSUES

Defendant Jones submits the following statement of issues and undisputed material facts relating to those issues, together with references to supporting evidence pursuant to CCP Section 437c(b).

ISSUE NUMBER 1: The anger and disturbance plaintiff Smith alleges to have suffered as a result of defendant Jones' acts does not constitute the severe emotional distress required for recovery under the theory of intentional infliction of emotional distress.

UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
1. Plaintiff Smith did not seek medical care or treatment as a result of Defendant Jones' alleged acts.	Plaintiff Smith's answers to Defendant Jones' Request for Admissions Number 4, Exh. 1(a) at 3:4-7.
2. Plaintiff Smith did not seek psychiatric treatment or any form of emotional or mental counseling as a result of Defendant Jones' alleged acts.	Plaintiff Smith's deposition, Exh. 1(b) at 26:3-10.
3. Plaintiff Smith took no prescribed medication or drugs following the alleged incidents.	Declaration of Brown, Exh. 1 at 2:9-13, Authenticating Plaintiff Smith's deposition, Exh. 1(b) at 56:7-4.

D. EVIDENCE IN SUPPORT OF OR IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION OF ISSUES

1. FORMAT FOR PRESENTING EXHIBITS

a) Identifying Exhibits. The exhibits shall be separated by hard paper sheets 8 1/2 inches by 11 inches with hard paper or plastic tabs extending below the bottom of the page bearing the exhibit designation assigned in the exhibit index.

b) Declaration and Affidavits. Declarations and affidavits offered in support of or in opposition to a motion for summary judgment or summary adjudication of issue shall:

1) Comply with Code of Civil Procedure Sections 2003 and 2012 (for affidavits be sure not to use an acknowledgment form of the jurat for the notary public) or Code of Civil Procedure Section 2015.5 (for declaration);

2) State the facts which show that the affiant or declarant has personal knowledge of the facts set forth in the affidavit or declaration;

3) State facts with particularity and not conclusions except where a proper foundation for the conclusion is established:

4) Set forth the qualifications of any affiant or declarant who states an opinion as an expert.

c) Documentary Evidence. The party relying on documentary evidence submit an affidavit or declaration which identifies and authenticates the document. The party must also comply with the best evidence rule or establish an exception to it with respect to the document.

A signed stipulation of the parties stating that copies of original documents are acceptable, will satisfy the best evidence rule.

A party may comply with the best evidence rule by bringing the original document to the hearing and presenting it for inspection. If the opposing party has not seen the original before, the opposing party should be invited to inspect the original before the hearing and a declaration to that effect should be filed.

Following this procedure avoids delay during the hearing but it does not excuse production of the original at the hearing except when the document's existence and content are admitted by verified pleadings, answers to interrogatories, or responses, or failure to respond to request for admissions. If the document's existence and contents have been admitted, the moving papers shall refer to the pleadings or discovery which contains the admission.

d) Discovery Products. A party relying upon answers to interrogatories, testimony at deposition, or responses to request for admissions shall submit an affidavit or declaration identifying and authenticating the answers, testimony, or responses.

e) Depositions. The first page of any deposition used as an exhibit shall be the title page of the transcript indicating the name of the deponent and the date of the

deposition followed by the relevant pages of the transcript. The name of the deponent shall appear on the bottom of each page of the transcript. The pages of the deposition shall constitute a single exhibit, and the hard paper sheet which precedes it must bear a tab setting forth the letter/number designation.

1) The exhibit shall contain only the relevant pages of the transcript;

2) The page number must be clearly visible;

3) The material portions of the deposition testimony shall be highlighted.

f) Exhibits to Discovery Products. Each exhibit to a deposition, or to answers to interrogatories, or requests for admissions must be treated as a separate exhibit.

2. JUDICIAL NOTICE

Any request for judicial notice shall be made in a separately captioned document listing the specific items of which notice is requested and stating the authority for the request. Copies of these items shall be attached to the request as exhibits.

Where judicial notice of a local county court file is requested, the party requesting the notice shall arrange for the file to be in the courtroom at the time of the hearing. Where the file sought to be noticed is that of an action outside the local county, certified copies of the appropriate file contents will be acceptable in lieu of the original file.

E. OBJECTIONS TO EVIDENCE

Any objections to evidence in support of or in opposition to motions for summary judgment or summary adjudication of issues may be raised either in papers submitted to the court, or orally at the time of the hearing. (Adopted effective October 1, 1998; Amended effective July 1, 1999)

7.11 EX PARTE APPLICATIONS

Ex parte applications in civil cases should be filed with the court clerk, directed to the attention of the Supervising Judge, Civil Division. (It is suggested that the moving party telephonically notify the clerk to the Supervising Judge of the filing, to facilitate tracking.)

As part of the application, the moving party shall submit to the Court a declaration stating the date and time of service on the opposing party of the moving papers.

The notice of ex parte application which is served on the opposing party must contain the following information: (1) neither party is to appear when the application [or opposition] is submitted to the Court; (2) opposition to the ex parte application must be received by the Court within 24 hours of service of the moving papers on the opposing party.

After allowing time for receipt of opposition, the court may set the matter for hearing, or issue a ruling based on the written application and any opposition it has received.

The moving party should submit an order for the Court's signature along with the ex parte application. (Adopted effective January 1, 2004; Amended effective January 1, 2005)

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 (1) 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 10 percent of the principal amount between $25,000.00 and $50,000.00, and 5 percent of any additional sum.

Plaintiff shall have the right, in accordance with Section 585 (1) 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 effective 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 effective October 1, 1998)

Superior Court of California, County of Monterey
Local Rules of Court

CHAPTER 9

APPELLATE DEPARTMENT

9.01 JURISDICTION

The Appellate Department of the Superior Court of California, Court of Monterey has jurisdiction over all appeals arising out of Courts in Monterey County, except where the appeal is a retrial in the superior court as in a trial de novo from small claims, and all motions and all petitions for stays in connection with such appeals. (Code of Civil Procedure, Sec. 77, subd. (e)). (Adopted effective October 1, 1998; Amended effective July 1, 2003, January 1, 2006)

9.02 JUDICIAL ASSIGNMENT

Four judges are assigned to the Appellate Department, generally three of whom participate in each matter, with the concurrence of two judges required for the decision in each case and to transact business except business that may be done in chambers by the presiding judge. (Code of Civil Procedure, Sec. 77, subd. (d).) (Adopted effective October 1, 1998; Amended effective January 1, 2006)

9.03 PRACTICE POINTERS

These rules supplement the applicable code sections and California Rules of Court. Litigants are advised to research and follow case reports and secondary authorities which apply and interpret the codes and rules.

a) Civil Cases -- See Code of Civil Procedure, Sec. 904.2 [appealable judgments and orders in limited civil cases] and California Rules of Court, rules 8.700-709, 8750-773, 8.900-916. (Amended effective January 1, 2006; Amended effective January 1, 2007)

b) Criminal Cases -- See Penal Code Sec. 1466 [appealable judgments and orders] Sec. 1510, [time of motions in Court] and Sec. 1538.5, subds. (j) and (m) [pretrial and post-trial review of suppression orders] and California Rules of Court, rules 8.700 through 8.709; and 8.780 through 8.793. (Adopted effective October 1, 1998; Amended effective January 1, 2007)

9.04 NOTICE OF APPEALS

A timely notice of appeal is a jurisdictional requirement to a valid appeal. (California Rules of Court, rules 8.751-8.752 [civil appeals], rule 8.782 [criminal appeals]). The notice of appeal should be filed with the Court. (California Rules of Court, rules 8.750(a), 8.752(a)). Requests for relief from the filing of a late notice of appeal and motions to dismiss on grounds of an untimely notice of appeal must be filed in the Appellate Department. California Rules of Court 8.767, 8.787 (Adopted effective October 1, 1998; Amended effective January 1, 2006; Amended effective January 1, 2007)

9.05 STAYS PENDING APPEAL

a) Civil Appeals. Only the trial court may order a stay before a notice of appeal is filed. (Code of Civil Procedure, Sec. 918.) A party seeking a stay from the Appellate Department must first file a notice of appeal with the Court.

b) Criminal Appeals. A defendant's application for bail must first be made with the trial court. (See Penal Code, Secs. 1272, 1272.1, California Rules of Court, rule 8.312) defendant's motion for stay of execution of the judgment must first be made with the Court. (See Penal Code, sec. 1467, California Rules of Court, rule 8.312.) (Adopted effective October 1, 1998; Amended effective January 1, 2006; Amended effective January 1, 2007)

9.06 PLEADINGS

All motions and petitions must comply with California Rules of Court. (Adopted effective October 1, 1998)

