SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
LOCAL RULES OF COURT

Effective January 1, 2024

FOREWORD

STATE RULES

The California Rules of Court are adopted by the Judicial Council of California for all Superior Courts. The California Rules of Court can be found at:

www.courts.ca.gov/rules.htm

LOCAL RULES

The following Local Rules of Court supplement the California Rules of Court and apply in Santa Clara County only. If there is a conflict between the Local Rules and the California Rules of Court, the California Rules of Court apply. The following Local Rules can also be found at:

www.scscourt.org

CALIFORNIA CONSTITUTION AND STATE CODES

The California Constitution and State Codes can be found at:

www.leginfo.ca.gov/calaw.html

STATE LEGAL FORMS

State legal forms are approved by the Judicial Council for all Superior Courts. State legal forms can be found at:

www.courts.ca.gov/rules.htm

LOCAL LEGAL FORMS

Local legal forms are designed for use in Santa Clara County only, and can be found at:

www.scscourt.org

Parties and attorneys must comply and be familiar with these Local Rules, which are designed to help the Court and parties resolve cases promptly and efficiently.

The Superior Court

STANDING ORDER
RE SANTA CLARA COUNTY BAR ASSOCIATION
CODE OF PROFESSIONALISM

Good cause appearing, upon consideration by and with the approval of the Judges of the Santa Clara Superior Court, it is hereby ORDERED that the Code of Professionalism adopted by the Santa Clara County Bar Association in June 1992 and revised in October 2015 will serve as a guide to the Judges of the Santa Clara Superior Court in the exercise of their individual discretion when adjudicating disputes among attorneys. While the Code does not have the force of law or regulation with respect to the conduct of attorneys, it reflects the view of the members of the Santa Clara County Bar Association regarding appropriate attorney behavior. As such it is helpful in giving judges guidance about the expectations of attorneys concerning acceptable behavior. (Cf. *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 838, fn. 6.)

It is further ORDERED that notice of this standing order shall be published to all attorneys practicing before this Court by appending a copy of this order to the Local Rules of Court.

Dated: November 17, 2016

Hon. Risë Jones Pichon
Presiding Judge of the Superior Court

COURTHOUSE LOCATIONS AND TELEPHONE NUMBERS

Administration
201 North First Street, San Jose, CA 95113 (408) 882-2700

Downtown Superior Court
191 North First Street, San Jose, CA 95113 (408) 882-2100

Old Courthouse
161 North First Street, San Jose, CA 95113 (408) 882-2100

Family Court
201 North First Street, San Jose, CA 95113 (408) 534-5600

Child Support Court
201 North First Street, San Jose, CA 95113 (408) 882-2900

Dependency Court
201 North First Street, San Jose, CA 95113 (408) 491-4700

Drug Court
201 North First Street, San Jose, CA 95113 (408) 481-4700

Hall of Justice
190 West Hedding Street, San Jose, CA 95110 (408) 808-6600

Juvenile Justice Court
840 Guadalupe Parkway, San Jose, CA 95110 (408) 808-6200

South County Courthouse
301 Diana Avenue, Morgan Hill, CA 95037 (408) 695-5000

Santa Clara Courthouse
1095 Homestead Road, Santa Clara, CA 95050 (408) 556-3000

Palo Alto Courthouse
270 Grant Avenue, Palo Alto, CA 94306 (650) 462-3800

Mailing address for all Judicial Officers
Superior Court of California
County of Santa Clara
191 North First Street
San Jose, CA 95113

CIVIL RULES

RULE 1 DIFFERENTIAL CIVIL CASE MANAGEMENT SYSTEM

A. OVERVIEW

(1) PURPOSE

The purpose of the Differential Civil Case Management System is to ensure that, from the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery and court events is unacceptable and should be eliminated. To enable the just and efficient resolution of cases, the Court, and not the lawyers or litigants, should control the pace of litigation. The Court is strongly committed to reducing delay, and once achieved, maintaining a current docket.

(2) APPLICATION

The differential civil case management system applies to all general civil cases as defined in CRC1.6(4), including limited and unlimited civil cases.

(Effective 7/1/2007)

(3) INCORPORATION OF STATE STATUTES AND RULES

The Trial Court Delay Reduction Act (Gov. Code 68600 et seq.), California Rules of Court, Titles 1, 2 and 3, and the Standards of Judicial Administration, Standards 2.1 and 2.2, are incorporated into these rules.

(Effective 7/1/2007)

(4) PRESUMPTION

When a general civil case is filed, it is presumed to be subject to the disposition goal under case management plan 1, as defined in CRC 3.714(b).

(Effective 7/1/2007)

B. CASE MANAGEMENT JUDGES

General civil cases are managed by case management judges designated by the Presiding Judge. When a general civil case is filed, it is assigned to a case management judge. The case management judge may thereafter assign the case to another judge or judicial officer for any purpose.

(Effective 1/1/2020)

C. CASES INVOLVING EMPLOYEES

If a court employee or deputy sheriff working at a courthouse, or a member of his or her family, is a party to a case, the clerk or Supervising Judge of the Civil Division shall transfer the case to the South County Courthouse, unless the location is specified by statute, including Civil Code § 1812.10 and § 2984.4 and Code of Civil Procedure § 392 and § 395.

(Effective 1/1/2011)

D. PROPER COURTHOUSE FOR FILING A GENERAL CIVIL CASE

(1) All unlimited civil cases must be filed in the Downtown Superior Court.

(2) All limited civil cases must be filed in the Downtown Superior Court.

(Effective 11/24/2014)

E. CIVIL LAWSUIT NOTICE

(1) When the complaint or other initial pleading is filed, the filing party must submit a blank Civil Lawsuit Notice (CV-5012) to the Clerk for issuance of Judicial Assignment, Initial Court Hearing Date, Time, and Department with the filing of the new complaint. The Civil Lawsuit Notice will only be completed and returned by the Clerk if one is provided by the filer. The party who filed the initial pleading must serve a copy of the Civil Lawsuit Notice completed by the Clerk on all other parties named in the pleading. A party who subsequently files a pleading that adds a new party must serve a copy of the Civil Lawsuit Notice on all new parties. Service of the Civil Lawsuit Notice must be done at the same time as service of the pleading. When the Civil Lawsuit Notice is served, it must reflect the most up-to-date information available concerning the date, time and location of the next CMC. Therefore, the party serving the Notice must complete the information on the next CMC if the first CMC was continued or has passed.

(Effective 1/1/2020)

(2) CRC RULE 3.740 COLLECTIONS CASES.

The plaintiff may designate a case as a CRC "Rule 3.740 collections" case by filing a Civil Case Cover Sheet with the box "Rule 3.740 collections" checked. The filing party must submit a blank Civil Lawsuit Notice – Rule 3.740 Collections Cases (CV-5052) to the Clerk for issuance of Judicial Assignment and Department with the filing of the new complaint. The Civil Lawsuit Notice will only be completed and returned by the Clerk if one is provided by the filer. The plaintiff must serve a copy of the Civil Lawsuit Notice – Rule 3.740 Collections Cases completed by the Clerk on all defendants. A party who subsequently files a pleading that adds a new party must serve a copy of the Civil Lawsuit Notice – Rule 3.740 Collection Cases on all new parties

(Effective 1/1/2020)

(3) When a case is filed alleging violation of the California Environmental Quality Act, the plaintiff shall state in the caption of the complaint, directly below the title of the complaint: ACTION BASED ON CALIFORNIA ENVIRONMENTAL QUALITY ACT.

(Effective 7/1/2012)

F. MANDATORY CASE MANAGEMENT CONFERENCES

(1) DEFINITION

The term "Case Management Conference" ("CMC") includes the first Case Management Conference, subsequent Case Management Conferences, ADR Status Conferences, Trial Setting Conferences, Dismissal Reviews, and any other conference scheduled by the Court.

(Effective 1/1/2004)

(2) DATE OF FIRST CASE MANAGEMENT CONFERENCE

(a) In all cases, except those designated as "uninsured motorist" and "Rule 3.740 collections." the Clerk of the Court will schedule the first CMC approximately 120 days from the date of filing of the complaint.

(Effective 7/1/2008)

(b) "Uninsured motorist" cases. The plaintiff may designate a case as an "uninsured motorist case" by filing and serving a declaration demonstrating that the designation is appropriate. If the declaration is filed with the complaint, the Clerk of the Court will schedule the first CMC approximately 180 days from the date of filing of the complaint. If the plaintiff files the declaration at a later time, the Case Management Conference will not be continued unless the plaintiff applies for a continuance.

(Effective 7/1/2004)

(3) REQUEST TO CHANGE CMC DATE

Pursuant to written stipulation of all parties, the Court may advance a CMC. Upon timely application and a showing of good cause, the Court may continue a CMC. If the Court continues a conference, the party who applied for the continuance must serve notice upon all parties who were served with a copy of the Civil Lawsuit Notice.

(Effective 7/1/2004)

(4) MANDATORY ATTENDANCE

Attendance at all CMC's is mandatory unless otherwise excused by the Court.

(Effective 1/1/2006)

RULE 2 ALTERNATIVE DISPUTE RESOLUTION (ADR)

A. POLICY STATEMENT

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. It is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and voluntary settlement conferences. Therefore, the Court will refer all general civil cases to an appropriate form of ADR before they are set for trial, unless there is good cause to dispense with the ADR requirement

(1) DISCLAIMER

The Court and the Judicial Council of California may not defend or indemnify any ADR provider or neutral who serves on a court related program, or who is listed on a court ADR provider list. ADR providers are encouraged to seek errors and omissions insurance from a qualified insurance provider.

(Effective 7/1/2019)

B. CIVIL ADR STIPULATION

(1) In most civil cases, if all parties have appeared, then all parties may stipulate to any form of ADR at any time. The Court has an ADR Stipulation and Order Form for this purpose. (See attached form CV-5008.) If the parties efile a signed ADR stipulation including the name of the ADR provider and the date of the ADR hearing at least 20 calendar days before a Case Management Conference, and the Court approves the stipulation and the order is filed, the CMC will be canceled and an ADR Status Conference will be scheduled. An ADR stipulation will not cancel a Case Management Conference unless it contains the name of the ADR provider and the date on which the ADR will be conducted

(Effective 7/1/2019)

(2) If the parties stipulate to ADR, but have not already selected an ADR provider and date, then, within 20 calendar days, plaintiff's counsel must efile an amended ADR Stipulation and order form including the name of the ADR provider and the date on which the ADR will be conducted. Parties may use the Court's ADR Stipulation and Order Form for this purpose. (See attached form CV-5008.)

(Effective 7/1/2019)

(3) Parties who have previously stipulated to any form of ADR may later stipulate to another form of ADR by efiling a signed ADR stipulation and order.

(Effective 7/1/2019)

(4) If the parties stipulate to Civil Early Settlement Conference, the procedure will be governed by Local Civil Rule 4.

(Effective 7/1/2019)

C. MEDIATORS AND NEUTRAL EVALUATORS

(1) The ADR Administrator has a list of Court-approved ADR providers and information about their qualifications, the services they provide, and the fees they charge.

(2) The parties may choose any ADR provider they wish, including a provider who is not on the list of Court-approved ADR providers.

(3) The ADR provider need not be an attorney
(4) All participants in the ADR process must participate in good faith.
(5) In conducting a session, the ADR provider must require the attendance of persons with full authority to resolve the dispute. The provider may not permit a telephone appearance unless good cause was shown in a timely manner before the session.
(6) Unless the ADR provider's fees and expenses have been fixed by the Court, the parties and the provider must agree on the fees and expenses. The fees and expenses of the ADR provider must be borne by the parties equally, unless they agree otherwise.

(Effective 1/1/2011)

D. COURT-APPROVED ADR PROVIDERS

(1) Court-approved ADR providers must be available to accept at least one pro bono or modest means case per year.
(2) When an ADR provider is added to the list of court-approved ADR providers, the ADR Administrator will send the following documents to the provider:
  (a) An ADR Attendance Form;
  (b) An ADR Provider's Statement – whether an agreement was reached;
  (c) An ADR Evaluation, to be filled out separately by the parties and their counsel.
(3) At the conclusion of the ADR process, the provider must give copies of the ADR Evaluation to the parties and their counsel. Within the next 10 calendar days, the provider must complete the ADR Provider's Statement and send it to the ADR Administrator. A mediator must maintain the Attendance Sheet in Compliance with CRC 3.860(a).

(Effective 7/1/2011)

E. ADR COMPLIANCE

Once a case has been set for an ADR review hearing, it is the Court's expectation that ADR will be completed by the date of the ADR review hearing. Failure to complete ADR by the date of the ADR review hearing may lead to sanctions up to and including vacation of the ADR order and setting the case for trial or trial setting.

(Effective 1/1/2011)

F. ADR GRIEVANCE PROCEDURE

It is the goal of the Superior Court of California, County of Santa Clara ADR Program to encourage excellence and the highest ethical standards in ADR practice. The Santa Clara Superior Court has established the following procedure for handling grievances regarding the conduct of any neutral serving on any of the Civil Division's ADR programs.

(1) All complaints regarding the conduct of ADR program neutrals must be submitted in writing to the designated Complaint Coordinator under CRC 3.867(a).
(2) When a complaint regarding a neutral is received by the Court, it will be directed to the Complaint Coordinator for processing. The Complaint Coordinator will send a written acknowledgment of the receipt of the complaint to the complainant.
(3) The Complaint Coordinator will assemble available information regarding the complaint, and preliminarily review the complaint to determine the appropriate response. The Complaint Coordinator may respond directly to the complainant, or may refer the complaint to the Civil Supervising Judge for review.
(4) Upon referral from the Complaint Coordinator, the Civil Supervising Judge will promptly review the complaint and determine whether further investigation is appropriate. If the Civil Supervising Judge finds a complaint does not warrant further investigation, no further action will be taken.
(5) The Civil Supervising Judge will refer all other complaints to an investigative subcommittee of the Court ADR Committee.
(6) The investigative subcommittee of the ADR Committee will review the complaint, conduct an investigation, and make a recommendation for action to be taken by an appointed subcommittee of the Civil Committee of the Bench. A copy of the complaint will be provided to the neutral, who will be allowed an opportunity to respond. The appointed subcommittee may recommend that no further action be taken on the complaint, that the neutral be counseled, admonished, or reprimanded, that further training be required, or that the neutral be suspended or removed from the Court's ADR program panel. The final decision on the appropriate action to be taken, based on this recommendation, will be made by the Presiding Judge or his or her designee. The retention of neutrals on the Court's ADR program panel is at the sole discretion of the Court. The neutral will be notified promptly in writing of the final decision.
(7) Each complainant will be notified promptly in writing of the disposition of the complaint.
(8) All papers filed and proceedings conducted on a complaint against a neutral will be confidential to the same extent the particular ADR procedure is confidential.
(9) Each member of the investigative subcommittee and the appointed subcommittee, as well as the Civil Supervising Judge and the final decision maker on the complaint, will be covered by the disqualification under CRC 3.872.

(Effective 7/1/2009)

RULE 3 JUDGES ADR PROGRAM

Parties may apply at the earliest opportunity to participate in an ADR session with a sitting civil judge. These ADR options include mediation and settlement conferences. The program is governed by the following rules:

A. ELIGIBILITY/CRITERIA FOR PARTICIPATION

(1) The case, if tried with or without a jury, would consume significant court resources.

(2) The parties and their attorneys represent in good faith that they desire to resolve the case, and that they agree to participate in an ADR session with an agreed-upon judge.
(3) The parties are prepared to complete an ADR session as soon as the case is accepted in to the program.
(4) The Court has obtained jurisdiction over all necessary parties so that a resolution resulting from an ADR session will be final.

The Supervising Civil Judge accepts the case for the program despite the failure to satisfy one or more of the above-stated criteria.

B. PROCEDURE

(1) Application must be made on the Judges ADR Program Stipulation and Order form (see attached form CV-5017). The application must be signed by all counsel and self-represented parties.
(2) The application must be efiled and approved by the Civil Supervising Judge.
(3) When the application is approved, counsel and/or self-represented parties must promptly contact the department of the judge selected to conduct the ADR session, to schedule the session. ADR sessions will be conducted on Fridays, unless otherwise ordered by the ADR judge.
(4) When the application is approved, all law and motion and discovery proceedings shall be stayed until completion of the ADR session, and all case management conferences shall be vacated except as otherwise ordered by the Court.
(5) Good faith participation in the ADR session by all parties will satisfy the requirement of Rule 2 that parties participate in alternative dispute resolution before a case is set for trial.

(Effective 7/1/2019)

C. TIMELINE

(1) The ADR session shall commence within thirty days of approval of the application, and shall be completed no later than sixty days after approval of the application, except as otherwise ordered by the Court.

The case will be set for Mediation Status Review by the Court.

(Effective 7/1/2019)

D. PERSONS ATTENDING/STATEMENTS

(1) Lead counsel, parties, and persons with full authority to settle the case must personally attend the ADR session, unless excused by the ADR judge for good cause. If any consent to settle is required for any reason, the person or persons with that consensual authority must be personally present at the ADR session, unless excused by the ADR judge for good cause.
(2) Counsel and self-represented parties must submit to the ADR judge and serve on all parties, but not file, full written statements of their position regarding settlement no later than five calendar days before the ADR session. Failure to comply with this rule may result in sanctions.

(Effective 1/1/2024)

E. MEDIATION

(1) Mediation conducted under the Judges ADR Program is conducted under Evidence Code Sections 1115-1129, which provide for confidentiality of communication.

(Effective 7/1/2019)

(2) If mediation before the ADR judge results in settlement, the parties may place their agreement on the record, or they may report the case settled and privately execute a written settlement agreement. In either case, the parties may stipulate that the Court shall retain jurisdiction over them to enforce the settlement pursuant to Code of Civil Procedure Section 664.6. If the terms of settlement are placed on the record, or if a party moves to enforce the settlement, the terms of settlement shall not be confidential, unless a party seeking confidentiality complies with CRC 2.550, et seq.

F. SETTLEMENT CONFERENCE

(1) A settlement conference conducted under the Judges ADR Program is conducted under CRC 3.1380. There is no provision for confidentiality of communication, except as provided in Evidence Code § 1152(a).
(2) If a settlement conference before the ADR judge results in settlement, the parties may place their agreement on the record, or they may report the case settled and privately execute a written settlement agreement. In either case, the parties may stipulate that the Court shall retain jurisdiction over them to enforce the settlement, pursuant to Code of Civil Procedure § 664.6.

G. FURTHER COURT PROCEEDINGS

(1) Except as provided in paragraphs E(2) and F(2) above, the ADR judge will recuse himself or herself from acting in any further court proceedings in the case, unless the parties stipulate in writing that the judge may so act.
(2) The ADR judge shall be subject to the provisions of Evidence Code § 703.5.
(3) ADR judges are bound by the disqualification and recusal requirements of Code of Civil Procedure § 170.1, et seq., and by the disclosure requirements of the Canons of Judicial Ethics.

(Effective 1/1/2008)

RULE 4 CIVIL EARLY SETTLEMENT CONFERENCE PROGRAM

The Civil Early Settlement Conference is available for cases with very simple facts that have low dollar amounts in controversy, providing an early resolution option for cases that can be settled in three hours or less with no extensive document review by the neutral. This program is not available for cases with more complex facts, multiple parties, higher value disputes, cross actions, or requiring extensive discovery or document review before an ADR session.

The Civil Early Settlement Conference Program is available to parties who stipulate, using the ADR Stipulation and Order Form (see attached form CV-5008), to have a neutral attorney conduct a settlement conference in their case at the neutral's office or other agreed place. The program is governed by the following rules:
(Effective 7/1/2019)

A. SELECTION OF NEUTRAL

All parties and counsel must agree upon the neutral, and must obtain the neutral's signature on the stipulation, indicating the neutral's agreement to take the case. Plaintiff's counsel must efile the signed stipulation and order within 10 days of signature of all parties, counsel, and the neutral.

The parties may, but are not required to, select the neutral from the Court's list of program neutrals available from the Court's ADR web page. The list of neutrals consists of active or inactive members of the State Bar and retired judicial officers.

If the parties agree to use the program but do not choose a neutral at the time of the original stipulation, plaintiff's counsel must submit an amended ADR stipulation and Order form including the neutral's name and signature within 20 court days of the original stipulation. The Court will not assign a neutral without the neutral's signature on the stipulation.

When a neutral is selected by all parties and signs the stipulation, the neutral will hold the agreed-upon ADR hearing date on their calendar for 30 days. If the neutral does not receive confirmation from the court of the filing of the stipulation within 30 days of reserving the ADR hearing date, the neutral may vacate the ADR hearing date.