9.07 RECORD ON APPEAL

a) **General –** The "record on appeal" is generally determined by the parties and includes a clerk's transcript (California Rules of Court, rules 8.754, 783) or equivalent (California Rules of Court, rule 8.755) and may include a reporter's transcript or its equivalent. (California Rules of Court, rules 8.753, 755, 756, 784). The record is both designated and prepared with the Court. (Amended effective January 1, 2006; Amended effective January 1, 2007)

b) **Procedure and fees –** Parties must comply with court rules with respect to the method and time limits for providing a record (California Rules of Court 8.753-761,183-187.5), and except as provided by the rules, are responsible for assuring that the record needed for review is paid for and prepared. (Adopted effective October 1, 1998; Amended effective January 1, 2007)

1) Fees for Clerk's Transcript-Civil: Appellant must designate and pay the fees for the documents to be included in the clerk's transcript. (California Rules of Court, rule 8.754(a&c). (Adopted effective October 1, 1998; Amended effective January 1, 2006; Amended effective January 1, 2007)

2) Fees for Clerk's Transcript-Criminal: A record on appeal (clerk's transcript) will be prepared by the Clerk of the Court without request or payment by appellant. (California Rules of Court, rule 8.783.) (Adopted effective October 1, 1998; Amended effective January 1, 2007)

c) **Reporter's Transcript –** In a civil appeal, if appellant requests a reporter's transcript a notice to prepare a reporter's transcript must be served on the respondent and filed with the clerk. Appellant in a criminal appeal must request a reporter's transcript directly from the reporter or a written transcript of an electronic recording from the Court. An appellant requesting a reporter's transcript in a criminal appeal a court expense must apply to the Court within the time limits authorized by for submitting a proposed settled statement. (See California Rules of Court, civil rule 8.753; criminal rule 8.754 (d).) (Adopted effective October 1, 1998; Amended effective January 1, 2006; Amended effective January 1, 2007)

9.08 AUGMENTATION OF TRANSCRIPT

An appellant may request that the clerk's transcript be augmented to include additional documents. (California Rules of Court, rule 8.761 and 8.791. (Adopted effective October 1, 1998; Amended effective January 1, 2006; Amended effective January 1, 2007)

9.09 EVIDENTIARY MATTERS AND EXHIBITS – CIVIL APPEALS

Parties relying on evidentiary matters or on exhibits must include either a reporter's transcript (California Rules of Court, rule 8.753) or written transcript of electronic recording (California Rules of Court, rule 2.952), an agreed statement (California Rules of Court, rule 8.755) or a settled statement (California Rules of Court, rule 8.756) of the relevant oral proceedings. (Adopted effective October 1, 1998; Amended effective January 1, 2006; Amended effective January 1, 2007)

9.10 EVIDENTIARY MATTERS – CRIMINAL APPEALS

An appellant relying on evidentiary matters or any proceeding not otherwise a part of the record of appeal, shall submit a proposed statement on appeal, which must include at a minimum a specification of the grounds on appeal and set forth the evidentiary matters and other proceedings necessary for a decision. (California Rules of Court, rule 8.784(a&b)). (Adopted effective October 1, 1998; Amended effective January 1, 2006; Amended effective January 1, 2007)

Appellant shall serve and file a proposed statement and, either a narrative summary of the relevant oral proceedings, or may give notice that a reporter's transcript or written transcript of the electronic recording (California Rules of Court, rule 2.952) will be filed. (California Rules of Court, rule 8.784(a&b)). (Amended effective January 1, 2006; Amended effective January 1, 2007)

9.11 EXTENSIONS OF TIME

a) Applications for extensions of time that cannot be granted by the trial court or that are denied by the trial court may be directed to the Presiding Judge of this Department. (California Rules of Court, rules 8.766, 8.767(c), 8.787). (Amended effective January 1, 2006; Amended effective January 1, 2007)

b) All applications to be relieved from default for failure to act within the allowed time periods must be submitted as a written motion with service on all parties. (California Rules of Court, rules 8.705, 8.772(b), 8.787(b), 8.787(b). (Adopted effective October 1, 1998) Amended effective January 1, 2006; Amended effective January 1, 2007)

9.12 BRIEFS

a) Following the filing of the record on appeal, the court will issue an order fixing specific dates by which briefs should be filed. (See California Rules of Court, rule 105(a) for the allowed time for opening, responding, and reply briefs.)

b) Briefs must comply in form with California Rules of Court, rule 8.706. The original brief submitted for filing must be accompanied by three copies. (Amended effective January 1, 2007)

c) No brief shall exceed 15 pages in length except by permission of the Presiding Judge of the Appellate Department. (See California Rules of Court, rules 8.766 and 8.706(c)). (Amended effective January 1, 2006; Amended effective January 1, 2007)

d) A copy of all briefs must be served on each adverse party and on the Court. If the adverse party has legal counsel service should be on counsel. (California Rules of Court, rules 8.706(e), 8.706(f)). (Amended effective January 1, 2006; Amended effective January 1, 2007)

e) Failure to file an appellant's opening brief constitutes a ground for dismissal of the appeal. (California Rules of Court, rule 8.762(c); rule 8.790 and 8.792).

f) Failure to file a respondent's brief may be treated by the court as an admission that the appeal is meritorious. (Adopted effective October 1, 1998; Amended effective January 1, 2007)

9.13 ORAL ARGUMENT

Argument will be set normally on four weeks advance notice.

Routine application should be served on opposing counsel and are submitted to the Presiding Judge of the Appellate Department. (California Rules of Court, rules 8.703, 8.766).

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.

Continuances will not be granted without a showing of good cause.

Continuances by stipulation are subject to the approval of the Presiding Judge of the Appellate Department.

Motions of an attorney to withdraw as counsel of record must comply with the requirements of Code of Civil Procedure, sections 284 and 285 and California Rules of Court rule 8.768(b).

Supplemental briefing will be permitted when, after argument, the court intends to decide a case upon the basis of an issue not briefed or proposed by any party. (Government Code Sec. 68081). (Adopted effective October 1, 1998; Amended effective January 1, 2007)

9.14 OPINION AND JUDGMENT

The court must decide a case within 90 days after submission. (California Constitution, Art. 6, Sec. 19.)

The court will generally file an opinion or statement of reasons with each decision, although not required to do so. (See California Rules of Court, rule 8.707). (Adopted effective October 1, 1998; Amended effective January 1, 2007)

9.15 REHEARING AND/OR CERTIFICATION

A petition for a rehearing must be served and filed with proof of service within 15 days after the judgment is pronounced. An answer to the petition may be served and filed within

eight days after service of the petition. (California Rules of Court, rule 8.708(c)). (Amended effective January 1, 2007)

If a rehearing is ordered the Appellate Department will ordinarily place the case on calendar for further argument but may resubmit the matter for decision. (California Rules of Court, rule 8.708(c)). (Amended effective January 1, 2007)

Any party may move the court to certify or the court on its own motion may certify that the transfer of a case to the Court of Appeal appears necessary to secure uniformly of decision or to settle important questions of law. (California Rules of Court, rule 8.1005(a&b).) Amended effective January 1, 2006; Amended effective January 1, 2007)

Judgments of the Appellate Department are not appealable. (Code of Civil Procedure, Sec. 904.1(a)(3); Penal Code, Secs. 1237, 1238)

A party may request review by the Court of Appeal by way of writ. (Adopted effective October 1, 1998; Amended effective January 1, 2007)

9.16 MOTIONS AND APPLICATIONS

Routine applications should be served on opposing counsel and are submitted to the Presiding Judge of the Appellate Department. (California Rules of Court, rules 8.703, 8.766, 8.787). (Amended effective January 1, 2007)

Applications on routine matters should not exceed five (5) pages, and must include a declaration under penalty of perjury.

Written motions with service on all parties must be filed in connection with all contested or non-routine matters or where a party is in default. (California Rules of Court, rules 8.705, 8.772(b)). (Amended effective January 1, 2007)

Motions of an attorney to withdraw as counsel of record must comply with the requirements of Code of Civil Procedure, sections 284 and 285 and California Rules of Court, rule 8.768(b). (Amended effective January 1, 2007)

An appeal in a criminal case is abandoned by filing a written abandonment of such appeal. (California Rules of Court, rule 8.790). (Amended effective January 1, 2007)

An appeal in a civil case may be abandoned before the record is filed by filing a written abandonment. After the record is filed, the parties must stipulate or the appellant must file a written request with service on all parties. (California Rules of Court, rules 8.762(a) and (b))

Civil motions filed before the Appellate Department have received the record on appeal must be accompanied either by a completed "Certificate of Clerk re Civil Motion to Appellate Department," certified by the Court, or by documents sufficient to permit review. (Adopted effective October 1, 1998; Amended effective January 1, 2007)

9.17 INFRACTIONS

The failure of the Court to settle the statement on appeal, if one is submitted, will result in reversal or dismissal of the case. (People v. Bighinatti, (1975) 55 Cal.App. 3d Supp. 5.)

Trial courts should comply with the procedure set forth in (1976) People v. Jenkins, 55 Cal.App.3d Supp. 55.

Appellants are warned that the Court is not under existing law required to mail or deliver to the appellant a copy of the certified statement on appeal.