The Court has not screened neutrals for training or experience and makes no warranty regarding their ability.
(Effective 7/1/2019)

B. STIPULATION AND CMC

(Effective 7/1/2012)

All parties must complete the ADR Stipulation and Order Form, (attached local form CV-5008), checking the box "Early Settlement Conference, pursuant to Local Civil Rule 4," must get the signature of the chosen neutral on either the original or amended stipulation, and plaintiff's counsel must efile the ADR Stipulation and Order form in the Clerk's Office.
(Effective 7/1/2019)

If the form is efiled at least 20 calendar days before the initial Case Management Conference (CMC), the CMC may be vacated. The case will be set for ADR review on a date the Court selects.
(Effective 7/1/2019)

If the ADR Stipulation and Order form is filed after the initial CMC, upon approval of the Court, any pending CMC will be vacated and the case will be set for ADR review on a date the Court selects.
(Effective 7/1/2019)

C. LOCATION OF HEARING

(Effective 7/1/2012)

Plaintiff's counsel must contact the office of the selected neutral to arrange a settlement conference location, date, and time agreeable to all parties. Court facilities are not available for the conferences.

D. NEUTRAL FEES AND CHARGES

(Effective 7/1/2012)

The Court will pay the neutral a flat fee of $150.00 for up to three hours of the neutral's time to be used only for direct services to the parties. Neutrals will be paid from the same fund and in the same manner as judicial arbitrators. No additional charges, such as document review, scheduling time, travel, parking, or space rental, are to be added to the neutral's flat fee.
(Effective 7/1/2019)

If a case cannot settle within the three hours allotted, the neutral will end the Rule 4 hearing, and counsel and parties will select a different form of ADR and file a new stipulation
(Effective 7/1/2019)

By requesting a Rule 4 Civil Early Settlement Conference, parties and counsel acknowledge that their early settlement conference hearing time will not exceed three hours.

If a settlement conference is cancelled within five calendar days of the scheduled date of the conference, the neutral may apply ex parte or make a motion to the Court to be permitted to charge the canceling party at the neutral's normal hourly rate for the cost of the neutral's time that was set aside for the cancelled settlement conference.
(Effective 7/1/2019)

E. CONFERENCES NOT CONFIDENTIAL

(Effective 7/1/2012)

A settlement conference conducted under the Civil Early Settlement Conference Program is conducted under CRC 3.1380. It is not a mediation, as defined in Evidence Code § 1115. There is no provision for confidentiality of communication, except as provided in Evidence Code § 1152(a).

F. ATTENDANCE AND AUTHORITY

(Effective 7/1/2012)

Parties and counsel must comply with CRC 3.1380, unless the neutral excuses compliance.

G. NOTIFICATION OF SETTLEMENT

(Effective 7/1/2012)

Following settlement of the case, plaintiff's counsel must promptly notify the Court, as required by CRC 3.1385.

H. GRIEVANCES
(Effective 7/1/2012)
Any grievance regarding a neutral will be handled pursuant to Local Civil Rule 2G.
(Effective 1/1/2008)

RULE 5 [RESERVED]
(Effective 1/1/2024)

RULE 6 FORMAT OF DOCUMENTS SUBMITTED FOR FILING
A. REPRESENTED PARTIES
Refer to Rule 6 of the General Court and Administrative Rules.
B. SELF-REPRESENTED LITIGANTS
Documents that exceed 10 pages must be submitted held by binder clips. Exhibit attachments to pleadings must be separated by a standard size sheet of paper with a title identifying the sequence of the exhibit. Tabs must not be included in any documents submitted for filing.
(Effective 1/1/2024)

RULE 7 EX PARTE APPLICATIONS
A. GENERAL
Ex parte applications in Civil Division cases must be electronically filed by counsel and any parties who have access to the court's e-filing system. Ex parte applications may be submitted to the court in paper form by self-represented litigants by placing them in the dropbox at DTS every court day between 8:15 and 9:00 a.m. The applications will be submitted to the pretrial judge by the Clerk. All ex parte applications are reviewed and considered only in compliance with CRC 3.1203(a), which requires notice to all parties no later than 10:00 a.m. the court day before the ex parte submission, absent a showing of exceptional circumstances that justify a shorter time for notice. The applicant for the order must inform the Court if the opposing party intends to oppose or requests a hearing. A separate form of order must be submitted with the application attached to Form EFS-020. All ex parte applications will be determined on the papers unless the Court orders otherwise, which may be based on a showing of good cause for a hearing. If either party requests a hearing, the application (or opposition) must so state, and the court will contact the parties by email to schedule a hearing if good cause is found. The party seeking ex parte relief must provide email addresses of all counsel or self-represented litigants, if known. Any written opposition to the application or request for hearing must be submitted no later than the end of the day that the application was submitted to the Clerk. The court will attempt to consider and rule on the application, if possible, within 24 hours.
(Effective 1/1/2024)
B. UNLAWFUL DETAINER
For ex parte applications in unlawful detainer cases, see Rule 13(D)(2) below.
(Effective 1/1/2024)
C. PROVISIONAL REMEDIES
For ex parte applications seeking a provisional remedy or interim relief (temporary restraining orders or, orders to show cause re preliminary injunctions, writs of attachment, and writs of possession but excluding requests for receiver), that fact should be clearly indicated on the face of the application, so the matter may be properly directed to a department that is assigned to hear provisional remedies.
(Effective 1/1/2024)
D. CIVIL HARASSMENT AND OTHER PHYSICAL RESTRAINING ORDERS
Applications for civil harassment, elder abuse, private postsecondary school violence, transitional housing misconduct, or workplace violence restraining order may be presented in the Clerk's Office at any time during Clerk's Office hours. The moving party or self-represented party applying for a civil harassment, elder abuse, private postsecondary school violence, transitional housing misconduct, or workplace violence restraining order must submit a Declaration in Support of Ex Parte Application for Civil Restraining Orders (attached form CV-5014).
(Effective 1/1/2024)

RULE 8 PRETRIAL MOTIONS
A. PRO HAC VICE APPLICATIONS
Before filing any pro hac vice application, the filing party must meet and confer with the opposing party or parties to determine whether the motion will be opposed. If the motion is unopposed, the application must be filed with the designation "UNOPPOSED MOTION FOR PRO HAC VICE". If the motion is opposed, the filing party must follow the rules for a regularly noticed motion.
(Effective 1/1/2024)
B. SCHEDULING HEARINGS
(1) Except for motions in non-CEQA mandate cases and motions or applications concerning TROs/preliminary injunctions, writs of attachment, and writs of possession, all limited and unlimited civil pre-trial motions including discovery motions, are heard in the department of the case management judge. The law and motion calendar is called on Tuesdays and Thursdays at 9:00 a.m. or such other calendars as may be set by the Court.

(2) To obtain a law and motion hearing date in a case management department, the moving party must (1) meet and confer with the non-moving party or parties to identify mutually agreeable dates then (2) follow the procedure set forth on the civil law and motion section of the court's website at https://www.scscourt.org/. Only one date may be reserved for any motion. Any reserved date for which a motion is not filed within 5 court days of the reservation will be forfeited and returned to the pool of available hearing dates.

(Effective 1/1/2024)

C. PROPOSED ORDERS AFTER HEARING

Proposed orders may not be submitted with moving papers before a hearing on a regularly noticed motion unless ordered by the Court or required by applicable statute or Rule of Court (such as motions to be relieved as counsel, petitions for compromise of minors' claims, orders on objections to evidence in summary judgment motions, *pro hac vice* applications, applications for writs of attachment, etc.). If instructed to prepare an order after a hearing, the proposed order must be lodged with the court electronically in PDF format attached to Judicial Council Form EFS-020.

(Effective 1/1/2024)

D. CONTINUANCES AND REQUESTS TO TAKE MOTIONS OFF CALENDAR

A scheduled motion may be continued only upon application to the judge who is to hear the motion, upon a showing of good cause. In case management departments, the moving party may take a scheduled motion off calendar by following the procedure set forth on the civil law and motion section of the court's website at https://www.scscourt.org/. Any request for relief by the party responding to the motion will remain set for hearing unless continued or withdrawn by that party.

(Effective 1/1/2024)

E. TENTATIVE RULINGS

The Court follows CRC 3.1308(a)(1) in case management departments. Tentative rulings are generally available by 2:00 p.m., and no later than 3:00 p.m., on the court day preceding the scheduled hearing. If the Court has not directed oral argument, a party contesting a tentative ruling must give notice of its intention to appear to the other side and the Court no later than 4:00 P.M. on the court day preceding the scheduled hearing. The tentative ruling will automatically become the order of the Court on the scheduled hearing date if the Court has not directed oral argument and if the contesting party fails to timely notice an objection to the other side and the Court. Tentative rulings will be posted on the Court's website, www.scscourt.org, where further information may be found. If a party does not have access to the internet, the tentative ruling may be accessed by calling Court Services at (408) 882-2515. Questions about these procedures may be addressed to the specific department where the matter is to be heard.

(Effective 1/1/2024)

RULE 9 TRIAL SETTING, MANDATORY SETTLEMENT CONFERENCES AND TRIAL IN GENERAL CIVIL CASES (EXCLUDING MANDATE CASES)

A. TRIAL SETTING

The trial date will be set by the case management judge at a Trial Setting Conference or other conference. Trial counsel and parties must be available for trial the entire week in which the trial is set. If the time estimated for trial is more than one day, a Mandatory Settlement Conference will be scheduled to take place during the week before the trial date.

(Effective 1/1/2024)

B. MANDATORY SETTLEMENT CONFERENCE

(1) If a Mandatory Settlement Conference has been scheduled, the court will send written notice of the time, date, and department. No later than five court days before the date set for the settlement conference, each party must file with the court and serve on each party a Settlement Conference Statement not to exceed five pages, excluding exhibits.

(Effective 1/1/2024)

(2) The conference will be supervised by a judge or settlement attorney. Lead counsel, parties and persons with full authority to settle the case must personally attend unless excused by the Court. Failure to comply with this requirement may result in sanctions.

(Effective 1/1/2024)

(3) If insurance coverage is available to satisfy plaintiff's settlement demand and a representative of defendant's insurer with full settlement authority attends the mandatory settlement conference with defendant's lead counsel, named defendants need not attend unless their personal consent is necessary to settle the case. Named defendants must also personally attend the mandatory settlement conference when (1) there is an insurance coverage dispute; (2) plaintiff seeks to recover damages not covered by insurance; or (3) plaintiff's demand exceeds insurance policy limits. Failure to comply with this requirement may result in sanctions.

(Effective 1/1/2024)

(4) Unless the parties stipulate in a writing signed by the parties or state orally on the record before a sitting judge, Civil Code section 664.6 does not apply to a mandatory settlement conference.

(Effective 1/1/2024)

C. ASSIGNMENT TO TRIAL

Before the date set for trial, the Court will assign the case to a trial judge or place the case on standby for assignment. The trial judge or other court representative will contact trial counsel with instructions for appearance. Trial counsel and parties must be available for trial the entire week in which the trial is set.

(Effective 1/1/2024)

D. SERVICE AND LODGING OF DOCUMENTS

Unless the case was settled at the Mandatory Settlement Conference or dismissed in full prior thereto, or unless otherwise ordered by the Court, the following items must be filed, with courtesy paper copies delivered to the department of the trial judge or with Court Services if no trial judge has yet been assigned, and served on all other parties by noon on the last court day before the date set for trial:
(Effective 1/1/2020)

(1) all in limine motions;
(2) exhibit lists, except impeachment exhibits;
(3) witness lists, except impeachment witnesses, and unusual scheduling problems;
(4) jury instruction requests, except for instructions that cannot reasonably be anticipated prior to trial;
(5) proposed special verdicts;
(6) any stipulations on factual or legal issues;
(7) a concise, non-argumentative statement of the case to be read to the jury in jury trials;
(8) trial briefs;
(9) trial exhibits may not be filed, but must be lodged with the trial department when known;

(Effective 1/1/2020)

E. POST-TRIAL PROCEEDINGS

Motions made after a jury or court trial, and related to that trial (e.g., and without limitation, motions for new trial, for attorney fees, to tax costs, for reconsideration, to set aside or modify a judgment, or for a settled statement) shall presumptively set for hearing and heard in the department of the trial judge, unless the Supervising Judge of the Civil Division or designee orders otherwise. This rule also applies to dispositive hearings or motions in petitions for writ of mandate. One exception is for proceedings for enforcement of judgment; such proceedings shall presumptively be set for hearing in the department of the pretrial judge, unless the Supervising Judge of the Civil Division or designee orders otherwise.
(Effective 1/1/2021)

F. EXPEDITED JURY TRIALS

(Effective 1/1/2021)

(1) The provisions of Rule 9A through E do not apply to expedited jury trials conducted pursuant to Code of Civil Procedure (CCP) § 630.01 (voluntary expedited jury trials) or pursuant to Code of Civil Procedure section 630.20. (mandatory expedited jury trials), except as specified in the CRC or the consent order or as ordered by the trial judicial officer.
(2) In cases that are subject to mandatory expedited jury trials, the parties must comply with CRC 3.1546. Parties desiring to participate in a voluntary expedited jury trial may submit to the case management **judge** at any pretrial Case Management Conference, but no later than the Trial Setting Conference, or as provided in CRC 3.1547, a proposed consent order fully compliant with CCP § 630.03(e). (See attached form CV-5056). If no Case Management Conference is scheduled, the parties may submit a stipulated proposed consent order ex parte or by motion. The case management judge, if adopting the proposed consent order, will set a pretrial conference pursuant to CRC 3.1548(f) in the department of the trial judicial officer.
(3) The pretrial exchange required by CRC 3.1548(b) must be served no later than 10 days before the pretrial conference. The service of the supplemental exchange required by CRC 3.1548(c), the filing required by CRC 3.1548(d), and the exchange of items required by CRC 3.1551(b), must take place no later than five days before the pretrial conference.

(Effective 1/1/2020)

RULE 10 PROPOSED ORDERS

Any proposed order submitted to the Court for signature must contain a footer with the title of the order on every page, including the signature page, unless it is a Judicial Council form. In addition, the Court signature and date lines must not be on a page by themselves; the signature page must contain some text of the order.
(Effective 1/1/2010)

RULE 11 SANCTIONS

If any counsel, a party represented by counsel, or a party unrepresented by counsel, fails to comply with any of the requirements of these rules, the Court, on motion of a party or on its own motion, may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party, or impose penalties of a lesser nature as otherwise provided by law, and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees. Alternatively, the Court may impose a monetary sanction.
(Effective 7/1/2002)

RULE 12 [RESERVED]

(Effective 1/1/2024)

RULE 13 UNLAWFUL DETAINER CASES

A. PURPOSE

This rule is promulgated to deal with the special problems created by the summary nature of unlawful detainer proceedings. The term "unlawful detainer cases" refers to all cases filed pursuant to Chapter 4 of Title 3 of Part 3 of the Code of Civil Procedure and, thus, includes forcible entry and forcible detainer cases.

(Effective 7/1/2002)

B. DESIGNATION OF UNLAWFUL DETAINER CASES

The Court will designate a case as an "unlawful detainer case" when the complaint is filed if 1) the caption alleges unlawful detainer, forcible entry or forcible detainer, and 2) the prayer seeks restitution of possession of real property.

(Effective 7/1/2002)

C. PROPER COURTHOUSE FOR FILING AN UNLAWFUL DETAINER CASE

All unlawful detainer cases must be filed in the Downtown Superior Court.

(Effective 11/24/2014)

D. UNLAWFUL DETAINER CASES IN DOWNTOWN SUPERIOR COURT

(1) All unlawful detainer cases are assigned to the Unlawful Detainer Department designated by the Presiding Judge.

(2) Ex-parte applications are heard every court day between 8:15 a.m. and 9:00 am. Such applications must first be presented in person to the clerk's office, which will then direct the applicant to the appropriate department. An ex parte application for a stay of eviction may be presented at any time during the clerk's office's hours.

(Effective 1/1/2024)

(3) Noticed motions are heard at 9:15 a.m. on Wednesday, Thursday, and Friday.

(Effective 7/1/2008)

(4) Court trials are heard at 9:00 a.m. on Wednesday, Thursday, and Friday.

(Effective 7/1/2008)

(5) Jury trials are heard in any available department in the Downtown Superior Court.

(6) Post-judgment claims of right to possession are heard at 9:15 a.m. on Wednesday, Thursday, and Friday.

(Effective 7/1/2008)

E. NOTICED MOTIONS

Any party who wishes to bring a noticed motion must contact the appropriate calendar clerk to obtain an approved date and time for the hearing.

F. TRIAL

Once the case is at issue, any party who has appeared, and has not been dismissed and is not in default, may file a Request/CounterRequest to Set Case for Trial – Unlawful Detainer (Judicial Council form UD-150). The Court will set the date for trial and mail notice to all parties except those who have been dismissed. If a Request/Counter-Request to Set Case for Trial is not filed within 60 days of the filing of the Complaint, the Court may dismiss the action on its own motion without further notice.

(Effective 7/1/2009)

G. CONVERSION TO ORDINARY CIVIL ACTION

If possession of the premises is surrendered to the plaintiff before trial, the case will proceed as an unlawful detainer case unless one of the parties files a motion for leave to file a pleading that will convert the case to an ordinary civil action. If trial has already been set, the trial judge will hear the motion for leave to amend before the trial. If the motion is granted, the Court will vacate the trial, redesignate the case as an ordinary civil action, and schedule a CMC. The case will thereafter proceed as an ordinary civil action.

H. POST JUDGMENT CLAIM OF RIGHT TO POSSESSION

Upon receipt of a post-judgment claim of right to possession, the Court will schedule a hearing and mail notice to the plaintiff and the claimant.

(Effective 7/1/2002)

I. SERVICE OF LANDLORD/TENANT ASSISTANCE PROGRAMS NOTICE

The plaintiff or cross-complainant in any unlawful detainer action must serve the "Landlord/Tenant Assistance Programs Notice" (Form CV-5102) simultaneously with the service of the summons and complaint on all defendants or cross-defendants. This provision will automatically sunset on March 31, 2022, or upon termination of the programs set forth in the notice, whichever is later.

(Effective 9/17/2021)

RULE 14 SCHEDULE OF REASONABLE ATTORNEY'S FEES

The Court has adopted a schedule of reasonable attorney's fees. (See attached form CV-5021.) The schedule applies to all cases in which a default judgment is entered in favor of a party who pleaded and proved entitlement to reasonable attorney's fees.

(Effective 7/1/2006)

RULE 15 [RESERVED]

(Effective 1/1/2024)

RULE 16 [RESERVED]

(Effective 1/1/2024)

RULE 17 APPLICATION FOR ORDERS FOR PAYMENT OF MONEY

A. PAYMENT OF MONEY

An application for an order for payment of money must be supported by an affidavit clearly setting forth the claimant's right to the specific amount shown, and a statement that the amount in question is presently on deposit in the Treasurer's Office.
(Effective 7/1/2002)

B. PAYMENT FOR PREPARATION OF TRANSCRIPT

An application for an order authorizing payment for preparation of a transcript out of funds deposited by an attorney or a party in propria persona, must be supported by an affidavit demonstrating 1) that the work has been done; 2) a statement of the charges therefore has been supplied to the person who deposited the funds; 3) ten days have elapsed; and 4) there is no dispute concerning the charges.
(Effective 7/1/2002)

RULE 18 INTERPRETERS

The Court is committed to providing interpreters at no cost to any party present in court who does not proficiently speak or understand English, subject to availability in civil proceedings and the priorities established in Evidence Code section 756, subdivision (b). A party who desires an interpreter must timely give notice to the court and all other parties of record and may submit a written request on Judicial Council Form INT-300 by e-mail sent via the Court's Language Access webpage or to interpreterrequest@scscourt.org. If a party retains an interpreter who is not a court certified or registered interpreter, the interpreter's name and qualifications must be provided to the court and opposing counsel at least 5 court days prior to the date of the interpreter's appearance..
(Effective 7/1/2018)

RULE 19 SMALL CLAIMS ACTIONS

A. PROPER COURTHOUSE FOR FILING A SMALL CLAIMS ACTION

All small claims actions must be filed and will be heard in the Downtown Superior Courthouse, if the defendant resides in Santa Clara County or the action concerns a contract entered into or to be performed in Santa Clara County or the action concerns an injury or damage that occurred in Santa Clara County.
(Effective 11/24/2014)

B. FAX FILING IN SMALL CLAIMS CASES

(1) DIRECT FILING

a. Pursuant to CRC 2.304, the Court accepts for filing all small claims documents submitted by facsimile transmission directly with the Court through the Court's automated facsimile filing system.

(Effective 11/24/2014)

b. The Court's facsimile machine is available 24 hours a day. Filings received after public business hours or on court holidays shall be deemed filed the next court business day.

c. The Court's automated facsimile filing telephone number is (408) 882-2692.

(2) PROCEDURE

a. Each document transmitted for fax filing with the court shall contain the phrase "By fax" immediately below the title of the document.

b. A party filing a document directly by fax must use the Judicial Council form, Facsimile Transmission Cover Sheet (Fax Filing) (form MC-005). The Court accepts MasterCard, Discover, and American Express credit cards for fax filings. The fax filing cover sheet, MC-005, also must include the cardholder's zip code and the three-digit verification on the back of the credit card.

c. A facsimile usage fee of $0.50 cents per page, including the cover sheet, along with all applicable filing fees and credit card convenience fees, must be paid by credit card as requested on MC-005.

d. Faxed documents must comply with all filing requirements otherwise listed in the State and Local Rules of Court. Compliance with filing requirements and proper transmission of the documents are the responsibility of the sending party.

(Effective 7/1/2011)

C. DATE, TIME, AND PLACE FOR HEARING

When the small claims actions is filed, the court clerk will schedule the hearing according to the following rules:
(Effective 7/1/2007)

(1) [RESERVED]
(Effective 1/1/2024)

(2) SAME COURTHOUSE

The clerk will schedule all hearings in the Downtown Superior Courthouse.
(Effective 1/1/2024)

(3) NIGHT COURT SESSION

Night court sessions will be scheduled as shown on the Court's website.
(Effective 1/1/2024)

D. SERVICE OF CLAIMS

(1) PLAINTIFF'S CLAIM

The plaintiff must serve the Notice to Small Claims Litigants [see attached form SC-8006] with the Plaintiff's Claim and Order to Go to Small Claims Court.

(Effective 1/1/2024)

(2) SERVICE BY CERTIFIED MAIL

Either party may pay the court a fee to have the court clerk serve their claim on the other party by certified mail, return receipt requested. Before the date set for hearing, the party requesting service may look in the court file to see whether the receipt for certified mail was signed by the other party and returned. Only the judicial officer or temporary judge makes the legal decision whether service was proper.

(Effective 7/1/2007)

(3) INABILITY TO SERVE DEFENDANT IN TIME

If the plaintiff is unable to serve the defendant in time, the plaintiff may request a later hearing date by going to the clerk's office at least one court day before the date set for the hearing.

(Effective 7/1/2007)

E. SETTLEMENT BEFORE HEARING

A party who settles his or her claim before the date set for the hearing must notify the Court in writing at least one court day before the hearing. A party may do this by filing a Request for Dismissal. (See attached form SC-8007.)

(Effective 7/1/2007)

F. DISMISSAL FOR FAILURE TO APPEAR AT HEARING

If a party does not appear at the hearing, his or her claim will be dismissed, but if there is a claim against him or her, it will be heard.

(Effective 7/1/2007)

G. APPEAL

An appeal of a judgment rendered in a small claims action must be filed in the Downtown Superior courthouse. The appeal will be heard by a judicial officer other than the one who issued the judgment. The Court will notify the parties of the date, time, and place for the hearing on the appeal.

(Effective 11/24/2014)

H. LOCAL FORM SC-8016

Local form Small Claims Order Form SC-8016 is adopted for optional use by the Court.

(Effective 1/1/2016)

RULE 20 COURT COMMUNICATION REGARDING RESTRAINING ORDERS

A. PROCEDURE IN CIVIL COURT

(1) Subject to available resources, the Family, Juvenile, Civil and Probate Courts must examine appropriate available databases for existing restraining or protective orders involving the same restrained and protected parties before issuing permanent CLETS Civil Restraining Orders. If that information is not available to the judicial officer, inquiry must be made of the parties before issuing permanent CLETS Civil Restraining Orders.

Safety of all parties must be the Court's paramount concern.

(2) In cases where the Court allows for property removal as an exception to the restraining order in a Civil Harassment, Family Attachment FM-1102 (Other Order-Property Removal) may be used as an attachment to the Temporary Restraining Order (Judicial Council form CH-110 or WV-110) and Restraining Order After Hearing (Judicial Council form CH-130 or WV-130).

(Effective 1/1/2024)

CRIMINAL RULES

RULE 1 GENERAL

A. SUPERVISING JUDGE – CRIMINAL

The Criminal Division of the Superior Court shall be supervised by a judge appointed by the Presiding Judge and designated as the Supervising Judge – Criminal.

B. ASSISTANT SUPERVISING JUDGES

The Presiding Judge may designate one or more Assistant and/or facility Supervising Judges, including Assistant Supervising Judges – Criminal, Assistant Supervising Judge – Family Violence, Assistant Supervising Judge – Misdemeanor Division, Assistant Supervising Judge – Drug Court, Facility Supervising Judge – North County, and Facility Supervising Judge – South County.

(Effective 1/1/2019)

RULE 2 APPEARANCES

A. APPEARANCE OF COUNSEL

(Effective 1/1/2023)

(1) Counsel of record must appear at all hearings, unless other counsel appear for them or prior arrangements are made with the court. Counsel of record must ensure that attorneys appearing "specially" have sufficient knowledge of the case, the schedule of the attorney of record, and/or settlement authority to ensure that all court appearances are meaningful and productive.

(2) Counsel must advise the court of any conflicting appearance in the court of another county before requesting or agreeing to any hearing date. Furthermore, counsel must not request or agree to any hearing date in another county that conflicts with a hearing date previously set by this court.

B. REMOTE APPEARANCES

(Effective 1/1/2023)

(1) Attorneys may appear remotely in proceedings in criminal cases if permitted by the judge presiding over the proceeding. Individual judges have the discretion to determine how attorneys seek approval to appear remotely. Individual judges have the discretion to determine the scope of any approval they grant for remote attorney appearances (i.e., approval may be granted for an attorney to appear only for a specific hearing, for all attorneys to appear remotely on particular calendars, or otherwise). When seeking approval to appear remotely, attorneys should be prepared to advise if an attorney's client — whether an accused, a witness, an alleged victim, or other individual — will appear personally in court for the proceeding. Approval for a remote appearance is unlikely to be granted if an attorney's client will appear personally in court for the proceeding.

(2) Conduct of remote appearances:

(a) No proceeding may be photographed, recorded (audio or video), or re-broadcast by any person who is personally present or who is appearing, participating, or observing remotely without prior written order of the court. (Cal. Rules of Court, rule 1.150; Super. Ct. Santa Clara County, General Local Rules, rule 2.)

(b) A remote appearance is a court appearance and must be conducted consistently with the court's Standing Order Regarding the Santa Clara County Bar Association Code of Professionalism.

(c) Attorneys must appear in professional business attire from a quiet, stationary location with minimal background noise or visual distractions, an adequate Wi-Fi connection, and using working microphones and headphones/speakers.

(d) For purposes of this rule, a "participant" includes an accused, a party, an attorney, an alleged victim, or a witness.

i. Unless approved by the court, participants must appear with their camera turned on. If a participant has security concerns about appearing on camera, this concern should be brought to the court's attention before the hearing.

ii. If a participant is able to appear only by telephone, that participant must identify themselves when requested by the court and thereafter when speaking during the hearing. Participants appearing by telephone may not place the Court on hold or use a speakerphone. Participants may turn off "caller ID" when appearing by telephone.

iii. All participants must ensure there are no interruptions or distractions for the duration of their appearance at the hearing. No other individual (including a minor child) may appear with the participant or be heard during the hearing without prior court approval, other than when an attorney appears with their client from a common remote location.

iv. All participants must place their microphones on mute unless they are speaking. All participants must refrain from speaking unless addressed or otherwise allowed by the court.

v. Individual judges have the discretion to allow remote observation by persons who are not participants and the authority to manage remote observation, including by requiring the identification of an observer and/or requiring observers to have cameras turned on.

(Effective 1/1/2023)

RULE 3 COURTHOUSES & CALENDARS

Adult criminal matters are filed and heard in the courthouses indicated in these rules. However, any case may be assigned to any courthouse for any purpose at the direction of the Presiding Judge, Supervising Judge – Criminal, or their designees.

(Effective 1/1/2019)

RULE 4 HALL OF JUSTICE COURTHOUSE

All misdemeanor and felony matters arising within Campbell, Los Gatos, Milpitas, Monte Sereno, San José, Santa Clara, Saratoga, and adjacent unincorporated areas are filed and heard in the Hall of Justice.

A. MASTER TRIAL CALENDAR

The Master Trial Calendar is called on Monday each week or as designated by the Supervising Judge – Criminal and, unless otherwise designated by the Presiding Judge, Supervising Judge – Criminal, or their designees, will include all felony and misdemeanor matters set for trial. If Monday is a court holiday, this calendar will be called on Tuesday. No probation violation, sentencing, misdemeanor pre-trial conference, or pre-information/indictment felony matters will be set on the Master Trial Calendar without authorization of the Supervising Judge – Criminal.

(Effective 1/1/2023)

(1) Readiness Conference

Except for cases assigned to one judge for all purposes, a Readiness Conference for cases on the Master Trial Calendar will be conducted on the court day immediately preceding the Master Trial Calendar or as designated by the Supervising Judge – Criminal. Privately retained counsel and a representative of the District Attorney, Public Defender, Alternate Defender, and Independent Defender are required to be present. For each case set on the Master Trial Calendar for the following Monday, trial counsel must notify the court of trial readiness at the Readiness Conference, including matters of attorney availability, compliance with Penal Code section 1054 and sections (A)(3) and (A)(4) of this rule (below), exhaustion of settlement negotiations between trial counsel, and preparedness to argue motions in limine and conduct jury selection without delay upon assignment to a trial department.

(2) Motions to Continue

All motions to continue matters set on the Master Trial Calendar are heard by the Supervising Judge – Criminal at or before the Readiness Conference.

(3) Trial Assignments, Trial Briefs, Motions in Limine, and Settlement Discussions

(a) Trial Assignments: It is the court's goal that less time be spent negotiating and discussing cases in the trial departments and that more time be spent with those resources conducting trial proceedings. It is also the court's goal to utilize all trial departments for trials as available. Cases will be assigned to trial departments for trial, not for protracted settlement discussions. The trial judge will have all in limine motions and witness lists available in the court file and will have the ability to review them immediately upon assignment of a case to that department.

The court will attempt to balance the seriousness of charges, custodial status, Penal Code section 1048 considerations, the age of case, and any other relevant factors in prioritizing and making assignments to trial departments. Input from the parties is welcome and helpful at the weekly Readiness Conference. When parties have particular readiness issues (illness, witness unavailability, attorney engaged in another trial or otherwise unavailable, etc.) the court will note these issues on the record and consider them when trailing cases on standby for trial.

The parties must give trial matters extremely high, if not the highest, priority. The court will look to assign cases at the earliest possible time of day or day of the week when trial department resources are available. Attorneys should not expect the court to accommodate an attorney's schedule for lower priority court matters or non-court conflicts.

(b) Felony Trial Settings: When a felony case is set for trial time-not-waived, the court will set the trial date on, or on the week of, the statutory last day for trial (Penal Code section 1382). The cases and the parties must be trial ready on the trial date in recognition of the statutory last day. For all felony trial settings (time-waived and time-not-waived), the court will also set the following dates, subject to any case-specific factors, which factors will be reflected in the minutes:

i. Absent case-specific factors dictating otherwise, all pretrial motions will be heard: (a) not later than 15 calendar days before the trial date, (b) at the direction of the Law & Motion department not later than the date of the Readiness Conference, or (c) at another time as directed by the court upon a showing of good cause. (Cal. Rule of Court, rule 4.112(b).)

ii. The last date for filing pretrial motions will be 30 calendar days before the trial date, absent a request for an order shortening time providing case-specific factors not previously raised or considered, signed by the Supervising Judge – Criminal. (Cal. Rule of Court, rule 4.100(1)(B).) Motions will be filed with, and scheduling of hearing on the motion(s) will be done by, the Law and Motion department consistently with that department's calendaring protocol and Local Rule7(H).

iii. The date for filing in limine motions, witness lists, and a required Readiness brief, which date will be 5 calendar days before the trial date. (Cal. Rules of Court, rule 4.112(a); Pen. Code section 1204.5, subd. (b).) Readiness briefs must include, but need not be limited to:

a. Prosecution: a statement of facts expected to be shown by the evidence; perceived factors in aggravation; factors in mitigation; criminal history information, including prior performance on probation and/or parole; other pending cases and their status; the history of prosecution settlement offers; the history of defense settlement proposals; any indicated sentences previously given by the court; whether collateral consequences have been considered; three strikes review, if pertinent; and consideration of substance abuse/mental health issues and treatment, if pertinent.

b. Defense: any information about the accused or the case that the accused consents to a trial judge considering, and/or that the accused desires a judge who is not the trial judge to consider under Penal Code section 1204.5, or a statement that the accused chooses to defer providing such information without prejudice

(c) Misdemeanor Trial Settings

i. When a misdemeanor case is set for trial time-not-waived, the court will set the trial date on, or in the week of, the statutory last day for trial (Pen. Code § 1382). The cases and the parties must be trial ready on the trial date in recognition of the statutory last day.

ii. For all misdemeanor trial settings (time-waived and time-not-waived), the court will also set the date, for filing in limine motions, witness lists, and a required Readiness brief, which date will be 5 calendar days before the trial date, subject to any case-specific factors, which factors will be reflected in the minutes. (Cal. Rules of Court, rule 4.112(a); Pen. Code § 1204.5 subd. (b).) Readiness briefs must include, but need not be limited to:

a. Prosecution: a statement of facts expected to be shown by the evidence; perceived factors in aggravation; factors in mitigation; criminal history information, including prior performance on probation and/or parole; other pending cases and their status; the history of prosecution settlement offers; the history of defense settlement proposals; any indicated sentences previously given by the court; whether collateral consequences have been considered; considerations of substance abuse/mental health and treatment, if pertinent; and consideration of the merits of diversion.

b. Defense: any information about the accused that the accused consents to a trial judge considering, and/or that the accused desires a judge who is not the trial judge to consider pursuant to Penal Code section 1204.5, or a statement that the accused chooses to defer providing such information without prejudice.

(d) Settlement Discussions.

In every case set on the Master Trial Calendar, the court encourages and expects the parties to have in-depth case discussions, including the exchange of offers and counter-offers for resolutions. At the discretion of the Supervising Judge – Criminal, however, cases set on the Master Trial Calendar may be sent out for discussions. If the parties do not reach an agreement and receive an indicated sentence during those discussions, the trial departments will have no further obligation to provide an indicated sentence when the case reaches a trial department. Trial judges will not read or consider a Readiness brief without consent, as described in Penal Code section 1204.5, subdivision (a). The judicial officer handling discussions may have multiple discussion sessions with the parties on a given case if the parties need to take further steps to settle the case in between sessions. But once a judicial officer has concluded settlement efforts on a case, the court will not send the case back to that judge for further rounds of discussions absent unusual circumstances.

B. FELONY ARRAIGNMENT ON INFORMATION/INDICTMENT CALENDAR

The Felony Arraignment on Information/Indictment Calendar will be called on Monday at 9:00 a.m. or at such other time as designated by the Supervising Judge – Criminal, and will include all non-family violence felony matters. If Monday is a court holiday, this calendar will be called on Tuesday or at such other time as designated by the Supervising Judge – Criminal.

No probation violation, sentencing, misdemeanor, or pre-information/indictment felony matters may be set on the Arraignment on Information/Indictment Calendar without authorization of the Supervising Judge – Criminal.

(Effective 1/1/2023)

(1) Attorney of Record

Pursuant to Penal Code § 987.1, counsel who represented a defendant at the preliminary examination or at the time the defendant was otherwise held to answer must appear with the defendant at the time of arraignment on the information. Any request to be relieved as attorney of record must be made at this appearance. An attorney seeking to be relieved must bring with him or her all previously received discovery material, or otherwise be prepared to deliver such material forthwith to new counsel, or to the court, upon the substitution of counsel.

(Effective 1/1/2023)

(2) Entry of Plea

A plea of not guilty must be entered if a defendant represented by counsel fails to plead or demur.

(3) Setting of Dates

The following dates will be set after a plea of not guilty, including a plea of not guilty by reason of insanity, unless good cause is found pursuant to Penal Code § 1049.5:

(Effective 1/1/2023)

(a) Trial, giving priority to any case entitled to priority under law;

(b) Filing and service of motions and responses and hearing thereon.

(c) In cases where a good cause finding has been made under Penal Code § 1049.5, the court may consider setting the matter on the Trial Status Conference Calendar. The purpose of the trial status conference calendar is for the court to ensure that matters proceed in a manner mindful of the Pace of Litigation (Standards of Judicial Administration 2.1, 2.2(j)). This calendar will be heard every Wednesday at 1:35 p.m. or at such other time as designated by the Supervising Judge – Criminal.

(Effective 1/1/2023)

(4) Pace of Litigation (Standards of Judicial Administration 2.1, 2.2(j))

In requesting and setting court dates, the parties and the court must be mindful of the felony case processing time goals set forth in the Standards for Judicial Administration.

(Effective 1/1/2023)

C. FELONY "AFTER ARRAIGNMENT" CALENDAR AND TRIAL STATUS CONFERENCE CALENDAR

The Felony After Arraignment Calendar will be called at 1:30 p.m. on Wednesday or at such other time as designated by the Supervising Judge – Criminal and will consist of non-family violence felony matters. No probation violation, sentencing, misdemeanor, or pre-information/indictment felony matters will be set on the After Arraignment Calendar without authorization of the Supervising Judge – Criminal.

(Effective 1/1/2023)

(1) Time for Filing

The filing deadline to place matters on the Felony After Arraignment Calendar is noon on the Thursday immediately before the calendar is called, except for motions pursuant to Penal Code § 1050. If Thursday is a court holiday, the deadline for placing matters on the Felony After Arraignment Calendar is on the Wednesday immediately before the calendar is called.

(Effective 1/1/2023)

(2) Motions to Continue Master Trial Calendar Cases

(a) Unless good cause is shown, motions to continue matters on the Master Trial Calendar will be heard on the After Arraignment Calendar before the pending trial date.

(Effective 1/1/2023)

(b) Unless good cause is shown, the deadline for placing Penal Code § 1050 motions on the After Arraignment calendar is noon on the court day immediately preceding the calling of that After Arraignment Calendar.

(Effective 1/1/2023)

(3) Trial Status Conference Calendar

(a) The parties may request that a matter be placed on the Trial Status Calendar in lieu of being set for trial. The parties must be prepared to articulate good cause to not set a trial date under Penal Code § 1049.5.

(Effective 1/1/2023)

(b) Counsel must meet and confer prior to each Trial Status Conference date and discuss, at a minimum, proposed trial date(s), whether resolution discussions would be beneficial, a plan to fully exchange discovery and whether there are any outstanding motions which need to be filed and heard. Counsel must be prepared to meaningfully discuss these issues at each Trial Status Conference date and must be mindful of the Pace of Litigation (Standards of Judicial Administration 2.1, 2.2(j)).

(Effective 1/1/2023)

D. FELONY PLEA, EARLY RESOLUTION, AND PRELIMINARY HEARING DEPARTMENTS

The Felony Plea, Early Resolution, and Preliminary Hearing judges and departments are responsible for non-Family Violence felony matters from arraignment on the complaint through sentencing under Penal Code section 859a, subdivision (a), or a holding order under Penal Code section 872, subdivision (a), and any other related matters at the discretion of the court to promote global disposition and efficiency.

(1) Pleas, Preliminary Examination Setting, and Motions

(a) Pre-Hearing Communication Between Counsel (Meet & Confer)

i. Pre-hearing meet and confer. Counsel for the parties must meet and confer before each court appearance to discuss the exchange of discovery, proposals for early resolution, collateral consequences, mitigation materials, and any other issues that might impact case disposition.

ii. Hearing preparation. Counsel must use the periods between court hearings to communicate with their client(s), alleged victims, and witnesses about ongoing investigations and offer(s) for disposition. Counsel who appear in the Felony Plea Department must be prepared to discuss any matter relating to the case disposition, including readiness, witness availability, discovery matters, ongoing investigations, and any special issues for alleged victims or the accused. This requirement applies to counsel of record and to counsel making special appearances. No continuances will be granted on the basis that special appearance counsel is not prepared to discuss the case.

(b) Motions

i. Motions made before the filing of an information will be scheduled by the Felony Plea judge in the Felony Plea Department, Felony Law and Motion Department, or other designated department.

ii. Motions to set or reduce bail or for pretrial release will be set in the Pretrial Services Pilot/In-Custody Felony Arraignment Department.

iii. Motions to Release documents pursuant to subpoena duces tecum will be set in the Felony Law and Motion Department, whether pre or post information.

iv. All motion papers and responses must comply with Rule 7.

(2) Preliminary Examinations

(a) Calendaring

Preliminary examinations will be set as follows in the designated Preliminary Examination Departments or as otherwise designated by the Supervising Judge – Criminal:

i. Long Cause Preliminary Examinations

a. Long Cause Preliminary Examinations are examinations with a time estimate of over one court day.

b. Long Cause Preliminary Examinations are set on Monday each week along with the Master Trial Calendar with the Supervising Judge – Criminal, or as designated by the Supervising Judge – Criminal. If Monday is a court holiday, then the long cause preliminary hearing calendar will be called on Tuesday.

c. Long Cause Preliminary Examinations will be heard in an available Trial Department or other available department at the discretion of the Supervising Judge – Criminal or their designee.
The date and time of the examination will be determined during the Readiness Conference as delineated in this Rule.

ii. All other preliminary examinations will be set in the Preliminary Hearing Departments as designated by the Supervising Judge – Criminal.