Appellants should obtain a copy of the certified engrossed or settled statement before preparing a brief.

Appeals of infraction traffic convictions shall be heard and decided by the presiding judge of the appellate division or his or her designee from the appellate panel. Code of Civil Procedure Sec 77 subd (h).

The Court herein adopts the Judicial Council Approved Forms (Revised January 1, 2004) for use in infraction appeal matters. (Adopted effective October 1, 1998; Amended effective July 1, 2000; Amended effective January 1, 2006)

9.18 WRIT OF SUPERSEDEAS

A petition for writ of supersedeas must be served and filed in accordance with California Rules of Court, rule 8.705(a). (See California Rules of Court, rule 8.769). A petition for writ of supersedeas will not be granted in civil cases unless exceptional circumstances exist or where the judgment may not be stayed by posting a bond. (See Code of Civil Procedure, secs. 916 et seq.). (Adopted effective October 1, 1998; Amended effective January 1, 2007; Amended effective January 1, 2007)

9.19 WRITS

Petitions for writs of coram vobis, mandamus, prohibition, review (certiorari) or supersedeas arising from any misdemeanor case, infraction case, or limited civil action shall be addressed to the Presiding Judge of the Appellate Division.

For all other writs see Chapter 15.

The petition must be served on all parties and the Presiding Judge of the Court.

Petitioner must file the original petition with proof of service attached in the office of the Clerk of the Court in Monterey, with a proposed alternative and peremptory writ with the Clerk of the Court. The clerk will then hold the petition for opposition for five days if the petition was personally served or ten days if service was by mail.

There is no filing fee in a criminal case. The filing fee for a civil petition is the same as that in the schedule for filing of civil cases.

The judge may continue the matter and request supplementary documents or preliminary opposition, summarily deny the petition, notify the parties of the judge's intent to issue the peremptory writ, or issue an alternative writ or order to show cause and set the matter for a hearing.

If an alternative writ is issued, petitioner must serve the writ on all other parties. (See Code of Civil Procedure, Sec. 1096.)

An order granting or denying a petition for writ of mandate or prohibition is not appealable (Code of Civil Procedure, Sec. 904.1, subd. (a)(4)), although the Court of Appeal in its discretion may review the judgment.

A writ petition generally must be filed within the statutory period for an appeal.

Petitioner is obliged to furnish an adequate record for review.

A writ petition must comply with all statutory requirements. (See Code of Civil Procedure, Secs. 1067-1108). (Adopted effective October 1, 1998; Amended effective July 1, 2000; Amended effective January 1, 2009)

9.20 APPOINTMENT OF COUNSEL IN CRIMINAL CASES

Applications for appointed counsel on appeal in criminal cases must be filed with the Appellate Department after a notice of appeals is filed with the Court. After the record on appeal is filed with this Department, the clerk will send a letter to unrepresented defendants in criminal cases inquiring whether that defendant wishes court-appointed counsel. Appointment of counsel in a criminal case is by the court, which selects the attorney from its list of qualified candidates. (See California Rules of Court, rule 8.786). (Adopted effective October 1, 1998; Amended effective January 1, 2007)

9.21 PUBLICATION

An opinion is published in whole or in part in the Official Reports when a majority of the court in the Appellate Department certifies that it meets one or more of the standards set forth in California Rules of Court, rule 8.1105(b), and a Court of Appeal does not order the case transferred to it for hearing and decision. (California Rules of Court, rules 8.1105(c), 8.1002 (a)). (Adopted effective October 1, 1998; Amended effective January 1, 2007)

CHAPTER 10

FAMILY LAW DEPARTMENT

10.01 LAW AND MOTION

A. LAW AND MOTION CALENDAR

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

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

3. Continuances. It is the policy of the Court not to continue law and motion matters without good cause. Either party may, with good cause, stipulate once to a continuance for a reasonable amount of time not to exceed 30 days. Any subsequent requests for continuances are subject to approval by the Family Court Judge. All requests must be submitted to the research attorney for the Family Court at least a full 48 hours prior to the date of hearing. The request must indicate good cause for the continuance and state the position of the opposing party regarding the continuance as well as the requested date.

B. TIMELY FILING OF PAPERS

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

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

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

2. Orders Shortening Time. Orders Shortening Time should not be requested unless there is a hardship or emergency requiring prompt action. All requests must be accompanied by a written declaration establishing GOOD CAUSE. Notice of the request must be given to opposing counsel, if any, within 24 hours, except for good cause. A declaration must be submitted stating the fact of notice or good cause for its absence.

3. Responsive and Reply Documents. Responsive and Reply documents must be filed and served as follows:

   a. Motions and Orders to Show Cause without Temporary Orders Attached - at least 9 court days prior to the hearing for Responsive Declarations and 5 court days prior to the hearing for Reply Documents. (Amended effective January 1, 2006).

   b. Orders to Show Cause with Temporary Orders Attached - 5 court days prior to the hearing for Responsive Declarations and 2 court days prior to hearing for Reply Declarations.

   c. Orders Shortening Time - The Responsive and Reply Declarations must be filed and served as set forth in the order.

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

C. EX-PARTE ORDERS

1. All applications for ex parte orders in Family Law matters shall be made to the Family Law Judge, or, in his or her absence, to the Presiding Judge or his or her designee.

2. Absent a written declaration establishing good cause, 24 hours prior notice of the ex parte request must be given to opposing party. The fact of notice and/or reasons for the failure to give notice to the opposing party should be stated in the declaration in the application for an ex parte order.

3. The application, proposed orders and any supporting documents should be submitted to the Family Law Judge for review prior to the time set for the ex parte hearing.

4. Declarations requesting a party to be excluded from the family home must include the factual basis establishing actual violence or a real threat of violence. Conclusionary allegations are not sufficient. Declarations requesting temporary custody orders must establish good cause for the order.

5. If the Declarations in Support of the Ex Parte Order are false or intentionally misleading, attorneys fees or sanctions may be awarded pursuant to California Rules of Court, Rule 230, and Code of Civil Procedure section 575.2.

D. SPECIAL SETTINGS

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

time estimate regarding the length of hearing requested. Continuances of special settings will not be granted except upon exceptional good cause.

E. USE OF DECLARATIONS

1. Declarations in lieu of Testimony. In all law and motion matters, declarations shall be submitted in lieu of testimony pursuant to California Rules of Court, Rule 3.1306. Testimony shall be received only upon a showing of good cause. (Amended effective January 1, 2007)

2. Evidence, Arguments or Comments. Evidence, argument or comments will not be heard unless clearly raised in timely filed pleadings. Argument, if requested by the Court at the time of hearing, shall only address points of law. Timely filed declarations shall be considered the evidence submitted.

3. Review Hearing Declarations/Supplemental Declarations.

   a. If a matter is set for a review hearing, a declaration describing the current status of the matter should be submitted by each party as set forth in the next paragraph. If no declaration is filed, the matter may be dropped at the discretion of the court.

   b. Supplemental Declarations/Declarations for review hearings must be filed and received by the opposing party at least five (5) court days prior to the date set for review or hearing. Any reply to such declarations must be filed and received by the opposing party no later than two (2) court days prior to the date of the hearing or review.

   c. The court may not consider declarations or reply declarations which are not filed and received within the time frame specified in this rule.

F. ATTORNEY FEES AND EXPERT WITNESS FEES

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

10.02 SETTLEMENT CONFERENCES

A. MANDATORY V. NON-MANDATORY

All long cause (more than 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 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. Service shall comply with the provision of local rule 12.06(d). 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 effective January 1, 2007)

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 section 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 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 effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2000; Amended effective July 1, 2001; Amended effective January 1, 2007)

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. It is a rebuttable presumption that the parent who drops off and picks up the child shall receive the hourly credit for that period of time the child is with someone other than a parent. If one parent drops off and the other parent picks up, then the time is to be divided equally.

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. INCOME AND EXPENSE DECLARATIONS

Income and Expense Declarations must be filled out completely by both parties. The last three months' earning 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 effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2000; Amended effective July 1, 2003; Amended effective January 1, 2008)

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 Law Section 10005 as directed by the Court. (Adopted effective October 1, 1998; Amended effective July 1, 2000)

10.05 CO-PARENTING WORKSHOP

A. PURPOSE OF CO-PARENTING WORKSHOP

The purpose of this half day workshop is to assist parents to better understand their children's point of view, to learn new ways to help their children through parental separation, to acquire new skills in interacting with their children and the other parent, to reduce acrimony between family members and to help parents identify when their children may be in need of further assistance in coping with parental separation.

B. REQUIREMENT TO ATTEND CO-PARENTING WORKSHOP

All parties to a Family Law proceeding in which there are minor children shall attend and complete the co-parenting workshop.

For Family Law cases commenced after the effective date of this rule, attendance by the parties shall be prior to mediation provided through Family Court Services. All parties to Family Law cases commenced prior to the effective date of this rule must attend the co-parenting education workshop when seeking to establish or modify custody or visitation orders. Attendance by all parties shall be prior to mediation and prior to hearing. A waiver of prior attendance may be obtained by court order.