(b) Readiness Notice

i. Long Cause Preliminary Examinations:

a. Counsel must be prepared to participate in a Readiness Conference on the court day immediately preceding the Master Trial Calendar or as designated by the Supervising Judge – Criminal. Counsel must advise whether each party will be ready to proceed, whether a continuance under Penal Code section 1050 will be sought and any objections thereto, whether there are requests for remote testimony and any objections thereto, and whether interpreters are needed. Each party must also provide an updated and accurate time estimate for the hearing.

b. During the Readiness Conference, Long Cause Preliminary Examinations will be scheduled in an available Trial Department or other department at the discretion of the Supervising Judge – Criminal or their designee.

c. The Readiness Conference will be held remotely, at the direction of the Supervising Judge – Criminal, or at another location designated by the Supervising Judge – Criminal.

ii. All other Preliminary Examinations
Each party must inform the preliminary examination judges via email by 5 p.m. at least one court day before the date set for the preliminary examination whether the party will be ready to proceed, whether a continuance pursuant to Penal Code section 1050 will be sought and any objections thereto, whether there are requests for remote testimony and any objections thereto, and whether interpreters are needed. Each party must also provide an updated and accurate time estimate for the hearing.

(c) Motions at Preliminary Examination
Any motions to be brought at the preliminary examination must comply with Rule 7.

(d) Scope of Examination
The court and the parties must be mindful of the mandates of Penal Code section 866 in conducting preliminary examinations. Any issues related to the scope of the hearing should be brought to the attention of the magistrate presiding over the preliminary hearing before the preliminary examination begins.

(3) Early Resolution

(a) Early resolution settlement conferences will be set at the discretion of the Felony Plea Judge. Conferences will be virtual or in-person, as directed by the Supervising Judge – Criminal.

(b) Matters set for an early resolution conference will have a return date set in the Felony Plea department for further setting.

E. FELONY LAW AND MOTION CALENDAR

(1) General
Pre-and Post-Indictment/Information motions in felony cases (except family violence, South County, and North County cases) will be heard by the judge assigned to the Criminal Law and Motion department, except as follows

(a) Motions to quash or traverse a search warrant will be heard before the judge who signed the warrant, if available (Pen. Code, 1538.5, subd. (b)). If that judge is not available, the motion will be set in accordance with these rules.

(b) If an All Purpose Judge has been assigned by the Supervising Judge – Criminal for a particular matter, then all motions associated with that case will be litigated in front of the All Purpose Judge assigned.

(c) If the time estimate for hearing a motion exceeds what can be heard on a regular Law and Motion calendar, the motion may be reassigned to a different department as designated by the Supervising Judge – Criminal.

(2) Pre-Information Motions

(a) Pre-Information motions may be set only by the Felony Plea judge, except motions to release documents pursuant to subpoena duces tecum which may be directly calendared with the Law and Motion department.

(b) Regardless of the stage of proceedings, motions regarding custodial status or pretrial release terms will be set in the Pretrial Services/Arraignment department.

(3) Post-Information/Indictment Motions

(a) For trial cases set time-not-waived (TNW), the last date to file pretrial motions is 30 calendar days before the initial TNW trial date set, absent an order shortening time signed by the Supervising Judge – Criminal.

(b) The following Post-Information/Indictment matters may be filed directly with the clerk's office: motions to consolidate, motions to amend, motions to sever, Pitchess/police personnel records discovery, motions to unseal documents, bond surety motions, motions to return seized property, and Vehicle Code section 14602.7 storage hearings. All other Law and Motion matters must be scheduled via calendar request with the Law and Motion department.

(c) Motions originally calendared on the After Arraignment calendar may be assigned to the Felony Law and Motion Department at the discretion of the Supervising Judge – Criminal.

(d) Regardless of the stage of proceedings, motions to release documents pursuant to a subpoena duces tecum must be set in the Felony Law and Motion department, via direct calendaring with the clerk's office.

(e) Regardless of the stage of proceedings, motions regarding custodial status or pretrial release terms will be set in the Pretrial Services/Arraignment department.

(f) Any motion to be filed with a requested hearing date on or after the Master Trial Calendar date must have the approval initials of the Supervising Judge – Criminal or their designee.

(4) Motion Papers

(a) All papers filed in support of or in opposition to a motion must comply with Rule 7.

(b) Except for motions brought under Penal Code section 995, if the motion is to be submitted in whole or in part on the transcript of the preliminary examination, or the transcript of any prior proceeding, the notice of motion and/or the response must so state.

(c) In any motion brought under Penal Code section 1538.5, subdivision (i) that is presented de novo, notice of this fact must also be set out on the first page of the moving and responding papers.

(d) In any motion brought under Penal Code section 1538.5, subdivision (i) where additional live testimony is anticipated, notice of this fact must be set out on the first page of the moving or responding papers.

(e) Failure to comply with any portion of this rule is sufficient cause for the court to refuse to consider any transcript of a prior proceeding, to allow the calling of additional witnesses, or to allow a de novo hearing.

(5) Motions to Continue

(a) Except in unusual or exigent circumstances, any party intending to request a continuance or who cannot proceed in any matter set for hearing must promptly inform all other counsel and THEN inform the court assigned to hear the motion. This notification to the court must be at least two court days before the hearing. It is counsel's responsibility in felony cases to submit a calendar request to reset the trial date if continuing the motion will require a continuance of the trial date. The provisions of Penal Code section 1050 must be followed.

(b) The court retains complete discretion concerning continuances, including the authority to deny any continuance and to rule in the absence of counsel, or to order the matter off calendar, notwithstanding any stipulation of counsel.

F. FAMILY VIOLENCE COURT

The Family Violence Court will hear felony and misdemeanor matters in which the alleged victim is a person defined in Penal Code section 13700 subdivision (b) and/or Family Code section 6211 ("Family Violence") before trial, including for arraignment, plea, preliminary hearings, disposition, and sentencing, and will hold hearings as necessary to monitor treatment progress and probation compliance.

(1) Arraignment

(a) Prosecuting Attorney's Duty. When the original complaint is filed, when determining an accused's custody status, and upon consideration of any plea agreement, the prosecuting attorney must present the court with information about an accused's prior convictions for weapons charges, for domestic violence, or for other forms of violence; any current protective or restraining order issued by any civil or criminal court; and any firearms registered to or otherwise allegedly within the custody or control of the accused.

(b) Protective Order Consideration.

i. On its own motion, the court must consider issuance of a protective order at each Family Violence arraignment.

ii. Before requesting a criminal protective order in any Family Violence matter, the prosecuting attorney must make reasonable efforts to determine whether the alleged victim and the accused have any shared children; whether there are any Family, Juvenile, Dependency, or Probate court orders for custody or visitation for such children; the case numbers for any such orders; and whether there are any existing protective or restraining orders involving the accused, the alleged victim and/or the shared children. The prosecuting attorney must advise the Family Violence court of the existence of any such orders when the proposed criminal protective order is submitted for approval and signature. If a criminal protective order is issued, the prosecuting attorney must make reasonable efforts to submit a copy of the issued criminal protective order to the Family, Juvenile, Dependency, or Probate Court where one or more cases involving shared children is/are pending.

(2) Preliminary Examination

(a) Readiness Notice. Each party must inform the preliminary examination judges via email by 5 p.m. at least one court day before the date set for the preliminary examination whether the party will be ready to proceed, whether a continuance under Penal Code section 1050 will be sought and any objections thereto, whether there are requests for remote testimony and any objections thereto, and whether interpreters are needed. Each party must also provide an updated and accurate time estimate for the hearing.

(b) Motions. Motions to release documents in response to a subpoena duces tecum, Penal Code section 1538.5 motions, and other motions necessary to be heard before or with the preliminary hearing must comply with Rule 7 and be set on the same day as the preliminary hearing.

(3) Felony Pleas and Misdemeanor Pre-Trial Conferences

(a) Plea. All accused are expected to enter a plea upon the earliest opportunity after retention or appointment of counsel. Any request to delay entry of plea must be approved by the court. Unless good cause is shown to delay the entry of plea on or after arraignment, the court will enter a plea of not guilty under Penal Code section 1024.

(b) Pre-hearing meet and confer. For felony plea and misdemeanor pre-trial conferences, counsel for the parties must meet and confer before each court appearance to discuss the exchange of discovery, proposals for early resolution, collateral consequences, mitigation materials, and any other issues that might impact case disposition.

(c) Hearing preparation. Counsel must use the periods between hearings to communicate with their client(s), alleged victims, and witnesses about ongoing investigations and offer(s) for disposition. Counsel who appear at felony plea and misdemeanor pre-trial conferences must be prepared to discuss any matter relating to the case disposition, including readiness, witness availability, discovery matters, ongoing investigations, and any special issues for alleged victims or the accused. This requirement applies to counsel of record and to counsel making special appearances. No continuances will be granted on the basis that special appearance counsel is not prepared to discuss the case.

(4) Protective Orders

(a) Issuance. The issuance of protective orders in Family Violence matters will be in accordance with Rule 4(F)(1)(b) and (F)(4)(b) and (c).

(b) Modification: Who may request. The following parties may request that a case be calendared to modify a criminal protective order:

i. The prosecuting attorney at the request of a protected person or the Family, Juvenile Justice, Dependency, or Probate Court;

ii. The Probation Department at the request of the accused, protected person, or the Family, Juvenile Justice, Dependency, or Probate Court;

iii. The accused or accused's counsel on behalf of the accused defendant;

iv. The court on its own motion.

(c) Modification: Procedure.

i. Where applicable, the party requesting modification must include the following information with the Request for Hearing on Criminal Protective Order Modification ("Request"): (1) any applicable CLETS Civil Restraining Orders and Custody and Visitation Orders; (2) the case numbers of both the criminal court case and any Family, Juvenile, Dependency, or Probate cases involving the accused defendant and the alleged victim; and (3) a copy of attendance or other record reflecting any safety planning, therapy sessions, or other counseling course attended by the accused and/or the alleged victim after the alleged incident date for the most recent Family Violence matter.

ii. The requesting party is responsible for service of the Request on all appropriate parties and agencies, including the District Attorney's office, Adult Probation (if the accused is on formal probation), the accused, and the accused's attorney of record at least five days before the hearing. Except when the protected person is the requesting party, the prosecuting attorney must send a copy of the Request to the protected person at their last known address.

iii. At any criminal protective order modification hearing, the parties must be prepared to provide the court with detailed information about the protected person's desired level of protection, preferably through the protected person's physical presence in court or virtual attendance at the hearing in a manner that permits the court to see the protected person and the protected person's surroundings.

(d) Modification: Custody or Visitation Orders.

i. Any court responsible for issuing custody or visitation orders involving minor children of an accused subject to a criminal protective order (Judicial Council Form CR-160) may modify the criminal protective order if all of the following circumstances are present:

a. Both the accused and the alleged victim/protected person are subject to the jurisdiction of the Family, Juvenile, or Probate Court, and both parties are present before the court;

b. The accused is on probation (formal or court), has been convicted of, or is currently charged with a Family Violence offense in Santa Clara County and a criminal protective order has issued;

(Effective 1/1/2023)

c. The Family, Juvenile, or Probate Court identifies a criminal protective order issued against the accused, that is inconsistent with a proposed Family, Juvenile, or Probate Court Order, such that the Family, Juvenile, or Probate Order is/will be more restrictive than the criminal protective order or there is a proposed custody or visitation order which requires recognition in the criminal protective order (item 16 on the criminal protective order form);

d. The accused signs an appropriate waiver of rights form or enters a waiver of rights on the record; and

e. Both the alleged victim/protected person and the accused/restrained person agree either that the criminal protective order may be modified to a more restrictive order or that item 16 on the criminal protective order may be checked.

ii. The Family, Juvenile, or Probate Court may not modify an existing criminal protective order to be less restrictive. The Family, Juvenile, or Probate Court may modify a criminal protective order by checking item 16 only when the minor child or children are not listed as protected persons.

iii. The Family, Juvenile, or Probate Court may on its own motion or at the request of an accused, protected person, or other interested party, calendar a hearing before the Criminal Court on the issue of whether a criminal protective order should be modified. The Family, Juvenile, or Probate Court must provide the Criminal Court with copies of existing or proposed orders relating to the matter. Notice of the hearing must be provided to all counsel and parties.

(e) Termination: Except as otherwise set forth in Penal Code section 1203.4b an issued criminal protective order will be terminated (i) upon dismissal of the action or (ii) when probation is revoked and terminated and the criminal protective order was issued solely pursuant to Penal Code section 1203.097. If the criminal protective order is not addressed at the hearing dismissing the action or terminating probation under Penal Code section 1203.097, the clerk of court will, within thirty days of case resolution, prepare and submit to a judicial officer for signature a Notice of Termination of Protective Order in Criminal Proceeding (CR-165).

(f) Property Removal Orders. In cases where the court allows the restrained person to remove "necessary personal property" from the protected person's residence as a one-time exception to the criminal protective order, Attachment CR-6072 (Property Removal Order) must be completed by and filed by the court, and the restrained person and protected person must be provided with one certified copy of the same.

G. MISDEMEANOR DIVISION

The Misdemeanor Division will hear non-family violence misdemeanor matters from arraignment through disposition and sentencing.

(1) Pretrial Calendars

All cases shall have a mandatory and meaningful pretrial conference before being set for jury trial.

All discovery and all pretrial motions must be completed before the matter is set for trial.

(2) Trials

Readiness Conference

When a case is set for trial, the court will also set a readiness conference the Thursday before the trial date. The readiness conference will be set at 1:35 p.m. in the pretrial department. All counsel must be present at the readiness conference. In order to facilitate resolution, unless waived by the court, the defendant must be present at the readiness conference unless defense counsel has the proper and necessary authorization from his or her client to settle the case.

(3) Motions

(a) Location of Filing

i. All pretrial motions shall be heard in the pretrial department to which the case is assigned

ii. Post-trial motions, motions for new trial and other matters related to contested cases shall be set and heard in the department of the trial judge. The time and date of the hearing shall be set only by the judge of such department. In the event that the original trial judge is unavailable, such matters will be assigned for hearing by the Supervising Judge-Criminal.

iii. Sentence Modification

For all requests for modification of sentence, notice must be sent to the District Attorney's Office as well as the Adult Probation Department (in cases in which formal probation was granted) before such request will be considered or calendared for hearing. Proof of such notice must be attached to the original request filed with the court. Failure to do so will result in the request being treated as an improper ex parte communication and the request will not be considered by the court until proper notice is given.

(b) Last Day to File Motions

Unless the court selects another date at arraignment, the last day to file motions is 90 calendar days after the date of arraignment.

(c) All Motions and Responses shall comply with Rule 7.

(d) Motions to Continue

i. Any party seeking a continuance or intending not to proceed in any matter set for hearing shall promptly inform all other counsel and thereafter inform the court.

ii. The court shall have complete discretion pursuant to Penal Code § 1050 to grant or deny any continuance, to rule in the absence of counsel, or to order the matter off calendar, regardless of any stipulation of counsel.

RULE 5 SOUTH COUNTY FACILITY

(Effective 1/1/2023)

All misdemeanor and felony matters arising in Gilroy, Morgan Hill, San Martin and adjacent unincorporated areas are filed in this courthouse.

RULE 6 NORTH COUNTY FACILITY

(Effective 1/1/2023)

All misdemeanor and felony matters arising within Cupertino, Los Altos, Los Altos Hills, Mountain View, Sunnyvale and Palo Alto and adjacent unincorporated areas are filed in this courthouse.

RULE 7 PLEADINGS AND FILING OF DOCUMENTS

(Effective 1/1/2023)

A. METHOD OF FILING PLEADINGS AND DOCUMENTS

(1) Documents may be filed electronically or in paper form at the Clerk's Office consistent with Rule 6(C) and (D)(1) and (2) of the General Court and Administration Rules except as described below.

(2) Any motion to set aside a bail forfeiture, any appeal of a denial of a motion to set aside a bail forfeiture, and any documents filed conditionally under seal may not be filed or submitted electronically.

(a) Except as provided in California rules of Court, Rules 2.500 through 2.507, an electronically filed document is a public document when it is filed unless it is sealed under California Rules of Court, rule 2.551(b) or filed as a confidential document as provided by law. Unless the document is confidential and/or will be filed under seal, to protect personal privacy, parties must not include, or must redact where inclusion is necessary, the personal data identifiers from all documents, including any exhibits, filed with the court under this rule, such as social security numbers, and financial account numbers. A motion to file documents under seal may be filed and served electronically. But, documents lodged with the court conditionally under seal, as provided in California Rule of Court, rule 2.551(d), must be served and submitted to the clerk of the court in paper form, pending hearing on the motion to seal.

(3) Consistent with rule 6(C) of the General Court and Administration Rules, documents must be electronically filed with the court using one of the court's approved electronic filing service providers. Information concerning the approved electronic filing service providers, including the procedures for electronically filing documents with the court and for electronically serving documents, is available on the court's website at www.scscourt.org.

B. FORMAT OF DOCUMENTS SUBMITTED FOR FILING

(1) Documents submitted in paper form must be held by binder clips.

(2) Exhibit attachments to pleadings must be separated by a standard size sheet of paper with a title identifying the sequence of the exhibit.

(3) Tabs may not be included in any documents submitted for filing.

(4) Memoranda of points and authorities must not exceed 25 pages, unless an order extending the page limit accompanies the motion when filed.

C. LOCATION OF FILING

(1) The party filing any motion, pleading, or petition, must file the original electronically or in the Criminal Court Clerk's office when the case is to be heard.

(2) If filing a motion in paper form, a courtesy copy for the Law and Motion Department must be provided. If filing a motion electronically, the filing party should provide an electronic courtesy copy to the Law and Motion department or other assigned judge.

(3) A drop box is available outside of the clerk's office to receive filings in all matters. The drop box will be checked one time per court day at 4:00 p.m. All pleadings placed in the drop box will be filed and deemed received at 4:00 p.m. the day they are retrieved from the drop box.

D. SERVICE OF COPIES

A copy of all moving and responding papers must be served upon opposing counsel, co-counsel, and counsel for all co-defendants on the same day that the originals are filed, unless previously served.

E. LAST DAY TO FILE

Any request to file a motion beyond a previously declared last day to file must be accompanied by an affidavit stating good cause for the motion to be filed past the deadline.

F. REQUESTS FOR ORDERS SHORTENING TIME

(1) Orders Shortening Time must be signed only by the judge hearing the motion or a designee. The declaration in support of the request for an Order Shortening Time must set forth good cause and must state the facts concerning notice to, and the position of, opposing counsel, co-counsel, and counsel for co-defendants.

(2) Notice of intent to request an ex parte Order Shortening Time must be given to all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice.

G. TIME ESTIMATE

All moving, responding, and joining papers must set out an accurate time estimate on the first page.

H. REQUEST FOR ORAL TESTIMONY

Oral testimony will not be permitted in a motion hearing unless the court orders otherwise, except for properly noticed hearings brought under Penal Code section 1538.5. The court retains complete discretion as to the necessity for, and nature and extent of oral argument. Notice of intent to call witnesses must be specifically set out on the first page of the moving and/or responding papers.

I. UNLESS OTHERWISE ORDERED BY THE COURT

(1) All motions and applications, together with supporting papers, documents and points and authorities, must be filed electronically or with the Criminal Court clerk in the appropriate courthouse no later than 15 calendar days before the date set for hearing. This requirement applies except where inconsistent with a state rule of court or statute. (See e.g. Code Civ. Pro., § 1005 requiring 16 court days for a Pitchess/Evid. Code section 1043 motion.)

(2) Unless waived by the court, or unless the party who would respond to the motion concedes it, a written opposition, together with supporting papers, documents, and points and authorities must be filed.

(3) All written responses, together with supporting papers, documents and points and authorities, must be filed with the Criminal Court clerk no later than five court days before the date set for hearing. The reply must be filed two court days prior to the date set for the hearing.

(4) Failure of the moving or responding party to comply with these filing deadlines is sufficient grounds for the court to refuse to consider the matters contained in late-filed papers.

J. MOTIONS TO SUPRESS EVIDENCE

The notice of a motion brought under Penal Code section 1538.5 must describe with particularity the evidence sought to be suppressed and must be served with a memorandum of points and authorities.

K. MOTIONS TO DISMISS INFORMATION/INDICTMENT

The moving party must lodge all exhibits relevant to any claim. The parties must meet and confer about the exhibits before their submission. If voice recordings are submitted for review by the court, the transcript required by California Rules of Court, rule 2.1040 must be included unless the magistrate waived the requirement under California Rules of Court, rule 2.1010(b)(3).

L. EX PARTE MATTERS

(1) Except as otherwise provided by law, for any application involving ex parte relief, including a request for an Order Shortening Time, advance notice must be given to opposing counsel, co-counsel and counsel for co-defendants.

(2) Notice of intent to request an ex parte Order Shortening Time must be given to all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter time for notice.

M. SUBPOENAS DUCES TECUM

All subpoenas duces tecum in criminal cases must comply with Penal Code section 1326 and Evidence Code section 1560, and when applicable Code of Civil Procedure section 1985.3, and must be returnable to the court. In the event materials that are the subject of a subpoena are received by a party, an attorney, or an attorney's agent or investigator directly from the subpoenaed party, the person receiving such materials must immediately lodge such materials with the clerk of the court. The materials must not be opened, reviewed, or copied by the recipient without a prior court order.

N. COMPLIANCE WITH STATUTES AND RULES OF COURT

(1) All papers filed in law and motion matters, and all motion proceedings must comply with the applicable statutes, California Rules of Court, and these Criminal Court Rules.

(2) A mere citing of code sections authorizing the filing of a motion is not compliance with the California Rules of Court or these Rules. Except as otherwise authorized by statute or Rule of Court, application for any relief, or any opposition to relief sought, must be supported by a memorandum of points and authorities.

(a) All case citations must include the official report volume, page number, and year of decision. Parties must not cite to unpublished decisions of the California Court of Appeal except as provided in California Rules of Court, rule 8.1115.

(b) A memorandum of points and authorities must contain a concise statement of facts, a concise statement of the law, a discussion of the evidence and arguments relied upon, and a discussion of the statutes, cases, and other authorities cited in support of the position advanced. When a party intends to rely on a transcript, the page number of the transcript must be cited.

O. MOTIONS TO JOIN

Any party seeking to join in any motion must set out the relevant facts and law as it relates to the joining party. All motions to join must be made in writing.

P. SEARCH WARRANTS

When an accused is seeking to quash or traverse a search warrant, a copy of the search warrant affidavit must be provided and attached to the moving papers.

Q. MOTIONS FOR REINSTATEMENT

When moving to reinstate a complaint, the prosecuting attorney must provide a copy of the preliminary examination transcript.

R. POST-TRIAL MOTIONS

(1) Post-trial motions, motions for new trial, and other matters related to contested cases must be set and heard in the department where the judge who heard the matter is currently sitting. The time and date of the hearing must be set only by that judge.

(2) If the original trial judge is retired or no longer available, the case will be assigned out for hearing by the Supervising Judge – Criminal.

RULE 8 USE OF JUVENILE RECORDS

(Effective 1/1/2023)

Attorneys or defendants who are involved in a criminal proceeding in the Superior Court of California, County of Santa Clara, and who seek juvenile records for use in the pending criminal action shall, in addition to filing a W&I Code § 827 Petition in the Juvenile Court, concurrently file a Declaration of Filing of Juvenile Court 827 Petition in the criminal case (Attachment CR-6082).

RULE 9 REQUESTS FOR INTERPRETERS

(Effective 1/1/2023)

Prosecution and defense requests for interpreters for trial, preliminary examinations, motions, or any other appearances, must be made in open court at the time these matters are set. A defendant who requires the assistance of an interpreter for his or her first appearance in a criminal proceeding may submit a written request for interpreter in advance of the first appearance on Judicial Council Form INT-300 by e-mail sent via the court's Language Access webpage or to interpreterrequest@scscourt.org.

RULE 10 REQUESTS FOR CALENDAR SETTING

(Effective 1/1/2023)

A party who wishes to add a case to a calendar must file a Request for Calendar Setting (form CR-6008) signed by the judicial officer presiding over that calendar, or in their absence another judicial officer, with the Clerk's Office at least 48 hours before the requested court date.

RULE 11 PROPOSED ORDERS

(Effective 1/1/2023)

Any proposed order submitted to the court for signature must contain a footer with the title of the order on every page, including the signature page, unless it is a Judicial Council form. In addition, the court signature and date lines must not be on a page by themselves; the signature page must contain some text of the order.

RULE 12 WRITS

(Effective 1/1/2023)

A. CRIMINAL COURT CLERK'S OFFICE FILING

Petitions for writs such as Writs of Habeas Corpus, Writs of Mandate or Writs of Coram Nobis in criminal cases shall be filed in the Criminal Division at the Hall of Justice.

B. CIVIL COURT CLERK'S OFFICE FILING

(1) Petitions for Writs of Mandate and/or Prohibition shall be filed in the Civil Division of the Downtown Superior Courthouse located at 191 North First Street, San José, California.

(2) Petitions for Writs of Habeas Corpus Re: Quarantine Detention shall be filed in the Probate Division of the Downtown Superior Courthouse located at 191 North First Street, San José, California.

RULE 13 REQUEST FOR COPY/TRANSCRIPT OF ELECTRONIC SOUND RECORDING FOR RECORD ON APPEAL, WRITS, OR OTHER HEARINGS FOR MISDEMEANORS OR INFRACTIONS

(Effective 1/1/2023)

A. The courthouse supervisor or his/her designee shall retain custody of the original sound recording, unless ordered to deliver it to the reviewing court. Tapes shall be under the control of the Court Services Manager.

B. The Court Services Manager or his/her designee shall make the original sound recording available to the parties and counsel for listening in courthouses during normal business hours within 72 hours of submission of a request to the Court Services Manager.

C. At the time of filing of a Notice of Appeal, Notice of Petition for Writ or Notice of Motion, or within 10 calendar days of the filing of such notice, counsel for the appellant, petitioner or moving party (or by the party if unrepresented by counsel), shall advise the court if there is a request for a copy of the recording or its transcript. Such request shall be made in writing to the clerk at the courthouse in which the appeal/petition/notice is filed.

D. Courthouse staff shall inform the requesting party of the current cost per recording and collect the fees at the time the request is submitted.

E. Within 48 hours of receipt of the request, the clerk of the courthouse shall forward the request to the Court Services Manager or his/her designee.

F. When a request is made for a copy of the recording of the proceedings, the following shall apply:

(1) Within 10 calendar days of receipt of the request, the Court Services Manager or his/her designee shall prepare and label one copy of the original sound recording for each requesting party. The copies shall be playable at 1 7/8" per second.

(2) The Court Services Manager or his/her designee shall promptly contact the appropriate parties to arrange for them to pick up their copy of the recording.

(3) In all cases involving appeals, the applicable California Rules of Court shall then apply regarding the settlement of a statement of proceedings.

(4) In cases involving appeals, counsel for the moving party shall serve opposing counsel or party, if unrepresented, with either a transcript or a copy of the recording requested within 10 calendar days of receipt of the copy of the recording.

G. When a request is made for a transcript of the proceedings upon filing of Notice of Appeal (CR-142) the following shall apply:

(1) Upon filing Notice of Appeal (Judicial Council form CR-142) the Traffic Appeals Clerk shall notify Court Services that appellant has selected paragraph 4(b) entitled "Transcript from Official Electronic Recording" in form CR-142.

(2) Court Services shall determine length and cost of transcript from official recording.

(3) Court Services shall notify appellant of the estimated costs for the transcript and all necessary copies (in the same manner as a court reporter would and with the same time constraints as in the appeal process).

(4) Court Services shall notify appellant of the estimated costs for the transcript and all necessary copies (in the same manner as a court reporter would and with the same time constraints as in the appeal process).

(5) After receipt of appellant's payment at the facility of their appeal, the Traffic Appeals Clerk will notify Court Services to prepare transcript.

(6) The Court Services Manager or his/her designee shall promptly send a copy of the original recording to the transcriptionist.

(7) In appeal proceedings, the California Rules of Court shall apply.

(Effective 1/1/2019)

RULE 14 TRAFFIC DIVISION – TRIAL BY DECLARATION

(Effective 1/1/2023)

The Court adopts the trial by declaration process defined in Vehicle Code § 40902.

Additionally, pursuant to Vehicle Code § 40903, any person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the code. In eligible cases the Court will conduct the trial in absentia and it will be adjudicated on the basis of the notice to appear issued pursuant to Vehicle Code § 40500 and any business record or receipt, sworn declaration of the arresting officer, or written statement or letter signed by the defendant that is in the file at the time the trial by declaration is conducted.

If there is a guilty finding, the conviction shall be reported to the DMV and the defendant notified of the disposition of the case, the amount of imposed fines, and fees, and the defendant's right to request a trial de novo within a specified period of time. If there is no timely request for a trial de novo and the fines and fees are not paid by the due date, the case will proceed to civil assessment pursuant to Penal Code § 1214.1. Additionally, the DMV will be notified of the failure to pay pursuant to Vehicle Code § 40509.5(b), which can result in a suspension of the defendant's driver's license pursuant to Vehicle Code § 13365(a)(2) until all obligations to the Court are satisfied.

RULE 15 ANCILLARY DEFENSE EXPENSES

(Effective 1/1/2023)

A. SCOPE

This rule states the requirements for the payment of reasonably necessary expenses that appointed counsel, retained counsel, and self-represented litigants incur in defending persons who are indigent. This rule will refer to these reasonably necessary expenses as "ancillary defense expenses." All funds expended for ancillary defense expenses must have prior approval by Court order. Funds approved for a specific purpose, moreover, may not be expended for another use without prior Court approval.

B. REQUIRED SUBMISSION

All initial applications for the authorization of ancillary defense expenses shall be submitted by ex parte motion to the clerk of the Criminal Division Supervising Judge. The application shall be accompanied by: (1) a completed and signed Defendant's Financial Statement in Support of Ancillary Fees Request (Attachment CR-6089) OR a Declaration signed under penalty of perjury, which includes all of the information requested in Attachment CR-6089 and (2) a declaration with the information described in subdivision C below. The application and supporting declarations shall be marked "Confidential," and shall be kept in a confidential section of the Court file.

C. REQUIRED DECLARATION

All applications for ancillary defense expenses shall be supported by a declaration setting forth:

(1) A summary of the circumstances of the charged offense or facts that demonstrates why the funding of ancillary defense expenses is necessary in the interests of justice;

(2) The status of the case;

(3) The specific purpose for the funds, including the nature of the services to be rendered and an explanation why those services are reasonably necessary for the defense of the case; and

(4) The name and title of each appointed service provider (investigator, expert, or other) for whom funds are being sought, the hourly rate and maximum amount expected to be charged for the service, travel-related expenses other than mileage, and any other special expenses. If a self-represented defendant has not suggested a particular investigator, the Court will select one from the rotational investigator list. The maximum hourly billing rates, as well as the maximum initial authorizations, for all investigators and legal runners shall be set by the Presiding Judge of the Superior Court. Legal runner services, when approved by the Court, are limited to photocopying, and transporting materials, orders, and motions. Visits and phone calls to the County's detention centers must be associated with an allowable billable activity, and will be subject to the Court's discretion..

D. TRAVEL EXPENSES

(1) No funds may be expended for overnight travel by investigators, experts, or others without prior court approval. Pre-approved hourly investigation expenses may not be applied to overnight or airline travel costs unless expressly designated by the court for travel after an appropriate request.

(2) Applications that include a request for travel expenses to interview witnesses must contain, in addition to the requirements above, a declaration setting forth:

a. The relevance and materiality of the witness's proposed testimony;

a. The relevance and materiality of the witness's proposed testimony;

b. An explanation why a telephone interview or an interview conducted through the Internet or other forms of electronic communication would not suffice instead of a face to face interview.
An explanation why it would not be practical to utilize the services of an investigator in the area where the witness lives to conduct the interview;

d. Whether it would be feasible to fly the witness to the San Jose airport for an interview, with a return flight the same day, to avoid the expense of overnight travel for the investigator; and

e. A representation that the applicant has endeavored to secure the lowest possible airfare.

E. EXPENSES FOR MEDICAL AND MENTAL HEALTH PROFESSIONALS

On initial applications for authorizing expenses for doctors, psychologists, psychiatrists, and similar experts, the maximum amount allowed by the court will be an amount sufficient to procure an initial written report form the expert. This report should describe the need, if any, for further services at an approved rate. The defense must endeavor to negotiate the lowest hourly rate. If the defense retains an expert from outside the Bay Area, the declaration shall explain in detail why local experts could not be employed to provide similar services. Expenses for supplemental reports by experts or investigators may not be paid by the Court without prior Court approval.

F. ADDITIONAL FUNDING

After the initial funding approved by the declaration described in subsection C above has been exhausted, no additional work may be performed or compensated without first obtaining Court approval by submitting a supplemental funding request under this subsection. Each application for additional funding for a previously authorized service provider (investigator, expert, or other) shall state, in the heading of the pleading, that it is a supplemental request, and shall include a declaration setting forth:

(1) The date and amount of previous funding authorizations for the service provider
(2) The amount of any billings for services completed by the service provider and a general summary of those completed services;
(3) The remaining balance from funds previously authorized for the service provider; and
(4) A detailed description of the services remaining to be performed. Any additional request for the services of an expert must be accompanied by a report or declaration of the expert explaining the need for the additional services.

G. CLAIMS FOR THE PAYMENT OF ANCILLARY DEFENSE EXPENSES

Claims for the payment of ancillary defense expenses must have prior Court authorization as described above; without prior authorization, claims will not be paid. Claims for payment of ancillary defense expenses shall be submitted to the Director, Independent Defense Counsel Office, 373 West Julian Street, Suite 300, San José, CA 95110, and shall comply with the requirements of that Office, including any requirements for supporting documents.

(Effective 1/1/2023)

RULE 16 PROTOCOL FOR SEALING OF RECORDS-CRIMINAL DIVISION

(Effective 1/1/2023)

In proceedings for requests for the sealing of Court records in the Criminal Division, California Rules of Court, Rules 2.550 and 2.551 et seq. shall apply. All judicial officers have the responsibility and authority to decide sealing requests. The Supervising Judge of the Criminal Division may designate the judges in each Criminal Courthouse to hear sealing requests in accordance with this protocol.

A. COURT RECORDS PRESUMED TO BE OPEN

Unless confidentiality is required by law, Court records are presumed to be open. (California Rules of Court, Rule 2.550(c).)

B. DEFINITIONS

(1) "Record" means all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court. (California Rules of Court, Rule 2.550(b)(1).)
(2) A "sealed" record is a record that, by Court order, is not open to inspection by the public. (California Rule of Court 2.550(b)(2))

C. SCOPE OF PROTOCOL

(1) These rules do not apply to records that are required to be kept confidential by law, e.g., search warrant records which are sealed pursuant to People v. Hobbs (1994) 7 Cal.4th 948, 963. (California Rules of Court, Rule 2.550(a)(2).)
(2) No action taken under this protocol, including the sealing of any records, shall affect the criminal discovery process, including any protective orders or actions pursuant to Penal Code § 1054.7.

D. EXPRESS FACTUAL FINDINGS REQUIRED TO SEAL RECORDS

Pursuant to California Rules of Court, Rule 2.550(d), the Court may order that a record be filed under seal only if it expressly finds facts that establish:

(1) There exists an overriding interest that overcomes the right of public access to the records;
(2) The overriding interest supports sealing the record;
(3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
(4) The proposed sealing is narrowly tailored; and
(5) No less restrictive means exist to achieve the overriding interest.

E. APPLICATION, FILING AND SERVICE REQUIREMENTS

(1) A party seeking an order to seal a record shall comply with the requirements of California Rules of Court, Rule 2.551.
(2) Except as provided in E(3), any motion or application to seal a record shall be filed with the Court at least four Court days prior to the time set for the hearing of the motion or application. Records that are the subject of a motion or application to seal shall be provisionally sealed pending the determination of the motion to seal. Such records may be considered by the Court for any purpose, including a finding of probable cause, pending the determination of the motion or application to seal. The Clerk's Office shall post the motion or application and any attachments (except for attachments containing information sought to be sealed), case name and docket number on the Court website no later than 5 p.m. of the second Court day after filing.
(3) If a sealing order is issued pursuant to an ex parte application, the Clerk's Office shall post the motion or application and any attachments (except for attachments containing information sought to be sealed), case name and docket number on the Court website no later than 5 p.m. of the second Court day after filing. If the Court issues a sealing order following an ex parte

application, that order shall be deemed to be a provisional order and subject to a de novo court review upon the request of any interested person.

F. NOTICE OF SEALING ORDER

In every matter in which a record has been ordered sealed, the requesting party shall file in the Clerk's Office a written notice of the sealing order prior to the date of arraignment, or if arraignment has already taken place, no later than 5 p.m. of the second Court day after the sealing order.

G. UNSEALING OF RECORDS

(1) In misdemeanor matters, if any record has been ordered sealed, the Court shall order that the record be unsealed at the time of arraignment unless a party to the proceedings requests that the record remain sealed and the Court makes express findings pursuant to Section D above to permit the continued sealing of the record. Notice of any request that the record remain sealed shall be provided in accordance with Section E. If notice is provided in accordance with Section E, a motion or application to seal may be heard at the Court's next motion calendar.

(2) In felony matters, if any record has been ordered sealed, the Court shall order that the record be unsealed no later than the completion of the preliminary examination unless a party to the proceedings requests that the record remain sealed and the Court makes express findings pursuant to Section D above. Notice of any request that record remain sealed shall be provided in accordance with section E and shall be filed and served on all parties who have appeared in the proceedings at least three Court days prior to the first date scheduled for the preliminary examination. The hearing on the request for the record to remain sealed will be heard at the conclusion of the preliminary examination.

(3) In all matters, any person may bring a motion or application pursuant to California Rules of Court, Rule 2.551(h) for the unsealing of any Court record previously sealed, and the Court may order the unsealing of any record previously sealed in accordance with that rule.

RULE 17 REQUESTS UNDER PROPOSITION 47 (PENAL CODE § 1170.18)

(Effective 1/1/2023)

A. PETITIONS FOR RESENTENCING (PENAL CODE § 1170.18(a))

A person currently serving a sentence for a conviction of a felony who requests a recall of the sentence and resentencing as a misdemeanor under Penal Code § 1170.18(a) shall file a Petition for Resentencing with the Criminal Clerk's office at the Hall of Justice in San José, and shall serve a copy on the Santa Clara County District Attorney's Office, 70 West Hedding St., West Wing, San José, CA 95110. An attorney representing a person shall file the Petition for Resentencing on Attachment CR-6086, with a proof of service. On the Petition, the attorney shall set a date for the resentencing at 9:00 a.m. in Department 29(b) at the Hall of Justice or in such other department as designated by the Supervising Judge – Criminal on a date at least 35 days after the Petition is filed. A self-represented person shall file the Petition for Resentencing on Attachment CR-6087. The self-represented person shall then be notified whether the person is eligible for resentencing and, if eligible, shall receive information concerning the resentencing hearing. The back of the self-represented Petition, Attachment CR-6087, contains additional information about the procedures following the filing of the Petition.

B. PETITIONS FOR REDESIGNATION (PENAL CODE § 1170.18(f))

A person who has completed a sentence for a conviction of a felony who requests a redesignation as a misdemeanor under Penal Code § 1170.18(f) shall file a Petition to Redesignate Felony Conviction as Misdemeanor with the Criminal Clerk's office at the Hall of Justice in San José, and shall serve a copy on the Santa Clara County District Attorney's Office, 70 West Hedding St., West Wing, San José, CA 95110. An attorney representing a person shall file the Petition to Redesignate Felony Conviction as Misdemeanor on Attachment CR-6086, with a proof of service. A self-represented person shall file the Petition to Redesignate Felony Conviction as Misdemeanor on Attachment CR-6087. A hearing is not required to decide the Petition. If the attorney or self-represented person does, however, request a hearing, or requests a hearing only if the Petition is opposed, the appropriate box must be checked on Attachment CR-6086 or Attachment CR-6087. If the Petition is granted, the attorney or self-represented person will receive a copy of the order. If the person is not eligible for redesignation, the attorney or self-represented person will receive further notice. The back of the self-represented Petition, Attachment CR-6087, contains additional information about the procedures following the filing of the Petition.

(Effective 1/1/2019)

RULE 18 POSTING OF PROPERTY BOND

(Effective 1/1/2023)

Any person(s) pledging real property as security for a property bond shall complete Attachment CR-6014 (Affidavit/Undertaking for Justification of Bail and Acknowledgement).