Nothing in this rule supersedes the right of the parties to seek ex parte relief as provided in these Rules prior to attending the co-parenting workshop. Notice of the ex parte request must be given to the opposing party absent a declaration establishing good cause and stating the basis for the urgency.

C. PAYMENT OF REGISTRATION FEES AND SERVICE OF FORMS

Written instructions regarding attendance, registration and payment of the fee for the workshop will be provided by the Clerk of the Court to any party commencing an action subject to this rule or seeking to modify a previous custody or visitation order. A copy of these written instructions shall be served on the opposing party by the filing party at the time of service of the above-described documents and a Proof of Service shall be filed with the Court.

The fee will not normally be waived; however, application may be made to the workshop for a fee adjustment if the applicant is receiving public assistance.

D. FAILURE TO ATTEND AND REMEDIES

A date for mediation may not be set until both parties have completed the co-parenting workshop. However, a party who has completed the co-parenting workshop may apply to the Court for an order or judgment before the other party's completion of the workshop. When a party has not completed the co-parenting workshop, that party may not seek any affirmative relief regarding child custody or visitation until that party has completed the workshop, or has obtained leave of Court to proceed by application to the Court upon a showing of good cause.

E. DOMESTIC VIOLENCE OR CHILD ABUSE

Due to the complexity of issues in cases in which there are incidents of domestic or child abuse, attendance in the workshop shall occur only upon order of the court. If the Court has ordered attendance, the restrained party and protected party shall attend separate sessions of the workshop.

F. OUT OF COUNTY/STATE RESIDENTS

If a party resides in another county or state, the Court may require or allow completion by a party of an equivalent co-parenting workshop located in another county or state. A party requesting attendance elsewhere, shall provide information regarding the proposed workshop to the Court as part of his/her application.

G. CERTIFICATE OF ATTENDANCE

The provider of the co-parenting workshop shall prepare and file with the Clerk of the Court a certificate of attendance verifying the completion of the workshop by each attending party. The provider shall also provide verification to each party upon completion of the co-parenting workshop.

H. NON-ENGLISH SPEAKING PARTICIPANTS

The workshop is offered in English and in Spanish. A participant who speaks a language other than Spanish or English may arrange at his/her own expense to have an interpreter attend with him/her. No additional workshop fee shall be charged for the attendance of such an interpreter. (Adopted effective July 1, 1999; Amended effective January 1, 1999; Amended effective July 1, 2000; Amended effective January 1, 2005; Amended effective January 1, 2007; Amended effective January 1, 2009)

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 (Family Code section 3170), 2) Stepparent Visitation (Family Code sections 3171, 3172, 3185); 3) Grandparent Visitation (Family Code sections 3171, 3176, 3185); 4) Domestic Violence (Family Code section 3170, 3181, 3182); 5) Paternity (Family Code section 3172,7600 et seq.); 6) Child Support Enforcement (Family Code, section 17404); 7)Termination of Parental Rights (Family Code section 7660.) and 8) Guardianships (Probate Code sections 1500 et seq.).

C. 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 I s 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 (Family Code section 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 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.

D. TYPES OF MEDIATION

There are three types of mediation services available: First Tier Mediation (confidential); Second Tier Mediation (non-confidential); and Separate Mediation (non-confidential). The following sections set forth general rules regarding mediation services; special rules that apply to Second Tier Mediation and Separate Mediation are set forth in later sections.

If there has been a history of domestic violence between the parties or a Domestic Violence Restraining Order has been issued, mediation shall be scheduled in separate sessions at separate times if ordered by the court or requested by the protected party or party who has made an allegation of domestic violence under penalty of perjury. See the rules on Separate Mediation.

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.

   The parties must complete the Co-Parenting Program prior to attending mediation. Specific rules and exceptions are set forth in the section on Co-Parenting herein. When requesting an appointment, the parties will be asked what efforts have been made to resolve the dispute prior to requesting mediation. In any case in which custody, temporary custody, or visitation is contested, the matter must be referred for mediation prior to any scheduled hearing. 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; and

   d. the name of a party's attorney if there is one.

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

   f. proof that the parties have completed the Co-Parenting Workshop or that prior completion was waived by court order.

   Rescheduling of a mediation appointment is discouraged. However, if there is a compelling reason, an appointment may be rescheduled if the parties contact Family Court Services 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 and Co-Parenting Program have 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 Co-Parenting Program and/or 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. Self represented litigants may provide their required information by telephone.

   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. The request must state whether the applicant has completed the Co-Parenting Program.

   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 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 Second Tier Mediation 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. Participating in the Mediation Proceeding. In First Tier Mediation, the mediator will see both parties together. Thereafter, depending on the nature of the issues to be resolved, the mediator may see each party separately during mediation. If there is a history of domestic violence or a protective order in place, the Local Rules governing Separate Mediation will apply. Stepparents may be included in mediation sessions only with the prior consent of the mediator and both natural parents.

   The mediator has a duty to assess the needs and interest of the children involved in the custody and visitation dispute. The mediator may interview the children if, in the mediator's opinion, such an interview is necessary or appropriate. The parties shall not bring the child to any meetings with the mediator unless specific arrangements have been made with the mediator in advance of the meeting.

   Under of Family Code section 3182, the mediator has the authority to exclude attorneys from participation in the mediation proceeding if, in the judgment of the mediator, the exclusion of the attorneys is necessary to facilitate the completion of mediation. Attorneys will generally be excluded from mediation proceedings.

   Under Family Code section 6303 a support person may attend mediation with the protected party under a restraining order. A mediator may exclude a support person from a mediation session if the support person participates in the session, acts as an advocate, or the presence of the support person disrupts the process of mediation. The presence of a support person does not waive confidentiality of the mediation and the support person is bound by the confidentiality of mediation.

   Attorneys are not to wait at the Family Court Services during a session. Experience has shown this practice to be counter-productive to the purpose of mediation.

Some attorneys have advised their clients not to sign any agreement the attorney has not reviewed. Because a ten day rescission period is available to address any objections to an agreement reached in mediation, attorneys are discouraged from advising a client not to sign any agreement.

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 (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

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 (Family Code section 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. FIRST TIER 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 First Tier 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 First Tier 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 effective January 1, 2006; Amended effective July 1, 2007; Amended effective 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 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 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 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.

1. The agreement will be kept on file in the Family Court Services office and will not be submitted to the Court, even after 10 days, by the Family Court Service.

2. A status form will be filed with the Court.

3. 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.

4. 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).

5. 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 apprising the Court of the unresolved custody or visitation issues will also be filed. The 10 day rescission process described above applies to partial agreements.

2. SECOND TIER MEDIATION (NON-CONFIDENTIAL)

Second Tier Mediation may be scheduled only upon court order. Upon a finding of good cause, the court may direct the mediator to render a custody or visitation recommendation consistent with Family Code section 3183. Copies of the Second Tier mediator's report to the court will be provided to the parties and counsel of record. (Amended January 1, 2006; Amended effective July 1, 2007)

3. SEPARATE MEDIATION (NON-CONFIDENTIAL)

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 Second Tier Mediation. 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 mediator 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 mediation session. Until the Court adopts the recommendation, the parties must follow any interim order regarding custody and visitation. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2000; Amended effective July 1, 2003; Amended effective January 1, 2005; Amended effective July 1, 2005; Amended effective July 1, 2007; 10.06.E.2 (a-f) Relettered, Amended effective January 1, 2009)

10.07 COURT ORDERED CUSTODY INVESTIGATION, EVALUATION, AND ASSESSMENT

A court-ordered investigation refers to a factual investigation into custody or visitation issues. Each investigation costs $350 to $700.

An evaluation refers to a psychological evaluation prepared by a psychologist or psychiatrist, or a custody/visitation investigation under Family Code § 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. Parties shall arrange for payment directly with the counselor or therapist.

A. APPOINTMENT OF EVALUATOR/INVESTIGATOR/COUNSELOR

In any case in which custody or visitation is in dispute, the court may appoint an investigator, evaluator or counselor and order that a child custody/visitation investigation, 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.

Each party shall complete a written investigation questionnaire within seven (7) days after an investigation is ordered. The $350 to $700 fee must be paid in full or a payment plan ordered by the court before an investigation will begin. Each party shall inform the investigator with 72 hours of any change of address or telephone number occurring during the pendency of an investigation. (Amended January 1, 2006)

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.

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 any 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 Family Court Services 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 by the Family Court Services Director. 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.

I. DISTRIBUTION OF COURT RULES

The court shall advise each party of the local rules relating to court-appointed investigations in child custody and visitation disputes. These rules shall be made available to the public through the Local Rules of Court and through distribution of the court pamphlet "Child Custody and Visitation Investigations and Evaluations."