(Effective 1/1/2019)

FAMILY RULES

RULE 1 GENERAL INFORMATION

A. SCOPE

These Rules govern cases in the Family Law Division, which hears all matters concerning the Family Code or related matters.
(Effective 7/1/2018)

B. SANCTIONS

If any attorney, a party represented by an attorney, or a self-represented party, fails to comply with any of the requirements of these Rules, the Court, on motion of a party, or on request by FCS, or on its own motion, after notice and the opportunity to be heard, may strike out all or any part of any pleading of that party, dismiss the action or proceeding or any part of the action or proceeding, or enter a judgment by default against that party, or impose other penalties of a lesser nature as otherwise provided by law, including monetary sanctions to the Court, and may order that party or his or her attorney to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees.
(Effective 7/1/2010)

C. FAMILY JUSTICE CENTER COURTHOUSE

(Effective 7/1/2016)
The Family Law Division operates in the Family Justice Center courthouse located at 201 North First Street, San Jose California 95113.
(Effective 7/1/2016)

D. CASE ASSIGNMENT

(1) DIRECT CALENDAR

New family law cases, except those subject to subsection (3) and (4) below, are randomly assigned to a judicial officer for all purposes. The judge in that department is the All-Purpose Judge (APJ). Upon the filing of a new case, the clerk must provide the Petitioner notice of the case assignment on the Family Law Notice (attached form FM-1050). If a case is sent for trial to the Civil Division based on its expected length or other reasons, the APJ will still decide all issues up to trial, including any ex parte requests and motions to continue the trial. All filed documents must contain the name of the assigned APJ and department.
(Effective 7/1/2022)

(2) CASES HEARD BY COMMISSIONERS

In some proceedings assigned to a family law department, except those subject to subsection (3) below, the parties may be asked to stipulate that their matter be heard and decided by a Commissioner of the Superior Court, acting as a temporary judge pursuant to California Constitution, Article VI, §§ 21 and 22 and Code of Civil Procedure Code § 259(e), either for All Purposes or for a Limited Purpose. Before the first hearing before a Commissioner who will hear that case for all purposes, the Court will provide the parties the Stipulation for Court Commissioner to Act as Temporary Judge for All Purposes (attached form FM-1112). The refusal of a party to stipulate to a Commissioner acting as an All Purpose temporary judge will lead to reassignment of the case to an APJ and in most cases will result in a continuance of the matter to another date. If a party declines to stipulate to a Commissioner acting as a Limited Purpose temporary judge, in most cases the hearing will be delayed until the APJ is able to hear the matter.
(Effective 7/1/2016)

(3) THE CHILD SUPPORT COMMISSIONERS

As provided by statutes or upon stipulation, the Child Support Commissioners shall hear all Title IV-D support cases; U.I.F.S.A., Department of Child Support Services (DCSS) paternity, custody and visitation issues raised in IV-D cases as provided by law, support enforcement, and welfare reimbursement cases, as well as other family law matters upon assignment.
(Effective 1/1/2010)

(4) DOMESTIC VIOLENCE PREVENTION ACT (DVPA) FILINGS
(Effective 1/1/2017)

All standalone DVPA filings, except for those involving married parties with minor children, and DVPA filings accompanied by a Uniform Parentage Act (UPA) filing will be assigned to a Dedicated Family DVPA Department's APJ for all purposes. For cases that are accompanied by a Uniform Parentage Act Filing, the DVPA APJ may order the case to be reassigned to a non-DVPA APJ once all issues related to the DVPA request have been addressed or at any other time in the DVPA APJ's discretion. If a DVPA case is set for trial for more than two days, the trial will be scheduled in the civil division. A DVPA department's APJ will decide all issues up to trial, including any ex parte requests and motions to continue the trial. All filed documents must contain the name of the assigned APJ and department.

All DVPA filings accompanied by a Family Law Petition, and all standalone DVPA filings involving married parties with minor children, will be randomly assigned to a non-DVPA APJ for all purposes and subject to all provisions under Local Family Rule 1D. If a Family Law Petition filing occurs after a DVPA filing has been filed and assigned to the DVPA APJ, the DVPA APJ will continue to address any issues regarding the DVPA filing. The DVPA APJ may order the DVPA filing to be consolidated into the Family Law Petition filing once all issues related to the DVPA request have been addressed or at any other time in the DVPA APJ's discretion.
(Effective 7/1/2022)

(5) CASES INVOLVING EMPLOYEES

If a court employee or deputy sheriff working at the Family Justice Center courthouse in the Family Law Division, or a member of his or her family, is a party to a Family case, the Supervising Judge of the Family Law Division may transfer the case to the Civil Division for assignment.

(Effective 7/1/2022)

E. VENUE

All family proceedings in Santa Clara County, including the DCSS matters, must be filed at the Family Court Clerk's Office of the Santa Clara County Superior Court, located at 201 North First Street, San José, California 95113. Domestic violence and gun violence restraining order applications must also be filed at the Family Court Clerk's Office location.

(Effective 7/1/2022)

F. ABBREVIATIONS

The following abbreviations are used throughout the Family Court Rules.

APJ	= All-Purpose Judge
Cal. Rules	= California State Rules of Court
CLETS	= California Law Enforcement Telecommunications System
CRC	= Family Centered Case Resolution Conference
CSC	= Custody Settlement Conference
DCSS	= Department of Child Support Services
EPRO	= Emergency Protective Restraining Order
FC	= Family Code
FCS	= Family Court Services
FCSO	= Family Court Settlement Officer
JCC	= Judicial Custody Conference
JSSC	= Judicially Supervised Settlement Conference
MSC	= Mandatory Settlement Conference
PMH	= Post-Mediation Hearing
SOC	= Settlement Officer Conference
TRO	= Temporary Restraining Order
DVPA	= Domestic Violence Prevention Act

(Effective 7/1/2022)

G. SERVICE OF ALTERNATIVE DISPUTE RESOLUTION INFORMATION

A notice regarding Alternate Dispute Resolution Information must be served with any new Dissolution, Legal Separation, Nullity, Parentage, or Petition for Custody and Support of Minor Children, as well as with any post-Judgment Requests for Order in cases where a Judgment resolving all matters has been obtained. (See attached local form FM-1021.)

(Effective 7/1/2022)

H. FILING REQUIREMENTS

(Effective 7/1/2010)

(1) MANDATORY ELECTRONIC FILING AND SERVICE

a. Refer to Rule 6 of the General Court and Administration Rules.

(Effective 6/20/2016)

b. EX PARTE APPLICATIONS

Attorney applications for ex parte or emergency orders, or domestic violence restraining orders in Family Law matters must comply with Local Family Rule 5 and must be submitted to the Court through e-filing. Self-represented litigant applications for ex parte or emergency orders, or domestic violence restraining orders in Family Law matters must comply with Local Family Rule 5 and must be submitted to the Court by using the FJCC drop box or by e-filing.

(Effective 10/1/2020)

(2) FORMAT OF DOCUMENTS SUBMITTED FOR FILING

Documents that exceed 10 pages must be submitted held by binder clips or two prong fasteners.

Exhibit attachments to pleadings must be separated by a standard size sheet of paper with a title identifying the sequence of the exhibit. No tabs should be included in any documents submitted for filing.

(Effective 7/1/2022)

(3) ATTACHMENTS TO PLEADINGS

a. Evidentiary attachments to pleadings filed with Family Court (excluding Judicial Council form attachments to the pleading at issue) must not exceed 10 pages in length, except orders to show cause re contempt or applications for wage assignments. However, a party may apply to the court ex parte with written notice of the application to the other parties for permission to attach additional documents. The application must state reasons why the additional attachments are relevant and necessary. Parties should not attach copies of pleadings already contained in the Court file to any new pleading.

(Effective 7/1/2022)

b. In lieu of the limits above, courtesy copies of relevant prior filings or other attachments exceeding the 10 page limit may be submitted to the Court bound separately from the current filing to which they relate, with the same copies provided to all attorneys and self-represented parties. Each page of all such attachments must be numbered sequentially. Parties must deliver courtesy copies to the Court, and must not send courtesy copies by fax machine. Such photocopies will not be filed or marked

as received by the Court. If the submitting party wishes to have such photocopies returned to the party, the submission must include a stamped, self-addressed envelope of sufficient size to return the photocopies.

(Effective 7/1/2022)

(4) USE OF CONFIDENTIAL JUVENILE CASE FILES OR CHILD WELFARE AGENCY RECORDS IN FAMILY COURT MATTERS

All documents obtained from any juvenile case file or from any child welfare agency must be treated as confidential by all parties and attorneys pursuant to WIC 827, 827.10, and Cal. Rules, Rule 5.552. Any party who seeks to file with or present to the Family Court any juvenile case file or child welfare agency document or record must first present a request to file such documents under seal pursuant to Cal. Rules, Rules 2.550 and 2.551. Any pleading filed with the Family Court which attaches, recites or quotes any juvenile case file or child welfare agency record without a prior request and order to file under seal will be stricken from the Family Court file.

(Effective 1/1/2013)

I. PREPARATION OF ORDERS

(1) Any proposed order submitted to the Court for signature must contain a footer with the title of the order on every page, including the signature page, unless it is a Judicial Council form. In addition, the Court signature and date lines must not be on a page by themselves; the signature page must contain some text of the order.

(2) When a case has been heard by assignment to a temporary judge, the order prepared must contain the name of that judge and must be submitted to the temporary judge or the APJ for signature.

(Effective 7/1/2022)

J. SERVICE OF SUMMONS BY PUBLICATION OR POSTING

(1) To request service by publication or posting, the Petitioner must submit to the Court an Application for Order for Publication or Posting of Summons, Judicial Council Form FL-980 and Order for Publication or Posting Judicial Council Form FL982.

(Effective 1/1/2016)

(2) Service by posting may be ordered only if the Petitioner is found to be indigent. A Petitioner requesting service by posting must submit a Request to Waive Court Fees, Judicial Council Form FW-001, unless one has been approved in the last 4 months. If the Court approves service by posting, a Proof of Service By Posting, Judicial Council Form FL-985, is needed.

(Effective 1/1/2016)

K. DEFINITION OF SOUTH BAY COUNTIES

When this term is used in any court order, "South Bay Counties" includes only the counties of Alameda, Contra Costa, Marin, Merced, Monterey, San Benito, San Joaquin, San Mateo, San Francisco, Santa Clara, Stanislaus, and Santa Cruz.

(Effective 7/1/2012)

L. ONE SETTING PER CALENDAR CALL AND CONFLICTS

The attorney for any moving party must not set a matter for hearing at a time which conflicts with another hearing or conference scheduled in any other case. However, more than one motion to withdraw as attorney of record may be set by the same attorney on one or more calendars, if to be heard at the same courthouse.

If an attorney is scheduled to appear in more than one matter at a time (for example, as attorney for a moving party in one case and for a responding party in another case), that attorney must make reasonable effort, well in advance of the hearing date, to obtain a stipulation from the opposing attorney for a hearing on a different day and/or time. Where the unresolved conflict involves an emergency screening, the attorney with the conflict must notify the courtroom clerk and opposing counsel of the conflict and that the attorney will be delayed for a brief period to allow the emergency screening to commence. Where the unresolved conflict involves a settlement conference or trial, the attorney with the conflict must schedule a Status Conference on the earliest available date.

(Effective 7/1/2022)

M. MEET AND CONFER REQUIREMENTS

(1) GENERAL POLICY

All parties and all attorneys must meet and confer pursuant to Cal. Rules, Rule 5.98.

(Effective 8/25/2020)

(2) DVPA HEARINGS

(Effective 7/1/2016)

Self-represented parties are not required to meet and confer prior to a hearing seeking a Restraining Order under the Domestic Violence Prevention Act. If only one party is represented, counsel must ask the self-represented party if he or she consents to speak to the attorney for the other party before any meet and confer.

(Effective 7/1/2022)

RULE 2 CUSTODY AND VISITATION

A. PARENT ORIENTATION AND INITIATING MEDIATION

(Effective 6/23/2020)

(1) Except as provided in subdivision (a) of this rule, in all motions or requests for order in which custody or visitation is an issue, the moving party must include the order described in subdivision (b) of this rule and must serve a notice form describing Parent Orientation and mediation, as follows: Each party is ordered to complete Orientation and schedule Mediation before going to the

hearing. Go online to www.scscourt.org [Search "Orientation."] Questions? Call FCS (408) 534-5700 or email FCSCalendar@scscourt.org

(Effective 1/1/2022)

(a) Due to the Covid-19 pandemic, neither a motion nor a court order referring parties to mediation is required. Instead, mediation may be initiated by a Stipulation to Telephonic Family Court Services. Any Stipulation to Telephonic Family Court Services must be filed with the Clerk's Office with a copy served on Family Court Services. This subdivision (1)(a) will remain in place until further action by the Court.

(Effective 6/23/2020)

(b) Each party is ordered to complete Parent Orientation immediately by completing Orientation online at www.scscourt.org [Search "Orientation."] Failure to comply with this order or keep any FCS appointments may result in the imposition of sanctions.

(Effective 1/1/2022)

(c) The Court may also order parents to attend Parent Orientation at any time. Generally, parents are required to attend Parent Orientation only once, but the Court may order parties to take the class more than once.

(Effective 6/23/2020)

(2) Attendance at or participation in online Parent Orientation must occur before mediation, unless the Court orders otherwise.

(Effective 1/1/2022)

(3) Each parent participating in online Parent Orientation satisfies the Orientation requirement on the FCS Intake form. In the event parties have participated in Parent Orientation more than six months earlier and the Court orders the parties to return to mediation, or if the contact information for a party changes at any time prior to mediation, the parties must submit an updated FCS Intake Form for mediation (Attachment FM-1015 English or Attachment FM-1015 Spanish) to the FCS office via US mail or via email at FCSCalendar@scscourt.org.

(Effective 1/1/2022)

B. MEDIATION PROCEDURE

(Effective 6/23/2020)

(1) Upon completion of Parent Orientation, FCS shall schedule the first available mediation appointment and both parties shall attend the mediation. If the date assigned by FCS is not acceptable, either party may request one rescheduled date for mediation. If a party does not notify FCS of a request to reschedule at least 48 hours before the mediation appointment, that party will be assessed a fee to FCS.

(Effective 1/1/2022)

(2) The mediation appointment shall be considered a court date at which the parties shall appear. Failure to attend mediation or late cancellation of mediation appointments may result in sanctions. There are no fees for FCS mediation, provided that there is a pending custody or visitation motion before the Court.

(Effective 1/1/2013)

(3) The parties may stipulate to private mediation for custody and visitation disputes, at their own expense. The APJ will determine whether the parties must also participate in mediation with FCS.

(Effective 1/1/2007)

(4) Mediation proceedings shall be private and confidential, and the mediator's notes shall be confidential, except as provided by law. The mediator shall report any reasonable suspicion of child or elder abuse to the proper authorities and may advise the APJ of the same. The mediator may also recommend to the APJ that Minor's Counsel be appointed.

(Effective 1/1/2022)

(5) At the mediation, if the parties agree to some or all of the custody and visitation issues, the mediator shall prepare the written agreement and shall mail copies of the document to the parties and attorneys. The parties may object to the mediated agreement by submitting written objections to FCS, along with a proof of service on all attorneys or self-represented parties.

a. Objections: Objections shall be in writing and shall include:
   i. the specific paragraphs and language to which the party objects;
   ii. the reasons for the objections; and
   iii. the proposed modified language.

(Effective 1/1/2011)

If FCS receives no written objections with proof of service within 15 calendar days from the date of the mailing of the mediated agreement, the agreement will be submitted to the Court for review and signature. Family Court will send a copy of the agreement and order, when signed and filed by the Court, with proof of service to the parties and attorneys.

(Effective 1/1/2011)

(6) Waiver of Objections Time: In cases without allegations of domestic violence, parties may stipulate to waiving the 15 calendar day period provided for objections and their child custody order will be filed with the court upon completion of the mediation appointment.

(Effective 7/1/2019)

C. CONTESTED CASES

(1) RETURN TO MEDIATION AFTER OBJECTIONS

a. Full Agreements: If the parties reached a full agreement in mediation but a party served timely written objections, the parties shall return to mediation to attempt to resolve any outstanding disputes. Each party shall contact FCS within 10 calendar days from the mailing of the objections to schedule the return mediation.

(Effective 1/1/2011)

b. Partial Agreement: If the parties reached only a partial agreement in mediation and a party served timely written objections, the mediator may choose to schedule a return mediation, or the parties may return to mediation by agreement. If the parties agree, each party shall contact FCS within 10 calendar days from the mailing of the objections to schedule the return mediation. If no return mediation is scheduled, the parties, shall proceed to a Post-Mediation Hearing as described in Section (C)(2) of this Rule.

(Effective 7/1/2020)

(2) POST-MEDIATION HEARING (PMH)

a. Purpose: The purpose of a PMH is to comply with the post-mediation hearing requirement described in Family Code section 3185.

b. Format:

i. A PMH will be scheduled before the APJ.

ii. All parties and attorneys are required to attend the PMH, including attorneys appointed to represent a minor, unless attendance has been excused by the APJ.

iii. A PMH is a hearing at which the APJ will select, in his or her discretion, the appropriate procedure after mediation. This may include, but is not limited to, returning the parties to mediation; scheduling a Judicial Custody Conference (JCC) before the APJ or another judicial officer; scheduling a hearing on contested issues; ordering one or both parties, or a minor child, to participate in counseling, therapy, drug/alcohol testing, or other services; or ordering an Emergency Screening, Brief Focused Assessment (BFA), or Evaluation pursuant to Family Code sections 3111 and 3188(a)(5). The APJ may also order some combination of procedures in his or her discretion.

(Effective 1/1/2022)

iv. The APJ may receive evidence at a PMH and may make any orders affecting child custody, visitation, and related matters consistent with the provisions of Family Code section 3000 et seq.

c. Referral to PMH: If the parties do not reach a full agreement at mediation and no return mediation is scheduled, the mediator must serve on the attorneys and any self-represented parties a Referral to Post-Mediation Hearing (PMH), and must provide a copy of the referral to the Clerk's Office. (See attached form FM-1191) The Referral must describe generally the remaining disputed issues.

d. Requesting a PMH after Private Mediation: If the parties do not reach a full agreement at private mediation and no return mediation is scheduled, one party must complete and file a Referral to Post-Mediation Hearing (PMH). (See attached form FM-1191) The Referral must describe generally the remaining disputed issues.

e. Scheduling the PMH: The Clerk's Office will schedule the PMH to occur before the APJ within 30 to 60 days of the date of receipt of the Referral, and will serve written notice of the hearing date and time on the attorneys and self-represented parties.

f. Requirement to Confer: Except where contact between self-represented parties is prohibited by a Restraining Order, all parties and attorneys must confer in good faith no later than 10 days before the PMH to resolve any remaining disputes. If the issues are resolved, the parties shall immediately notify FCS and the Court, and prepare and submit a stipulation for approval by the APJ.

g. PMH Statement: Each party must serve and file a Post-Mediation Hearing Statement at least 10 calendar days before the scheduled PMH. (See attached form FM-1016) Each party must bring two copies of this form to the PMH.

h. Failure to Appear at PMH: If a party or attorney fails to appear at the PMH, the APJ may conduct a hearing on disputed issues on the same date and make any orders affecting child custody, visitation, and related matters consistent with the provisions of Family Code section 3000 et seq.

(Effective 7/1/2020)

(3) JUDICIAL CUSTODY CONFERENCE (JCC)

(Effective 7/1/2009)

a. Purpose: A JCC serves primarily as a post-mediation judicially-supervised settlement conference at which the court assists the parties in reaching resolution of contested child custody and visitation issues.

(Effective 7/1/2020)

b. Format:

i. The APJ may schedule a JCC to occur before the APJ upon consent, or before another judicial officer. All parties and attorneys must sign the Stipulation to Allow Trial Judge/Commissioner to Conduct Judicial Custody Conference (JCC) before a JCC can be scheduled before the APJ. (See attached form FM-1192)

ii. All parties and attorneys are required to attend the JCC, including attorneys appointed to represent a minor, unless attendance has been excused by the judicial officer assigned to the JCC.

iii. The judicial officer assigned to a JCC may schedule additional sessions in his or her discretion.

iv. If the judicial officer assigned to a JCC is not able to assist in resolving the contested child custody and visitation issues, the judicial officer will schedule subsequent proceedings subject to the following directives:

(a) If the judicial officer assigned to a JCC is the APJ, the APJ will select, in his or her discretion, the appropriate procedure subsequent to JCC. This may include, but is not limited to, returning the parties to mediation; scheduling a hearing on contested issues; ordering one or both parties to participate in counseling, therapy, drug/alcohol testing, or other services; ordering counseling, therapy, or other services for a minor child; or ordering an Emergency Screening, BFA, or Evaluation pursuant to Family Code sections 3111 and 3188(a)(5). The APJ may also order some combination of these procedures in his or her discretion.

(Effective 1/1/2022)

(b) If the judicial officer assigned to a JCC is not the APJ, the judicial officer will schedule the matter for a PMH before the APJ.

v. A judicial officer assigned to a JCC may make any orders affecting child custody, visitation and related matters consistent with the provisions of Family Code section 3000 et seq.

(Effective 7/1/2020)

c. Requirement to Confer: Except where contact between self-represented parties is prohibited by a Restraining Order, all parties and attorneys must confer in good faith no later than 10 calendar days before the scheduled JCC to resolve any remaining issues. If the issues are resolved, the parties must immediately notify the judicial officer assigned to the JCC and submit a stipulation for approval by the APJ.

(Effective 7/1/2020)

d. JCC Statement: Each party must serve and file a Judicial Custody Conference Statement at least 10 calendar days before the scheduled JCC. (See attached form FM-1016.) Each party must bring two copies of this form to the JCC.

(Effective 7/1/2020)

e. Failure to appear at JCC:

i. If a party or attorney fails to appear at a JCC assigned to the APJ, the APJ may conduct a hearing on disputed issues on the same date and make any orders affecting child custody, visitation and related matters consistent with the provisions of Family Code section 3000 et seq.

(Effective 7/1/2020)

ii. If a party or attorney fails to appear at a JCC assigned to another judicial officer, the judicial officer will schedule the matter for a PMH before the APJ. The judicial officer may also conduct a hearing on disputed issues on the same date as the JCC and make any orders affecting child custody, visitation and related matters consistent with the provisions of Family Code section 3000 et seq.

(Effective 7/1/2020)

(4) CUSTODY EVALUATIONS

(Effective 7/1/2009)

a. When an evaluation is ordered at FCS, the Court shall set a Custody Settlement Conference (CSC) on a date between 90 and 100 calendar days from the initial appointment. At the initial appointment, the FCS evaluator may coordinate rescheduling the CSC, within the same 90 to 100 calendar day period, if the original CSC date conflicts with the evaluator's schedule.

(Effective 1/1/2011)

b. By stipulation and with the Court's approval, the parties may nominate a private evaluator to perform an evaluation at the parties' expense. The Court may also appoint a private evaluator over objection at a noticed JCC, PMH, Status Conference, CRC or other hearing. The parties shall share the costs of the private evaluation equally, unless the Court orders a different allocation. The Court shall set a CSC date between 140 and 150 calendar days from the date of the order to a private evaluation, or earlier if the private evaluator and the APJ agree. The requirements and other timelines in this Rule shall apply to private evaluations.

(Effective 1/1/2022)

c. By stipulation and with the Court's approval, the parties may nominate a private evaluator to perform a BFA at the parties' expense. The Court may also appoint a private evaluator to conduct a BFA over objection at a noticed JCC, PMH, Status Conference, CRC, or other hearing. A BFA is a limited custody evaluation. Form FM-1127 shall be attached to Judicial Council form FL-327, to set forth the scope and procedures for the BFA. The parties shall share the costs for the BFA equally, unless the Court orders a different allocation. The Court shall set a CSC date between 90 and 100 days from the date of the BFA Order or earlier if the evaluator and the APJ agree. The requirements and other timelines in this Rule shall apply to BFA evaluations.

(Effective 1/1/2022)

d. Parties shall notify the evaluator, the Calendar Office and the clerk for the APJ as soon as the case settles before the CSC.

(Effective 1/1/2011)

e. Children must be present for the initial FCS evaluation appointment only when either parent resides more than 100 miles from the courthouse to which the case is assigned, or the Court or the evaluator directs that the children be available. When the children are required to be present, the custodial parent shall bring an adult who can care for the children.

(Effective 1/1/2022)

f. If one attorney fails to appear at the initial appointment, as required, the evaluator has the discretion to proceed with the parties only and to reschedule the appointment with both attorneys.

(Effective 1/1/2011)

g. Evaluation and BFA reports are confidential and shall be sent to the Court, attorneys and self-represented parties only. The report shall not be duplicated, disseminated, or in any other way provided or shown to any individual not a party to the proceedings, except consulting experts and court-ordered therapists and evaluators. Evaluation reports, including psychological evaluations, shall not be attached as exhibits to any papers filed with the Court, and shall not be quoted or summarized in any publicly filed document.

(Effective 1/1/2022)

h. FCS will charge for evaluations, unless a fee waiver is granted for a party. The parties shall submit deposits or fee waiver requests to FCS within five court days of receipt of the Court's order to an evaluation.

(Effective 1/1/2011)

(5) RECOMMENDED ORDERS AND OBJECTIONS

a. No later than 60 calendar days after the date of the first evaluation or BFA appointment the evaluator shall serve on all parties and counsel written recommendations and a report. The time for completing the evaluation may be extended by the Court on the evaluator's written application upon a showing of good cause. Any extension request shall be served on all self-represented parties and attorneys. The Court shall wait 10 calendar days before deciding any extension request, to allow parties the opportunity to respond. Any response shall be submitted to the Court in writing with a proof of service on the opposing party or counsel, FCS, private evaluator.

(Effective 1/1/2022)

b. Any party shall have 15 calendar days after the date of mailing of the evaluation recommendations to object to the recommendations by doing all of the following:
   i. File specific written objections with the Court.
   ii. File a proof of service showing service of the objections on all attorneys or selfrepresented parties.
   iii. Personally serve FCS or the private evaluator with an endorsed, filed copy of the objections and a copy of the proof of service showing service of the objections on the attorneys and parties.
   iv. File a proof of service reflecting compliance with Rule 2(C)(5)(b)(iii).

(Effective 1/1/2022)

c. Objections: Objections shall be in writing and shall include the following:
   i. the specific paragraphs and language to which the party objects;

(Effective 1/1/2008)

   ii. the reasons for the objections; and
   iii. the proposed modified language.

(Effective 1/1/2008)

d. Meeting After Objections:
   When objections are filed, the parties shall contact the evaluator within five calendar days of the filing of the objections to schedule a Meeting After Objections to discuss the objections before the CSC. The Meeting After Objections shall occur prior to the date of the CSC. If any party fails to cooperate in setting, or fails to attend, this Meeting after Objections, the Court at the CSC may sign the recommended orders and may order sanctions. If no endorsed, filed objections are received by FCS or the private evaluator within 15 calendar days from the date of mailing of the evaluation recommendations, the recommended order shall be submitted to the Court for review and signature.

(Effective 7/1/2014)

(6) CUSTODY SETTLEMENT CONFERENCE (CSC)

a. All attorneys and parties and the evaluator shall attend the scheduled CSC to attempt to settle all contested custody and visitation issues. (See attached form FM-1192) Any proposed stipulation to reschedule a CSC shall be in writing and shall include the evaluator's signature.

(Effective 1/1/2024)

b. Each party shall file and serve a CSC Statement at least 10 calendar days before the CSC, clearly stating any remaining custody or visitation issues and any proposed alternative language. Previously-filed objections may be attached and incorporated by reference. The Statement of Issues shall also include the time estimate for trial and a list of witnesses. Each party shall bring two copies of the CSC Statement to the CSC.

(Effective 1/1/2011)

c. If agreement is not reached at the CSC, the Court may set the case for trial or hearing.

(Effective 1/1/2011)

d. If a party fails to appear at the CSC, a hearing may be held on the day of the CSC or on another day set by the Court and custody or visitation orders may be made.

(Effective 1/1/2011)

(7) EMERGENCY SCREENINGS

(a) In any any case in which there are serious safety risks to the child/ren, the Court may order a staff member of FCS, other than the mediator, or a private screener, at the parties' expense, to conduct an "emergency screening" (a preliminary and limited

investigation), to make recommendations regarding the temporary custody, visitation, and related conditions for the minor children. In most cases, the Court will not order any emergency screening based solely on an ex parte application, but may order protective orders until the hearing date on an adequate showing that serious harm to a child may result if no order is issued. FCS, the private screener, or the Court will provide instructions for emergency screening to all parties and attorneys when a screening is ordered. Parties shall comply with FCS' or the private screener's instructions, rules, and procedures. Attorneys and parties must be available as required by FCS, or the Court may reschedule the screening. A private screening shall be conducted in compliance with these Local Rules, but without the involvement of FCS. The Court will not provide reports of criminal history or CPS records to any private screener.

(Effective 1/1/2022)

(b) If the parties agree to and sign the screening recommendations, they shall be submitted to the Court for review and signature.

(Effective 1/1/2008)

(c) If a party objects to the FCS or private screener's screening recommendations, a brief hearing, generally less than thirty minutes, will be held on the day of the screening, or as soon as possible.

(Effective 1/1/2022)

(d) Fees shall be charged for any screening performed by FCS, unless a fee waiver is granted.

(Effective 1/1/2008)

(8) MODIFICATION OF JUVENILE COURT EXIT ORDERS

Requests to modify the juvenile custody order filed within one year of the date the custodial order was entered shall be returned to the issuing juvenile department for hearing. The juvenile judge shall determine whether there is a significant change in circumstances to warrant modification of that order as set forth in Welfare and Institutions Code § 302(d), and make any orders necessary to promote the child's best interests. The juvenile judge shall sit as a family judge for purposes of hearing the motions regarding modification of custody and/or visitation. Thereafter, any future litigation relating to the custody, visitation and control of the child shall be heard in the Family Court.

(Effective 7/1/2012)

D. SPECIAL ISSUES

(Effective 1/1/2011)

(1) FCS PERSONNEL

(Effective 1/1/2011)

a. Any party who seeks to examine any FCS staff at any deposition, trial, or hearing must coordinate the date with FCS and must serve an appropriate subpoena.

(Effective 1/1/2018)

b. Any party who subpoenas any FCS staff to appear in Court must confirm that the appearance is still required with that FCS staff person by telephone at least one court day in advance. The subpoenaing party must inform the FCS staff person immediately of any continuance or delay of the hearing, or settlement.

(Effective 1/1/2011)

c. Any party may be assessed expert witness fees for the appearance of an FCS staff member at a trial or hearing. The parties shall pay the fees equally unless the Court orders otherwise.

(Effective 1/1/2011)

d. Absent a Court order based on good cause, no deposition subpoena of FCS personnel and no subpoena for FCS records shall be served until recommendations pursuant to an evaluation are complete and an objection is filed.

(Effective 7/1/2012)

e. No peremptory challenges are permitted to FCS evaluators, private evaluators appointed by the Court pursuant to Evidence Code § 730, and mental health professionals appointed by the Court to do psychological testing. A complaint about an FCS evaluator, mediator, or emergency screener may be submitted by letter to FCS with proof of service of a copy to all other counsel and self-represented parties FCS will accept and respond to the complaint in writing to all parties within 30 days. (See Attachment FM-1078)

(Effective 1/1/2018)

(2) CHILDREN IN THE COURTHOUSE

While children who are the subject of litigation may appear at the courthouse, it is the policy of the Court not to have any children in the courtroom without the Court's prior knowledge. At all times, children present at the courthouse shall be in the care of a responsible adult person who is not a party to the case. Further, a child shall not be brought to court to testify without prior order of the court following a discussion of the factors described in Cal. Rules 5.250 regarding the child's participation in family court proceedings.

(Effective 1/1/2013)

(3) TESTIMONY OF CHILDREN

No party shall notice or take the deposition of any minor child who is the subject of litigation without first obtaining a court order to allow that deposition after a noticed hearing and based on a showing of a compelling reason to take the deposition

(Effective 7/1/2012)

(4) PRODUCTION OF FCS RECORDS/ PROTECTIVE ORDER

When making any order for the production of FCS records or psychological evaluations, the Court will make appropriate Protective Orders. The mandatory Protective Order form is located on the Court's website. (See attached FM-1036.) Subpoenas for the production of FCS records and the signed Protective Order must be served on FCS at least six weeks in advance of the date the records are required.

(Effective 7/1/2012)

(5) DOCUMENTS PROVIDED TO EVALUATOR OR SCREENER

(Effective 7/1/2009)

Any documents provided to an evaluator or screener must be accompanied by either a Judicial Council Proof of Service (FL-330 or FL-335) or the FCS Declaration of Mailing or Personal Service form (See attached form FM-1061). The number of submitted pages must be stated on the form. FCS may require a party to index and prioritize submissions. A party who seeks to submit more than 15 pages to an FCS evaluator or screener must obtain the consent of the FCS evaluator or screener by demonstrating good cause, and must provide an index, number each page sequentially, and assign a priority to all documents submitted. All electronic media files, such as audio and video files should be appropriate and relevant. Electronic media must not be more than 10 minutes long. FCS may require a party to index and prioritize submissions. Audio and video files must be in a format that can be read by FCS personnel. FCS may seek guidance from the Court at the commencement of a screening, or in the case of an evaluation, may ask the Court to set an immediate review hearing if FCS contends that a document submission of more than 15 pages (excluding items specifically requested) is not warranted or contains documents not relevant to the issues to be considered. The Court will set this hearing on shortened time so that the evaluation will not be delayed. At that hearing, the Court may limit the scope and/or number of documents to be considered by FCS.

(Effective 1/1/2022)

(6) TIME LIMITS

(Effective 1/1/2022)

The time limits in this Rule include the time for mailing and shall not be extended by the mailing of any required documents.

(Effective 1/1/2011)

(7) SUPERVISED VISITATION

(Effective 1/1/2022)

a. Professional Visitation and Professional Exchange Supervisors:

(i) Professional visitation and professional exchange supervisors must complete and submit Judicial Council Form FL-324(P), Declaration of Supervised Visitation Provider (Professional), and the Initial and Annual Renewal Application and Change Request Form (see attached form FM-1179) to Family Court Services to be included on the Supervised Visitation and Supervised Exchange Provider List.

(Effective 1/1/2022)

(ii) Professional visitation and professional exchange supervisors must thereafter complete and submit annually an updated Judicial Council Form FL-324(P), Declaration of Supervised Visitation Provider (Professional), and an updated Initial and Annual Renewal Application and Change Request Form (see attached form FM-1179) to Family Court Services no later than January 15th of each year to remain on the Supervised Visitation and Supervised Exchange Provider List.

(Effective 1/1/2022)

(iii) Professional visitation and professional exchange supervisors must lodge with the Clerk of Court any written report generated pursuant to Section (j)(3) of the California Standards of Judicial Administration, and must file an updated Judicial Council Form FL-324(P), Declaration of Supervised Visitation Provider (Professional), at the same time the report is lodged.

(Effective 1/1/2022)

b. Non-Professional visitation supervisors must complete and file Judicial Council Form FL-324 (NP), Declaration of Supervised Visitation Provider (Nonprofessional), within 30 days of appointment as a visitation supervisor in a case. The supervised party must provide the visitation supervisor with a copy of A Guide for the Non-Professional Provider of Supervised Visitation within 15 days of appointment.

(Effective 1/1/2022)

RULE 3 CHILD, SPOUSAL AND PARTNER SUPPORT

A. INITIAL SUPPORT MOTIONS

All initial motions for child, spousal or partner support shall be calendared within 30 calendar days of the filing of the Request for Order, except upon the request of the moving party for additional time.

(Effective 1/1/2013)

B. COMPUTER SUPPORT PRINTOUTS

A computer support printout shall be attached to the pleadings or submitted to the Court at the hearing by both moving and responding parties when child support or temporary spousal or partner support is at issue (but not permanent spousal or partner support).

(Effective 1/1/2011)

C. TEMPORARY SPOUSAL OR PARTNER SUPPORT FORMULA

Temporary spousal or partner support is generally computed by taking 40% of the net income of the payor, minus 50% of the net income of the payee, adjusted for tax consequences. If there is child support, temporary spousal or partner support is calculated on net income not allocated to child support and/or child-related expenses. The temporary spousal support calculations apply these assumptions. (Please refer to the Family Rules Appendix: Discretionary Policy Statements for the Family Law Division.)

(Effective 1/1/2011)

D. INCOME AND EXPENSE DECLARATION/FINANCIAL STATEMENT (SIMPLIFIED)

A current Income and Expense Declaration or, if applicable, Financial Statement (Simplified), shall be filed and served by both parties as part of the moving or responding papers if support is an issue. An Income and Expense Declaration or Financial Statement is "current" within the meaning of this Rule if it was completed and filed within three months prior to the hearing, as long as none of the information has changed. A copy of any previously-filed Income and Expense Declaration that is asserted as current must be attached to the moving or responding papers. All blanks on the forms must be answered. Notations such as "unk." for unknown, "est." for estimated, "N/A" for not applicable, and "None" shall be used to avoid leaving any item blank, but failure to provide any required information may result in the Court's refusal to consider the forms, denial of the requested relief, or a delay of the hearing. Referring to any separate document, such as "see SAD (Schedule of Assets and Debts)" is not acceptable.

(Effective 1/1/2011)

E. TAX RETURNS

The parties shall bring to the hearing at least three legible copies of their most recent state and federal income tax returns including all Attachments, specifically including all schedules, W-2 forms, 1099 forms, and amendments. If a self-employed party operates as a corporation, that party shall also bring copies of the most recent corporate tax return. If the most recent tax returns are not for the prior year, (1) self-employed parties shall bring their most recent profit and loss statements, balance sheets, quarterly sales tax reports, or similar documentation evidencing income from all sources; and (2) employees shall bring paystubs for the prior year-end showing all income for the prior year. The Court may request additional tax returns and related documents. Failure to bring tax returns to the hearing may result in a delay of the hearing on a request for support or other sanctions.

(Effective 1/1/2011)

F. SEEK WORK ORDER

The Court may issue orders requiring a party to actively seek employment, provide a monthly report of job search efforts, and promptly notify the other party when employment is obtained. When a Seek Work Order issues, Attachment FM-1120 shall be used.

(Effective 1/1/2014)

G. CHILD SUPPORT HEARINGS IN DCSS MATTERS

(1) All hearings to establish, modify, or enforce child support orders in cases where Department of Child Support Services (DCSS) is involved shall be set on the DCSS calendar when appropriate.

(2) Transfers: If an APJ or other judicial officer transfers or continues a child support matter to a DCSS calendar, the moving party shall provide a filed-endorsed copy of the moving papers and the Court's transfer order to DCSS. The responding party shall provide a filed-endorsed copy of any responsive pleadings to DCSS. Failure to do so may result in another continuance to give DCSS proper notice of the hearing and pending issues.

(Effective 7/1/2015)

H. BONUS INCOME ATTACHMENT

When the Court orders additional child support and/or spousal support based upon the parties' receipt of inconsistent income under *In re Marriage of Ostler and Smith* (1990) 223 Cal.App.3d 33, the terms of the order may be specified using the Smith/Ostler Bonus Attachment (attached Form FM-1194).

(Effective 1/1/2021)

RULE 4 ATTORNEY'S FEES AND COSTS

(Effective 1/1/2010)

A. FEE REQUESTS

When a party has requested attorney's fees (either pendente lite or after judgment), both parties shall file a current Income and Expense Declaration with attached pay stubs, which shall be served along with the Application, Request for Order, or Responsive Declaration requesting fees. The requirements of Rule 3 B above concerning the definition of "current," the attachment of a previously-filed statement, and the completion of all blanks apply. Both sides must also complete the attorney's fees section, and provide complete information in the asset section (Section 11). Any fee request above $1,000 shall be accompanied by the declaration described in Section B below, in addition to the Income and Expense Declaration. The parties shall not attach billing statements to the attorney's fee request, but shall exchange billing statements before the hearing. The attorney shall also bring copies of the bills to the hearing.

(Effective 1/1/2013)

B. FEE DECLARATIONS

Any fee and cost request over $1,000 shall include a separate written fee declaration signed by the attorney and addressing the following facts:

(Effective 1/1/2011)

(1) the services performed and by whom and costs incurred to date, the time expended, and the hourly rate(s) charged, if applicable;

(Effective 1/1/2011)

(2) the best estimate of the future services to be performed and costs to be incurred; the specific amounts of fees and costs requested, the reasons for the request, and why the fees and costs are necessary;

(Effective 1/1/2011)

(3) each party's financial circumstances and access to assets, including a copy of any computer printout for any current support order;

(Effective 1/1/2011)

(4) all fees paid by or on behalf of the party requesting fees and costs, and the history of prior fee awards; and

(Effective 1/1/2011)

(5) a brief description of the attorney's experience in practicing family law, including whether the attorney is a Certified Family Law Specialist.

(Effective 1/1/2011)

RULE 5 LAW AND MOTION

A. EX PARTE/EMERGENCY APPLICATIONS AND ORDERS

(Effective 7/1/2013)

(1) ORDERS SHORTENING TIME

A request for an order shortening time must be submitted to the Court Specialist as an ex parte application on Form FL-300 and must include all of the information and documentation required by Cal. Rules, Rule 5.151, including a declaration setting forth evidentiary facts which explain why a shorter notice period is necessary. An Order shortening time will only be granted upon a showing of good cause.

(Effective 10/1/2020)

(2) SUBMISSION OF EX PARTE APPLICATIONS

a. All applications for ex parte or emergency orders must be submitted on Form FL-300 and must include all of the information and documentation required by Cal. Rules, Rule 5.151. In Santa Clara County Family Court, all ex parte applications are handled on the documents submitted. No hearings are scheduled to argue ex parte applications.

(Effective 10/1/2020)

b. All ex parte requests by attorneys must be submitted to the Court Specialist through e-filing with any filing fees due with the motion. All ex parte requests by self- represented litigants must be submitted to the Court Specialist by using the FJCC drop box or by e-filing with any filing fees due with the motion. The Court Specialist will hold all applications (except requests for domestic violence restraining orders, gun violence restraining orders, matters identified in Cal. Rules, Rule 5.170, or properly supported requests not to give notice) for 24 hours before submission to the judicial officer. Notice of the application must be given to the opposing attorney or self-represented party before 10:00 a.m. on the court day before the matter is to be considered by the court.

(Effective 10/1/2020)

c. Except where otherwise specifically ordered by the Court, if the requesting party gives notice of the application after 10:00 a.m. or submits the application to the Court Specialist after 4:00 p.m., then notice will be deemed to have been given at 9:00 a.m. the next court day, and the application will be submitted to the judicial officer after 9:00 a.m. on the first court day after that.