The court pamphlet shall be distributed by the court-appointed investigator to counsel and each unrepresented party when a court-ordered investigation is ordered. The pamphlet and all rules shall be attached to the Investigation and Evaluation Questionnaire distributed by the investigator. The attorneys and the parties shall sign the Questionnaire and acknowledge that they have received and read the pamphlet. The Questionnaire shall contain an admonition that the investigator will not proceed with the investigation and evaluation until the questionnaire is received by the investigator and the investigation fees are paid in full. Arrangements for fees for psychological evaluations or assessments are made directly with the evaluator.

J. PAYMENT OF EVALUATOR'S FEES AND COSTS

The parties shall be charged a fee of $700.00 for a Child Custody/Visitation Investigation and Evaluation. Generally, each party is responsible for payment of one half ($350.00) of the total fee. At the time of appointment of the evaluator, the court shall make an order allocating the payment of the evaluator's fees and costs between the parties, using as a guideline Family Code sections 271, 2030 and 2032. Payment shall be made directly to the Clerk of the Court. Unless otherwise ordered by the court, the evaluator shall not commence an investigation without proof of full payment of fees by the parties. (Adopted effective October 1, 1998; Amended effective July 1, 1999; Amended effective July 1, 2000; Amended effective January 1, 2001; Amended effective January 1, 2005; Amended July 1, 2005; Amended effective January 1, 2007)

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.

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. (Adopted effective January 1, 2005; Amended effective January 1, 2007)

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; Relettered 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 sealed, clasp envelope not smaller than 7 inches by 10 inches nor larger than 8 ½ by 11 inches in size. The envelope shall be attached to the accompanying document clasp-side down to allow access for the court through the clasped end. A label shall be affixed to the envelope including 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)

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. If the court issuing the CVO recommends that a modification of the CPO be considered, the parties shall be referred to the modification calendar of the Domestic Violence court.

The court records shall be accessed as follows:

A. Family Law, Probate and Juvenile: When there are allegations of domestic violence in the documents submitted to the court.

B. 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.

C. 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 INVESTIGATORS.

Complaints not in connection with court-ordered evaluations (subsection H), 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 (30) days. The complainant may appeal the response to the Presiding Judge. The Presiding Judge will rule on the appeal within thirty (30) days. (Adopted effective January 1, 2004, pursuant to CRC 5.500(c); Re-numbered from Rule 10.08 to Rule 10.09 effective January 1, 2005; Amended effective July 1, 2007; Rule 10.09 A-H Re-lettered and Amended effective January 1, 2009)

CHAPTER 11

SPECIAL MASTER GUIDELINES (CHILD CUSTODY AND VISITATION)

11.01 ROLE OF SPECIAL MASTER

A Special Master is a mental health professional, mediator or family law attorney who specializes in helping parents resolve disputes about what is best for their children. The Special Master and can make such decisions about children if the parents are unable to do so. The Special Master's ultimate role is not to prepare an investigation or evaluation nor to mediate, but to make decisions when the parents cannot, and to assess, report and make recommendations to the Court regarding the impact of those decisions on the best interests of the children. (Adopted effective October 1, 1998)

11.02 SELECTION AND APPOINTMENT OF SPECIAL MASTERS

a. Legal Authority for Appointment

Legal authority for appointment of a Special Master is found in the following Code sections:

1. appointment of Special Master as an expert witness under Evidence Code δ 730;
2. appointment as an arbitrator under CCP δ 1280; appointment as a mediator under Family Code δ 3160-3186; or appointment as a referee under CCP δ 638 *et seq.*

The appointment of a Special Master as a referee under CCP δ 638 *et seq.,* provides the most flexibility and is closest to the intent of the Special Master role. It should be noted that if the appointment is by stipulation, the parties may agree that the Special Master be given the power to make binding decisions; if not, the role of the Special Master is advisory, with the court retaining authority over all decisions.

b. Qualifications

PSYCHOLOGISTS AND PSYCHIATRISTS:

1. Membership in national or state professional association.
2. Experience.
   a. 3 years post-license experience in child and family therapy; and
   b. 3 years experience in diagnostic evaluations for family court and/or CPS and/or family mediation service with a minimum of 10 evaluations; and
   c. 3 years experience in court-based family mediation or assessment.
3. Training.
   a. Family systems, child development, psychology of divorce and custody. Mediation training is helpful.
4. Familiarity with ethical issues of custody disputes.
5. Working knowledge of custody law, with a minimum of six cases working with attorneys and/or court appearances.

MARRIAGE, FAMILY AND CHILD COUNSELORS AND LICENSED CLINICAL SOCIAL WORKERS:

Same as above, with 5 years experience, for 2a, 2b, and 2c.

ATTORNEYS:

1. Membership in state or national professional association.
2. Experience:
   a. 10 out of the last 12 years experience practicing family law;
   b. 20 custody cases, carried through judgment.
3. Training
   a. Mediation training required;
   b. Continuing education in custody law;
   c. The equivalent of child development (6 units) and family systems (3 units).

c. Timing

Generally, a Special Master should not be appointed until after a formal child custody evaluation has been completed, so that he or she may have the benefit of the results of that evaluation in working with the parties. On rare occasions, it may be appropriate to appoint a Special Master pending completion of an evaluation, to deal with matters requiring immediate attention.

d. Procedure

1. Appointment

   The parties may stipulate to appointment of a Special Master, subject to consent of the individual selected, and subject to the Court's approval. (See Attachment II Receipt and Consent to Appointment of Special Master) The Special Master's role powers, duties, term and incidental matters should be set forth in a written stipulation. (See Attachment I Order Appointing Special Master)

   If the Court appoints a Special Master without a stipulation (either sua sponte or at the request of a party), the parties shall be informed of the name, qualifications and fee of the person proposed, and the right to object to that person for good cause (lack of qualifications, conflict of interest, etc.). Each party should also have the right to one peremptory challenge in the case, similar to that set forth in CCP§ 170.6.

2. Acceptance of Appointment

   The proposed Special Master should have the right to accept or decline any appointment, with or without giving a stated reason. A person proposed as a Special Master is required to decline appointment if he or she knows of any bias or conflict of interest which would prevent him or her from acting fairly and impartially.

The Special Master shall act pursuant to a written order defining his or her role, duties, and fees. The form of the order shall be signed and approved by the Special Master.

If the Special Master is appointed upon stipulation, the Special Master's written consent to appointment shall be included with the stipulated order before it is submitted to the court.

If the Special Master has been appointed without a stipulation, then counsel (or party acting *in pro per*) designated by the court shall send a file-stamped copy of the order to the Special Master, together with a receipt and consent for signature and filing with the court (See Attachment II, Receipt and Consent to Appointment of Special Master). In such a case, the moving party (or the court, if appointment is *sus sponte*) shall contact the prospective Special Master in advance to determine his or her availability.

e. Term of Appointment

The Special Master shall be appointed for a specified term or length of time, usually at least one year and not more than two. This will give the Special Master sufficient time to work with the family, while reinforcing the parents' responsibility for their own lives and their children's welfare.

f. Fees

A person appointed as a Special Master 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 Special Master shall clearly specify the fee arrangement and each party's responsibility for the fee, as determined by the Court or by stipulation. The Special Master 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 Special Master shall have the right to withdraw upon written notice of the Court and the parties, with or without stated reason.

The Special Master 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.

Neither party may initiate court proceedings for the removal of the Special Master or to bring to the attention of the court or any other body any grievances regarding the performance or actions of the Special Master without meeting and conferring with the Special Master in an effort to resolve the grievance. (Adopted effective October 1, 1998)

11.03 POWERS AND ISSUES OF THE SPECIAL MASTER

a. First Level

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 Special Master 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. Special Master decisions on these matters shall be communicated to parties and counsel in person, by telephone, mail, fax, and/or personal delivery, and will take effect immediately upon issuance. In the absence of a stipulation, the Special Master will make recommendations on these matters, as with the matters listed in the second level.

1. Dates and times of pick-up and delivery
2. Sharing of parent vacations and holidays
3. Method of pick-up and delivery
4. Transportation to and from visitation
5. Selection of child care/daycare and baby sitting
6. Bedtime
7. Diet
8. Clothing
9. Recreation
10. After school and enrichment activities
11. Discipline
12. Health care management
13. Alterations in schedule which do not substantially alter the basic time share agreement
14. Participation in visitation (significant others, relatives, etc.)
15. In the case of infants and toddlers, increasing time share when developmentally appropriate
16. Other daily routines
17. Participation in alcohol and drug monitoring or testing, including selection of monitors or testers

b. Second Level

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 Special Master 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 (See Attachment III Order Adopting Special Master Recommendations).

1. Private school education and school placement
2. Scheduling of church attendance and religious classes
3. Large changes in vacation and holiday timeshares
4. Supervision of visitation
5. Timeshare changes not altering the child's primary residence
6. Appointment of counsel for children

7. Participation in adjunct health services including physical and psychological examinations, assessments and psychotherapy, including selection of providers

Special Master recommendation on these matters shall be served on the Court, parties and counsel by mail, fax or personal delivery. The Special Master 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 15 calendar days of service of the recommendations. Either party shall have the right to request a written explanation from the Special Master of any recommendation, which shall be provided within 20 calendar days to both parties, counsel and the court.

c. Third Level

To recommend to the Court (without any recommendation as to the preferred outcome) that it consider and review matters substantially altering the parties' timesharing arrangements, altering physical custody or legal custody or substantially limiting a parent's access to his or her children, and matters related to religion and religious training.

The Special Master shall not make any recommendations which alter a child's primary residence, alter an award of physical custody, alter an award of legal custody, prohibit a party's contact with his/her children, or require or prohibit adherence to a religion. These decisions and others relating to issues not included among those assigned to the Special Master, as set forth in the first and second levels, are reserved to the Monterey County Superior Court for adjudication, and may be presented to the court by either party or upon the recommendation of the Special Master without a recommendation as to outcome. (Adopted effective October 1, 1998)

11.04 PROCEDURE FOR IMPLEMENTING RECOMMENDATIONS

a. Special Master's decisions on first-level matters shall be communicated to parties/counsel orally and/or in writing, in person, by telephone, fax and/or mail, and take effect immediately.

b. Special Master recommendation on second-level matters shall be communicated in writing to the Court/parties and counsel by mail, fax or personal delivery. The Special Master recommendations would be subject to adoption by the Court as an order after 15 days (see Attachment III Proposed Order Adopting Special Master) 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 20 calendar days, to the other party, counsel and the court.

c. Special Master recommendation on third-level matters shall be communicated in writing to the Court/parties and counsel by mail or personal delivery. (Adopted effective October 1, 1998)

11.05 EX PARTE COMMUNICATIONS

a. Communication with the Court.

The Special Master is authorized to communicate ex parte with the court, at the discretion of the Special Master and the judge. Ordinarily, such communication should

be made only after giving notice to both parties. However, notice may be excused if notice would frustrate the very purpose of the communication, provided that the Special Master notifies the court that the communication is being made without giving notice and provides the reasons for not giving notice.

b. Ex Parte Communications with Parties and Counsel

The Special Master and the parties, as well as their attorneys, shall be permitted to engage in free oral communication without advance notice to the opposing party or attorney. If the parties communicate in writing with the Special Master, copies should be provided to the other party. Similarly, written communications from counsel to the Special Master shall be copied to the other attorney. The Special Master shall have the right to impose reasonable limitation on these communications. (Adopted effective October 1, 1998)

11.06 SPECIAL MASTER ROLE WHEN ISSUES ADDRESSED INTERRELATE WITH FINANCIAL OR PROPERTY ISSUES

Occasionally, issues may arise which are outside of the expertise of the Special Master, particularly issues such as support, use or occupancy of property, management of assets and other financial issues. The Special Master may request appointment of a co-Special Master with the necessary expertise to assist the Special Master in finding a resolution which will be in the best interests of the children. The recommendations of the co-Special Master should ordinarily be considered second-level issues requiring approval of court to implement. (Adopted effective October 1, 1998)

11.07 IMMUNITY

Qualified people who serve as Special Master by appointment of the court shall be advised that they may be protected by quasi-judicial immunity, so long as they maintain neutrality and perform quasi-judicial functions. See Howard v. Drapkin 222 Cal.App.3rd [271 Cal.Rptr. 893]. (Adopted effective October 1, 1998)

11.08 FORMAT OF ORDER APPOINTING SPECIAL MASTER

The Court and Counsel should be free to fashion individual orders for unique situations. A proposed order for use and adaptation as appropriate is included in these guidelines (See Attachment I, Order Appointing Special Master). (Adopted effective October 1, 1998)

ATTACHMENT I

ORDER APPOINTING SPECIAL MASTER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Marriage of Petitioner:	**Case No.**
and	**ORDER APPOINTING SPECIAL MASTER**
Respondent: _____/	

Good cause appearing thereof, pursuant to the stipulation of the parties,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

Appointment of Special Master.

1. _____ is appointed Special Master, to serve until his/her resignation or written agreement of the parties, further court order, or _____, whichever first occurs.

Powers of Special Master.

2. Level One. Subject to the stipulation of the parties (if indicated on Exhibit 1), the Special Master has the authority to make decisions regarding the issues set forth on Exhibit 1 and such decisions are effective as orders when made and will continue in effect unless modified or set aside by a court of competent jurisdiction. Special Master decision on these matters shall be communicated to parties/counsel in person, by telephone, mail, fax, and/or personal delivery and will take effect immediately.

If the parties do no stipulate to the Special Master's authority to make decisions about the matters listed on Exhibit 1, those matters shall be subject to the Special Master's authority to make recommendations in accordance with Paragraph 3 of this order.

3. Level Two. The Special Master has the authority to make recommendations on the issues set forth on Exhibit 2, which recommendations shall be submitted to the court, which may approve them and enter them as court orders.

Special Master recommendation on these matters shall be served on the Court/parties and counsel by mail, fax or personal delivery. The Special Master 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 15 days of services of the recommendations. Either party shall have the right to request a written explanation from the Special Master of any

recommendation, which shall be proved within 20 calendar days to both parties, counsel and the court.

4. Level Three. The Special Master shall not make any recommendations which alter a child's primary residence, alter an award of physical custody, alter an award of legal custody, prohibits a party's contact with his/her children, or require or prohibit adherence to a religion. These decisions and other relating to issues not included among those assigned to the Special Master in Exhibits 1 and 2 of this order are reserved to the Monterey County Superior Court for adjudication, and may be presented to the court by either party or upon the recommendation of the Special Master without a recommendation as to outcome.

Communications with the Special Master.

5. Both parties shall cooperate with the Special Master and shall be present when so requested by the Special Master. The Special Master may initiate contacts with the parties or counsel which are informal in nature, by telephone or in person. The Special Master has the authority to decide when and if to meet with the parties and to determine the protocol of all meetings including the power to determine who attends such meetings.

6. The parties and their attorneys may communicate ex parte with the Special Master, subject to reasonable limitations imposed by the Special Master. Any party may write to the Special Master, provided that copies are provided to the opposing party simultaneously and subject to reasonable limitations imposed by the Special Master. Counsel may initiate contact in writing with the Special Master, provided copies are provided to opposing counsel simultaneously.

7. The Special Master may communicate ex parte with the judge, at the discretion of the Special Master and the judge. Such communications shall be made only after giving notice to both parties; provided, however, that notice may be excused if notice would frustrate the very purpose of the communication. If the Special Master communicates with the judge without having given notice, (s)he shall notify the judge of that fact and his/her reasons for not giving notice.

8. Counsel or parties in pro per shall serve the Special Master with all pleadings and discovery relating to non-financial issues concerning the child(ren).

9. With the agreement of the parties and counsel, or upon court order, the Special Master may utilize consultants and/or assistants as necessary to assist the Special Master in the performance of the duties contained herein.

10. The Special Master may request the appointment of a co-Special Master where issues arise which require the expertise of someone other than the Special Master. The powers of the co-Special Master shall be set forth in the order appointing the co-Special Master.

11. The parties shall sign all requested releases, including the release attached to this Order as Exhibit 3 and shall forthwith provide all relevant and reasonable records, documentation, and information requested by the Special Master.

12. No physician-patient or therapist-patient relationship and/or privilege between either party, the minor child(ren) and the Special Master is created by this order.

Fees.

13. The Special Master's fees is $_____ per hour. Time spent in interviewing, report preparation, review of records and correspondence, telephone conversation, travel, court preparation and any other time spent in connection with serving as Special Master will be billed at the same hourly rate. The Special Master's fee for Court appearances is $_____, per hour, including travel time to and from his/her office and waiting time. The Special Master may require an advance deposit in an amount to be agreed upon by him/her and the parties, subject to replenishment upon becoming diminished.

14. The Special Master shall be reimbursed for any reasonable expenses he/she incurs in association with his/her role as Special Master. These costs may include, but are not limited to the following: photocopies, messenger service, long distance telephone charges, postage, express and/or certified mail costs and excess postage to foreign countries, parking, tolls, mileage, other travel expenses and word processing. At the Special Master's discretion, fees for consultants or assistants agreed to ordered shall be paid directly to the provider or reimbursed to the Special Master.

Allocations.

15. Except as otherwise provided below, the fees of the Special Master shall be shared by the parties in the following manner: Father shall pay _____% of the Special Master's fees, expenses and advance deposit, and Mother shall pay ____ _% of the Special Master's fees, expenses and advance deposit.

16. The Special Master shall have the right to allocate payment of his/her fees at a percentage difference from the above if he/she believes the need for his/her services is attributable to conduct and/or intransigence of one party.

17. In the event that either party fails to provide twenty four (24) hours' notice of cancellation of any appointment with the Special Master, such party shall pay all of the Special Master's charges for such missed appointment at the full hourly rate, at the discretion of the Special Master.

18. Once appointed, the Special Master shall have the right to withdraw upon written notice to the Court and parties, with or without a stated reason.

19. The Special Master may be disqualified on any of the grounds applicable to the removal of a judge, referee or arbitrator, upon motion by either party or by the court on its own motion.

20. Neither party may initiate court proceedings for the removal of the Special Master or to bring to the attention of the court or any other body any grievances regarding the performance or actions of the Special Master without meeting and conferring with the Special Master in an effort to resolve the grievance.

_____ _____
Mother Father

APPROVED AS TO FORM:

_____ _____
Attorney for Mother Attorney for Father

_____
Special Master

ORDER

IT IS SO ORDERED.

Dated: _____ _____
Judge of the Superior Court

EXHIBIT 1 Level One Powers

1. Dates and times of pick-up and delivery

2. Sharing of parent vacations and holidays

3. Method of pick-up and delivery

4. Transportation to and from visitation

5. Selection of child care/daycare and baby sitting

6. Bedtime

7. Diet

8. Clothing

9. Recreation

10. After school and enrichment activities

11. Discipline

12. Health care management

13. Alterations in schedule which do not substantially alter the basic time share agreement

14. Participation in visitation (significant others, relatives, etc.)

15. In the case of infants and toddlers, increasing time share when developmentally appropriate

16. Other daily routines

17. Participation in alcohol and drug monitoring or testing, including selection of monitors or testers

18. Other: _____

We agree that the Special Master may make binding decisions on the above matters.

_____ _____
Initials Initials

EXHIBIT 2 Level 2 Powers

1. Private school education and school placement
2. Scheduling of church attendance and religious classes
3. Large changes in vacation and holiday timeshares
4. Supervision of visitation
5. Timeshare changes not altering the child's primary residence
6. Appointment of counsel for children
7. Participation in adjunct health services including physical and psychological examinations, assessments and psychotherapy, including selection of providers.

EXHIBIT 3

INFORMATION RELEASE

We, the undersigned, specifically authorize any public agency, private person, physician, psychologist, treating therapist, drug and/or alcohol treatment program, hospital, law enforcement agency, teacher, counselor or child care provider possessing information about each of us or our minor children, confidential or otherwise, to release this information, including copies of all relevant documents, to _____, Special Master. We consent that interviews may take place at the children's schools if deemed appropriate by the Special Master. We understand this information will be used as the Special Master may deem fit and proper. This release shall remain valid until _____, (date). We understand that we are entitled to a copy of this release of information form.

FATHER:	MOTHER:
_____	_____
Signature & Date	Signature & Date
_____	_____
Print Name	Print Name
_____	_____
Date of Birth	Date of Birth
_____	_____
Social Security Number	Social Security Number

NAME OF CHILD/CHILDREN:

_____ Date of Birth: _____

_____ Date of Birth: _____

ATTACHMENT II

RECEIPT AND CONSENT TO APPOINTMENT OF SPECIAL MASTER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Marriage of Petitioner:	**Case No.**
	RECEIPT AND CONSENT TO APPOINTMENT AND SPECIAL MASTER
Respondent:	

_____/

I, _____, hereby acknowledge receipt of a file-stamped copy of the order Appointing Special Master filed _____, and I consent to appointment as Special Master thereunder.

Dated: _____ _____
Signature

ATTACHMENT III

ORDER ADOPTING SPECIAL MASTER RECOMMENDATIONS

SUPERIOR COURT OF CALIFORNIA

Marriage of Petitioner: **Case No.**

and **ORDER ADOPTING SPECIAL MASTER RECOMMENDATIONS**

Respondent:
_____/

The court has read and considered the letter and recommendations submitted by Special Master _____, dated _____.

There being no objection filed, IT IS HEREBY ORDERED, that the court adopts and incorporated herein said recommendations (see attached copy of letter).

Dated: _____ _____
Judge of the Superior Court

CHAPTER 12

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

12.01 CONTESTED FAMILY LAW, PROBATE, ADOPTION, AND UNLAWFUL DETAINER ACTIONS

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

12.02 AT-ISSUE MEMORANDUM

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

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

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 effective October 1, 1998)

12.04 SHORT CAUSE

In short cause cases (one 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 effective October 1, 1998; Amended effective January 1, 2007; Amended effective January 1, 2008)

12.05 LONG CAUSE

In long cause cases (more than one 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 effective October 1, 1998; Amended effective January 1, 2007; Amended effective January 1, 2008)

12.06 SETTLEMENT CONFERENCES Repealed effective July 1, 2003.

CHAPTER 13

RESET AND CONTINUANCE OF A TRIAL DATE

13.01 DEFINITIONS

Reset: The rescheduling of a trial date within ten (10) days of the mailing of the Notice of Trial by the Court, of an assigned trial date due to the unavailability or conflict of the scheduling of an attorney, party or witness.

Continuance: The rescheduling of a trial date after the expiration of the time specified for resets. (Adopted effective October 1, 1998)

13.02 PROCEDURE FOR RESETTING CASES:

Since all trials are set without the necessity of appearance at a Trial Setting Conference and therefore without personal concurrence of trial counsel, the resetting of any assigned trial, Settlement conference or pretrial date can be accomplished if the request is made within ten (10) days of the date of mailing of the Clerk's Notice of Trial. The procedure for obtaining a resetting of an assigned date is as follows.

1. Notification of the Court Clerk Supervisor within ten (10) days of the Clerk's Notice of Trial of a conflict with the assigned date.

2. The Court Clerk Supervisor will give the requesting counsel a proposed date which is compatible with the Superior Court calendar.

3. The attorney requesting the resetting will confirm the proposed date as a mutually acceptable date with the opposing trial counsel.

4. A written stipulation stating the reason for the reset and the new trial date signed by both counsel will be filed with the Court. Only one (1) reset will be allowed on each case. (Adopted effective October 1, 1998; Amended effective July 1, 2004; Amended effective January 1, 2008)

13.03 PROCEDURE FOR CONTINUING CASES

Any motion for continuance must be made before the Civil Supervising Presiding Judge. (Adopted effective October 1, 1998; Amended effective July 1, 2004)

CHAPTER 14

CRIMINAL DEPARTMENT

14.01 PENAL CODE 995 AND 1538.5 MOTIONS

Except for good cause shown, all Motions to Set Aside the Indictment or Information must be set for hearing within ten (10) days of the date of arraignment. All Motions to Suppress Evidence must be calendared for setting within ten (10) days of the date of arraignment. (Adopted effective October 1, 1998)

14.02 OTHER PRETRIAL AND DISCOVERY MOTIONS

All other pretrial and discovery motions must be heard prior to the Jury Trial Readiness Calendar (CRC 4.112(b)).

a) 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 effective October 1, 1998; Amended effective July 1, 2002; Amended effective January 1, 2009)

SHORT CAUSE CRIMINAL

14.03 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 noon on Friday for all felony cases and no later than 3 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 effective October 1, 1998; Amended effective July 1, 2001; Amended effective January 1, 2004; Rule 14.05 Renumbered as 14.03 and Amended effective January 1, 2009)

14.04 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 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 of the Court 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 (PC1050). 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."

b) A member of the State Bar shall not:

1. 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

2. 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.

c) 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 Superior Court and cases in different branches 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.

d) Motions, pre-trials and trials are to be heard at the date and time set

e) 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. California Rules of Professional Conduct 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. CCP 128.5, CCP 177.5, California Rules of Court 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 effective January 1, 2007)

f) 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.

g) Counsel should subpoena witnesses as soon as a case is set for hearing or trial.

h) 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(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. CCP 128.5, CCP 177.5, California Rules of Court 2.30. (Amended effective 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, 4:30 and the next day at 8:30. When a case is trailing, the defendant and counsel, except in extraordinary circumstances, must be present when the case is called. (Adopted effective October 1, 1998; Amended effective July 1, 2002; Amended effective January 1, 2004; Amended effective January 1, 2007; Rule 14.06 Renumbered as 14.04 and Amended effective January 1, 2009)

14.05 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 ten (10) calendar 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.

a) 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 ten (10) 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 effective October 1, 1998; Rule 14.07 Renumbered as 14.05 and Amended effective January 1, 2009)

14.06 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 P.C. 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 effective October 1, 1998; Rule 14.08 Renumbered as 14.06 effective January 1, 2009)

14.07 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 effective October 1, 1998; Amended effective January 1, 2004; Rule 14.09 Renumbered as 14.07 effective January 1, 2009)

14.08 APPEALS IN MISDEMEANOR CASES THAT WERE ELECTRONICALLY RECORDED

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

14.09 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. *(Penal 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. *(Penal 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 must be filed with the Superior Court Clerk's Office at least 10 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 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 that 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. *(Penal Code 1281)*

B. All documents submitted for filing must conform to the form/format requirements set forth in California Rules of Court 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. *(Penal 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 stores 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 Director of Court Operations.
   - Director signs the Full Reconveyance in the presence of a notary public provided and paid for by the defendant.
   - Signed Full Reconveyance, cancelled recorded Deed of Trust and cancelled Promissory Note is given to the attorney of record.

J. 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. (Penal Code 1280.1(b)) (Adopted January 1, 2008; Rule 14.11 Renumbered as 14.09 effective January 1, 2009)

14.10 LOCAL CRIMINAL BAIL SCHEDULE

This rule sets forth a schedule and procedure for adoption of the local bail schedule pursuant to PC §§ 1269b (c) and (d) and CRC 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. [PC §1269b(f), CRC, Rule 4.102].

Bail shall be set according to the Uniform Bail Schedule established by the Judicial Council per CRC 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 effective January 1, 2009)

CHAPTER 15

WRITS

15.01 HABEAS CORPUS

Petitions for writs of habeas corpus shall be filed in accordance with Cal. 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 Cal. Rules of Court, rule 4.551(f) shall be addressed to the designated criminal writ judge. (Rule 15.01 previously Adopted effective October 1, 1998; Repealed effective January 1, 2009, New Rule 15.01 Adopted effective January 1, 2009)

15.02 WRITS FROM THE COURT

Petitions for writs of coram nobis, mandamus or prohibition in a criminal proceeding must be presented to the Presiding Judge except petitions for writs coram vobis, manadamus, prohibition, review (certiorari) or supersedeas arising from any misdemeanor case, infraction case, or limited civil action, which shall be addressed to the Presiding Judge of the Appellate Division. (Rule 15.03 Renumbered as 15.02, Amended effective January 1, 2009)

15.03 ALL OTHER WRITS

All other writs shall be addressed to the Supervising Judge of the Civil Division.

Writs addressed to the Appellate Division shall also comply with the rules in Chapter 9. (Adopted effective January 1, 2000; Rule 15.04 renumbered as 15.03, Amended effective January 1, 2009)

15.04 ADMINISTRATIVE RECORD

A party intending to use an administrative record in a case brought under section 1094.5 of the Code of Civil Procedure shall lodge the record in the department in which the matter will be heard at least five (5) court days before the hearing. (Adopted effective January 1, 2000; Rule 15.06 Renumbered as 15.04 effective January 1, 2009)

CHAPTER 16

MENTAL HEALTH DEPARTMENT

16.01 MENTAL HEALTH JUDGE

The Mental Health Judge shall be designated by the Presiding Judge. (Adopted effective 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 effective October 1, 1998)

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)

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 effective October 1, 1998)

17.02 EXAMINATION OF WITNESSES

Only one attorney on each side will be permitted to examine or cross-examine the same witness. (Adopted effective 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 effective October 1, 1998)

17.04 COPIES OF JUDGMENTS

(Adopted effective October 1, 1998) (Repealed Effective July 1, 2005)

17.05 TIMELY FILING

It shall be the duty of counsel, on all documents of whatsoever nature presented for filing as part of the official court file, to indicate the date of any pending 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, insuring 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 effective October 1, 1998)

17.06 COPIES OF PLEADINGS, JUDGMENTS AND APPEALABLE ORDERS

Attorneys or individuals acting as their own attorney shall furnish the Clerk with no more than two duplicate copies of all pleadings, judgments and appealable orders. The Clerk shall return up to two copies in the provided self-addressed stamped envelope. (Adopted effective July 1, 2005)

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 and is designated as the "attache" of the Court to perform the functions of Jury Commissioner. Said functions may be performed by such Deputies as may be designated by the Executive Officer. (Adopted effective October 1, 1998)

18.02 JURY SELECTION PROGRAM

a) Source Lists. The Jury Commissioner shall prepare and keep a consolidated, master list of eligible juror candidates. The list shall be drawn from source lists 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 Section 12800) and Article 5 (commencing with Section 13000) of Chapter 1 of Division 6 of the Vehicle Code. The master list shall be prepared 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 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, King City, 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. (Adopted effective October 1, 1998; Amended effective January 1, 2003)

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 Sections 204(b) and 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 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 effective 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 effective October 1, 1998)

18.05 DEPOSIT AND REFUND OF JURY FEES

a) Jury Fees. Jury fees are returnable only when notice of cancellation of jury is received by the Court or the Clerk thereof two (2) court days before the date of trial, which notice may be given by telephone or otherwise. The deposit for jury fees, pursuant to Section 631 of the Code of Civil Procedure, is fixed at One Hundred and Fifty Dollars ($150.00).

b) Waiver. Upon waiver of trial by jury by announcement or by operation of law, demand for trial by jury by opposing counsel shall be accompanied by a deposit for jury fees. (Adopted effective October 1, 1998; Amended effective January 1, 2003)

CHAPTER 19

MISCELLANEOUS RULES

19.01 PEREMPTORY CHALLENGE

If a Peremptory Challenge is filed on any matter assigned to a particular department, the case shall be immediately referred to the Presiding Judge for reassignment. (Adopted effective October 1, 1998)

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 effective 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 effective October 1, 1998; Amended effective July 1, 2004)

19.04 PROPOSED ORDERS

The attorney preparing a formal order following a court hearing shall provide opposing counsel an opportunity to review and approve a proposed order as to form and content before submitting the order to the Court for signature. (Adopted effective October 1, 1998)

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. (Penal Code section 1417)

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.

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 which will safeguard personnel.

Unless otherwise ordered, unidentified liquids, containers, controlled substances, or other suspect substances shall be returned to the party offering them.

A court, in its discretion, may admit any exhibit in the interest of justice. However, the following rules will be taken into consideration prior to approval.

a) 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.

b) Diagrams and Charts. Diagrams and charts shall not exceed 27"x40", 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. (Adopted effective October 1, 1998; Amended effective July 1, 2000)

19.06 USE OF CORRECTION FLUID OR TAPE ON DOCUMENTS AND PAPERS

Correction fluid or tape shall not be used to correct errors in dates, monetary amounts, names of parties, or legal descriptions on any documents or papers, of any nature, presented for filing as part of the official court file. Documents or papers presented for filing with such errors corrected with correction fluid or tape shall be refused for filing by the Clerk of the Court, unless otherwise ordered by the Court. The purpose of this rule is to ensure the long-term integrity of court documents which might otherwise be compromised by the decomposition of masking materials; nothing in this rule is intended to constrain the form or format of documents presented for filing, as alternative methods of document correction are available. (Adopted effective October 1, 1998; Amended effective January 1, 2002; Amended effective July 1, 2007)

19.07 TAPING AND EDITING RULES FOR VIDEO DEPOSITIONS

In addition to the requirements of Civil Code of Procedure section 340, the following rules shall be followed regarding the taping and editing of video depositions.

TAPING OF VIDEO DEPOSITION:

a) Head and shoulders view of witness only;
b) No split screen allowed;
c) A plain background shall be used; no photographs or pictures shall be in the background;
d) Only normal room lighting shall be used; no additional lighting shall be used without court permission or agreement of opposing counsel; and
e) The running time for the tape shall be displayed at the bottom of the picture.

EDITING OF VIDEO DEPOSITION:

a) Full questions and answers are required;
b) Pauses shall remain in questions and answers;
c) Pauses at end of answer and before next question may be edited out;
d) Introduction of subject matter for a section of tape by non-argumentative description is allowed (e.g., voice over of trial counsel or character display);
e) Objections and comments of counsel on record shall be edited out;
f) An edited version of the video deposition shall be exchanged with counsel 30 days before the pre-trial or settlement conference;
g) Sections of the video deposition offered for impeachment must comply with these taping and editing rules, but exchange between counsel is not required before trial; and
h) 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 effective October 1, 1998; Amended effective January 1, 2008)

19.08 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. Business & Professions Code section 6408 states: “The registrant’s name, business address, telephone number, registration number, and county of registration, shall appear on any … appropriate papers or documents prepared by the registrant, including, but not limited to, contracts…documents, forms, claims, petitions,… and pleadings.”

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. The Clerk of the Court shall not accept for filing or file any papers which do not comply with this rule, but for good cause shown the court may permit the filing of papers which do not comply. (Adopted effective July 1, 2000; Amended effective January 1, 2007)

19.09 INTERNET AND HOME STUDY TRAFFIC SCHOOL COURSES

The Court does authorize the use of internet or online traffic school courses. (Adopted effective March 26, 2001; Amended effective January 1, 2008)

19.10 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. Court reporting services will not be available for the Department of Child Support Services calendar.

Court reporting services are not available during a trial in civil cases except the court will generally provide said services during regular weekly scheduled court calendars unless said services are required in a criminal and/or juvenile matter. "Civil case" includes all matters other

than criminal and juvenile matters. (Adopted effective January 1, 2003; Amended effective April 1, 2003; Amended effective January 1, 2005; Amended effective January 1, 2007)

19.11 FILING OF CASES

Cases within the jurisdiction of the Superior Court of California, County of Monterey may be delivered to the Salinas, King City, 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 branch 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 effective January 1, 2006)

19.12 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 arranging and paying for the services of such interpreter. (Adopted Effective January 1, 2005)

ALPHABETICAL INDEX