(Effective 10/1/2020)

d. Any Request for Order seeking temporary orders without prior notice to all parties, including orders shortening time (except for requests for domestic violence restraining orders, gun violence restraining orders or matters described in Cal. Rules, Rule 5.170), must include a sworn statement of facts showing good cause not to give notice. The moving party may not rely on the declaration filed in support of the Request for Order to establish good cause not to give notice. The statement of good cause not to give notice may be provided on Attachment FM-1013, with attached pages if necessary, or may be provided through a sworn declaration submitted with Attachment FM-1013. Any party who does not provide a notice will be required to give notice before the request will be submitted to the APJ for consideration of the temporary orders. If the requesting party does not submit the required declaration of good cause or does not give notice within 48 hours of submitting the request for temporary orders, the Request for Order will be filed by the Court Specialist and set for hearing on the law and motion calendar without an order shortening time.

(Effective 10/1/2020)

e. All ex parte applications must disclose:

(1) whether a requested ex parte order will result in a change of status quo, and

(2) whether orders are already in effect regarding the same issue; and

(3) all previous applications on the same issue by any party and whether any orders were made, even if an application was previously made upon a different state of facts. Previous applications include an order to shorten time for service of notice or an order shortening time for hearing.

(Effective 10/1/2020)

(3) NOTICE OF APPLICATION

The moving attorney or self-represented party must submit a Declaration in Support of Ex Parte Application For Orders (attached form FM-1013) and must give notice of all ex parte applications to the opposing attorney or self-represented party

before submitting the request, except under the following circumstances, which must be documented in detail in the application:

a. The application requests Domestic Violence Prevention Act (DVPA) or gun violence restraining orders.

(Effective 10/1/2020)

b. Giving notice would frustrate the purpose of the order;

c. Giving notice would result in immediate and irreparable harm to the applicant or the children who may be affected by the order sought;

d. Giving notice would result in immediate and irreparable damage to or loss of property subject to disposition in the case;

e. The parties agreed in advance that notice will not be necessary with respect to the matter that is the subject of the request for emergency orders, and the applicant provides evidence of that agreement;

f. The party made reasonable and good faith efforts to give notice to the other party, and further efforts to give notice would probably be futile or unduly burdensome; or

g. Notice is not required for the request at issue under Cal. Rules, Rule 5.170.

(Effective 7/1/2013)

(4) MANNER OF NOTICE OF APPLICATION

Notice is provided by serving upon all self-represented parties and all attorneys of record the Declaration in Support of Ex Parte Application for Orders (attached form FM-1013), the proposed orders, and all moving papers before submitting the moving papers to the Court Specialist, in one of the ways below. Telephone notice alone is not sufficient.

(Effective 7/1/2013)

a. Personal service or, upon written consent, by facsimile transmission with either a printed electronic confirmation of receipt, which must be attached to the Declaration in Support of Ex Parte Application for Orders (attached form FM-1013), or the sender's declaration that the recipient has acknowledge receipt; or

(Effective 10/1/2020)

b. Service is by mail, but notice is not complete and the moving papers must not be submitted to the Court Specialist until five calendar days after mailing. Where service is by next-day carrier, notice is not complete and the papers must not be submitted until two calendar days after the carrier receives the papers to be served.

(Effective 10/1/2020)

(5) OPPOSITION TO EX PARTE APPLICATION

Attorneys or self-represented parties must serve on moving party and file with the Court Specialist any written response to the ex parte application within 24 hours of the ex parte application's submission to the Court, unless the Court requests an expedited response.

(Effective 10/1/2020)

(6) ON LINE STATUS OF EX PARTE APPLICATION

The Court will post on the website, www.scscourt.org the status of ex parte matters that have been submitted to the Court for review and signature.

(Effective 1/1/2011)

B. SPECIAL PROCEDURES FOR DVPA RESTRAINING ORDERS

(Effective 7/1/2016)

Any restraining orders under the Domestic Violence Prevention Act or Family Law Act must be submitted to the Court on the CLETS forms or other Judicial Council approved forms. All ex parte requests for CLETS restraining orders must include a completed Declaration in Support of Ex Parte Application for Orders (see attached form FM-1013). All personal conduct and stay away restraining orders in a judgment must be set forth separately on a CLETS or Judicial Council form and must include the expiration date, and good cause for granting the orders must be set forth in attached declarations.

(Effective 10/1/2020)

All restraining order applications and orders after hearing must be accompanied by the Confidential CLETS Information Form CLETS-001 and where applicant requests that the Sheriff serve the orders, by the Request for Sheriff to Serve and Sheriff's Fee Statement (see attached form FM-1041), which will not become part of the court file. The local form entitled How to Safely Turn in Firearms and Ammunition (see attached form FM-1047) must be served with any CLETS temporary restraining order or restraining order after hearing. In the event that the Court issues mutual restraining orders following a hearing, such orders must be stated on two separate forms, one for each party. Pursuant to Family Code § 6380, the Court will transmit to the Sheriff's Office for entry into the domestic violence restraining order system orders for personal conduct, residence exclusion, and stay away, as well as proofs of service of such orders and custody and visitation orders issued in these cases. Parties may also deliver certified copies of the orders and proofs of service to law enforcement agencies.

(Effective 10/1/2020)

In cases where the Court allows for property removal as an exception to the restraining order, Attachment FM-1102 (Other Orders-Property Removal) may be used as an attachment to the Temporary Restraining Order (Judicial Council form DV-110) and Restraining Order After Hearing (Judicial Council form DV-130).

(Effective 7/1/2014)

(1) EXISTING CRIMINAL PROTECTIVE ORDERS

a. The Family Court must examine available databases for existing restraining or protective orders involving the same restrained parties before issuing CLETS Civil Restraining Orders. If the information is not available, the Court will ask the parties before issuing any such permanent CLETS Civil Restraining Orders.

(Effective 10/1/2020)

(2) MODIFICATION OF CRIMINAL PROTECTIVE ORDERS

a. Any Court responsible for issuing custody or visitation orders involving minor child(ren) of a defendant/restrained person subject to a Criminal Protective Order – Domestic Violence (CLETS-CPO) (Judicial Council form CR-160), also known as Criminal Protective Order, may modify the Criminal Protective Order if all of the following circumstances are satisfied:

(Effective 1/1/2016)

i. Both the defendant/restrained person and the victim/ protected person are subject to the jurisdiction of the Family, Juvenile, or Probate Court; both parties are present before the Court; and both agree to the modification.

(Effective 1/1/2013)

ii. The defendant/restrained person has been convicted of or is currently charged with a domestic violence related offense in Santa Clara County and a Criminal Protective Order has issued and is still in effect.

iii. The Family, Juvenile, or Probate Court identifies a Criminal Protective Order issued against the defendant, which is inconsistent with a proposed Family, Juvenile, or Probate Court Order, such that the Family, Juvenile, or Probate Order is/will be more restrictive than the Criminal Protective Order or there is proposed custody or visitation order which requires recognition in the Criminal Protective Order (item 16 on the Criminal Protective Order form).

(Effective 1/1/2016)

iv. The defendant signs an appropriate waiver of rights forms or enters a waiver of rights on the record.

(Effective 1/1/2016)

v. Both the victim/protected person and the defendant/restrained person agree that the Criminal Protective Order may be modified to a more restrictive order or to check item 16 on the Criminal Protective Order

b. The Family, Juvenile, or Probate Court may not modify existing Criminal Protective Orders to be less restrictive. Only if children are not listed as protected persons, a modification of the Criminal Protective Order to check item 16 to the Criminal Protective Order will not be considered less restrictive.

(Effective 10/1/2020)

c. The Family, Juvenile, or Probate Court may, on its own motion or at the request of a defendant, protected person or other interested party, calendar a hearing before the Criminal Court on the issue of whether a Criminal Protective Order should be modified. The Family, Juvenile, or Probate Court will provide the Criminal Court with copies of existing or proposed Orders relating to the matter. Notice of the hearing will be provided to all counsel and parties.

(Effective 10/1/2020)

C. SPECIAL PROCEDURES FOR GUN VIOLENCE RESTRAINING ORDERS INVOLVING MINORS

(Effective 1/1/2024)

(1) This section applies to all requests for a gun violence restraining order pursuant to Penal Code section 18100 et seq. for which the respondent is a minor.

(Effective 1/1/2024)

(2)

a. A petitioner, or law enforcement officer or law enforcement agency requesting a gun violence restraining order who is informed and believes that the person to be restrained is a minor must, at the time the Petition for Gun Violence Restraining Order (GV-100) is submitted, request that information regarding the minor obtained or provided in connection with the request, including, but not limited to, the minor's full name, address, and the circumstances surrounding the request for a gun violence restraining order with respect to that minor, be kept confidential, by following subsection (3)b below, except as provided in subdivision (4).

(Effective 1/1/2024)

b. The person or entity submitting the request must complete and file confidential form Request to Keep Minor's Information Confidential – GVRO (attached form FM-1199) and must submit redacted and unredacted versions of the Petition for Gun Violence Restraining Order (form GV-100) and any attachments. Form FM-1199 and the unredacted version of the Petition for Gun Violence Restraining Order (form GV-100) must be filed and maintained in a confidential case file. The respondent must be served with copies of form FM-1199 and the redacted and unredacted versions of the Petition.

(Effective 1/1/2024)

c. The court must determine whether to grant a request for confidentiality without requiring that notice of the request be given to the other party and without an adversarial hearing. The court may grant the entire request, deny the entire request, or partially grant the request for confidentiality.

(Effective 1/1/2024)

d. The court may order the information in subdivision (2)a be kept confidential if the court expressly finds all of the following:

i. The minor's right to privacy overcomes the right of public access to the information.

ii. There is a substantial probability that the minor's interest will be prejudiced if the information is not kept confidential.

iii. The order to keep the information confidential is narrowly tailored.

iv. No less restrictive means exist to protect the minor's privacy.

(Effective 1/1/2024)

(3)

a. If the request for confidentiality is granted, except as provided in subdivision (4), the information regarding the minor must be maintained in a confidential case file and must not become part of the public file in the proceeding unless otherwise ordered by the court.

(Effective 1/1/2024)

b. On all subsequent pleadings and orders, the parties and the court must prepare redacted and unredacted copies and use the initials of the minor or other initials at the discretion of the court. Redacted pleadings and orders must be filed and maintained in the public file and the unredacted pleadings and orders must be filed and maintained in a confidential file.

(Effective 1/1/2024)

c. If the request for confidentiality is denied, the Clerk must file and provisionally maintain the unredacted Petition for Gun Violence Restraining Order (form GV-100) and any attachments in a confidential case file for 15 days from the date of filing. During the 15-day period, the minor, the minor's legal guardian, or the attorney for the minor may file an ex parte motion to schedule a closed hearing on shortened time to determine whether there are additional facts that would support granting the request for confidentiality. Unless the court grants the request for confidentiality after the hearing, the Clerk must remove the Petition from the confidential case file after the 15-day period has expired and place it in the public file.

(Effective 1/1/2024)

d. Except as provided in subdivision (4), if the court determines that disclosure of confidential information has been made without a court order, the court may, in its discretion, impose a sanction pursuant to Code of Civil Procedure section 575.2. The minor may not be sanctioned for the disclosure of confidential information.

(Effective 1/1/2024)

(4) Notwithstanding subdivision (3)a, confidential information must be made available to the following:

a. The Department of Justice and the California Restraining and Protective Order System consistent with Penal Code section 18115.

(Effective 1/1/2024)

b. Law enforcement pursuant to Penal Code section 18120 for the purpose of enforcing a gun violence restraining order.

(Effective 1/1/2024)

c. The minor, the minor's legal guardian, and the attorney for the minor to allow them to comply with the order for confidentiality and to allow the minor to comply with and respond to the gun violence restraining order.

(Effective 1/1/2024)

(5) The court may, at any time, on its own motion or on the motion of a petitioner, minor, minor's legal guardian, law enforcement officer or law enforcement agency, authorize a disclosure of any portion of the confidential information to certain individuals or entities as necessary to effectuate the purpose of the gun violence restraining order, including implementation of the gun violence restraining order, or if the disclosure is in the best interest of the minor.

(Effective 1/1/2024)

D. FAX FILING IN DOMESTIC VIOLENCE AND GUN VIOLENCE RESTRAINING ORDER CASES

(Effective 1/1/2024)

(1) DEFINITIONS

a. SERVICE PROVIDER

(Effective 7/1/2016)

"Service provider" means an entity authorized by the Court to provide fax filing services to the public and the Court for domestic violence, gun violence and elder abuse cases, to transfer filings and messages to and from the Court, and to pay any applicable filing fees to the Court

b. FAX

(Effective 10/1/2020)

"Fax" and fax filing is defined in Cal. Rules, Rule 2003.

(2) DIRECT FILING

a. Pursuant to Cal. Rules, Rule 2.304, et seq., authorized service providers may directly file domestic violence and gun violence restraining order applications, temporary restraining orders, and proofs of personal service by fax. Such filings must be submitted to a number to be designated by the court.

(Effective 10/1/2020)

b. A facsimile filing must be accompanied by a Domestic Violence Facsimile Filing Cover Sheet (Attachment FM-1000) or a Gun Violence Facsimile Filing Cover Sheet (Attachment FM-1186). This must be the first page transferred, to be followed by any special handling instructions required. If the domestic violence restraining order application is submitted with initial documents which require the payment of a filing fee, such as a dissolution or paternity action, the facsimile filing must also be accompanied by a Judicial Council Facsimile Filing Cover Sheet with the applicable credit card information. This must be the second page transmitted in that event. The Court is not required to keep a copy of the cover sheet and attachment. Any credit card information will be kept confidential by the Court.

(Effective 10/1/2020)

c. Each document transmitted for direct filing with the Court must contain the phrase "by fax" immediately below the title of the document. Each service provider must also include its applicable PIN number where indicated on the Domestic Violence Facsimile Filing Cover Sheet.

(Effective 10/1/2020)

d. There is no facsimile filing fee for the filing of domestic violence, gun violence or elder abuse restraining orders.

(Effective 10/1/2020)

(3) SIGNATURES

a. A person who files or serves a signed document by fax pursuant to the Code of Civil Procedure and this rule represents that the original signed document is in his or her possession and control.

b. At any time after the filing or service of a signed facsimile document, any other party may serve a demand for production of the original physically signed document. The demand for production must be served on all other parties but must not be filed with the Court.

(Effective 10/1/2020)

c. Notwithstanding any other provision to the contrary, including sections 255 and 260 of the Evidence Code, a signature produced by facsimile transmission is an original.

(4) SERVICE PROVIDERS

a. Service providers are required to sign a Memorandum of Understanding with the Court and attend periodic training sessions regarding domestic violence restraining orders and court procedures.

(Effective 10/1/2020)

b. The Court must maintain a list of approved service providers for facsimile filing of domestic violence cases. Each approved service provider will be assigned a PIN number for identification purposes.

(Effective 10/1/2020)

E. STIPULATIONS

(Effective 1/1/2024)

All stipulations must be signed by both parties and if represented, any attorney of record. FM-1197 Order appointing Real Estate Expert and FM-1198 Order appointing Certified Public Accountant are optional stipulations.

(Effective 7/1/2023)

F. PROOF OF SERVICE

(Effective 1/1/2024)

Unless the Court has granted an order shortening time, proof of service of the moving papers must be filed no later than five court days before the hearing. If a responding party fails to appear at a hearing and the moving party does not submit to the Court proof of timely service, the matter will be taken off calendar or reissued for service. If the responding party fails to appear and proof of service is submitted, the Court may enter orders based on the pleadings and evidence of the moving party, or continue the hearing and award attorney's fees.

(Effective 10/1/2020)

G. TIME LIMITS AND COUNTER-MOTIONS

(Effective 1/1/2024)

All matters on the law and motion calendar are limited to hearings of
30 minutes or less. A responding party may set a counter-motion on the law and motion calendar for the same date only if (1) the counter- motion will not cause the hearing to exceed 30 minutes; and (2) space is available on the calendar or the APJ approves an application submitted to the Court Specialist.

(Effective 1/1/2011)

H. CONTINUANCES

(Effective 1/1/2024)

(1) FIRST CONTINUANCE

Before the first hearing date, if the moving papers have already been served and if the parties agree, one continuance may be obtained by faxing to or filing at the Clerk's Office, at least two court days before the hearing, (1) a stipulation signed by both attorneys or self-represented parties; or (2) a letter signed by the requesting attorney or self-represented party confirming that the other party agrees to continue the hearing. This procedure for continuing the first hearing date does not apply to hearings on requests for domestic violence or other restraining orders.

(Effective 10/1/2020)

If the Court had issued an order shortening time for the filing, service, and original hearing date, and the hearing date is then continued by stipulation of the parties, the continuance will not affect the dates for filing and service set by the original order shortening time unless the Court specifically so orders.

(Effective 1/1/2011)

(2) ADDITIONAL CONTINUANCES

No additional continuances will be granted except by a written request submitted to the APJ no later than 9:00 a.m. on the court day before the hearing, based on a showing of good cause.

(Effective 1/1/2011)

I. LONG CAUSE HEARINGS

(Effective 1/1/2024)

A "long cause" hearing is any hearing other than a trial that will take longer than 30 minutes. The Court may calendar long cause hearings from the law and motion calendar or from a CRC. If a party believes that a law and motion matter requires a long cause hearing, the attorney or self-represented party must confer with the other attorney or self-represented party and schedule a CRC. If a party intends to request a long cause hearing at the law and motion calendar, all parties must be prepared to go forward with the hearing in the event the Court denies the request, or be prepared to address temporary orders pending the long cause hearing. Attorneys or self-represented parties must notify the Court of an intended request or agreement to schedule a long cause hearing at the earliest opportunity and no later than 9:00 a.m. on the court day before the scheduled law and motion hearing.

(Effective 10/1/2020)

J. MATTERS TAKEN OFF CALENDAR OR RESOLVED BEFORE HEARING

(Effective 1/1/2024)

(1) After service of the moving papers, no matter shall be taken off calendar without notice to the responding party. The responding party must agree to take any matter off calendar when the responding party has requested affirmative relief.

(Effective 1/1/2011)

(2) Attorneys or self-represented parties shall notify the Court at the earliest opportunity of any agreement or request to take a hearing off calendar or if all issues to be considered at the hearing have been resolved. At least one of the parties or counsel must leave a voicemail message for the Courtroom Clerk that the hearing will be a "no-read" matter no later than 9:00 a.m. on the court day before the hearing. At the same time, a voicemail message must be left for the Duty Clerk at (408) 5345644, with the caller's name, the case name, number, hearing date and department, and reason for the message. If a message is left that the parties have agreed to continue the hearing, the parties should be prepared to proceed with the hearing if the Court does not agree to continue the matter.

(Effective 1/1/2011)

K. DOCUMENTS

(Effective 1/1/2024)

Except for documents that impeach the truthfulness of a party or witness, a party shall provide a copy of each document to be offered to the Court before any hearing to all counsel and self-represented parties. Parties shall bring to court three copies of any document to be offered at the hearing. Parties shall also be prepared to provide to the Court at the hearing copies of all pleadings, proofs of service, and earlier orders.

(Effective 7/1/2012)

L. TIME ESTIMATES

(Effective 1/1/2024)

At the hearing, parties shall provide the Court with reasonable and accurate time estimates. If either party's time estimate is exceeded, the Court may, in its discretion, rule without further hearing, defer the matter to the end of the calendar if time permits, continue the matter, declare a mistrial for the hearing, or order the matter off calendar.

(Effective 1/1/2011)

M. CONTEMPT

(Effective 1/1/2024)

(1) APPOINTMENT OF COUNSEL

If a party cited for contempt appears without an attorney, one continuance will be granted to permit the citee to retain counsel or if indigent, to be referred to the appropriate office to determine financial eligibility and representation. The citee will be ordered to attend the continued hearing.

(2) ORDERS

After the contempt hearing, the moving party shall prepare an order for the Court's signature, using the Judicial Council form, setting forth the Court's findings and orders. If the citee is self-represented, the moving party shall submit the order directly to the Court, without the citee's approval as to form and content. A copy of the proposed order shall be provided to the other party at the same time it is sent to the Court. If the citee is taken into custody at the conclusion of the hearing, the order shall be filed before 4 p.m. the next court day.

(Effective 1/1/2011)

N. TENTATIVE RULINGS IN FAMILY LAW AND MOTION MATTERS

(Effective 1/1/2024)

For judges choosing to issue tentative rulings in law and motion matters, tentative rulings will be posted on the day of the hearing, or announced orally at the time of oral argument.

(Effective 7/1/2009)

RULE 6 CASE STATUS CONFERENCE (STATUS CONFERENCE), SETTLEMENT, FAMILY CENTERED CASE RESOLUTION CONFERENCE (CRC), LONG CAUSE HEARINGS AND TRIALS

(Effective 7/1/2013)

A. PURPOSE

The purpose, definitions, and goals of the CRC and Status Conference are set forth in Family Code Sections 2450 and 2451, and Cal Rules, Rule 5.83. Until final disposition of the case, the parties must participate in a review of the case at a Status Conference or a CRC at least every one hundred eighty (180) days in order to determine the most appropriate next steps to help ensure an effective, fair, and timely resolution. At each Status Conference, SOC or CRC, a further date for review will be scheduled, unless judgment has been entered.

(Effective 1/1/2022)

B. CASE STATUS CONFERENCE (STATUS CONFERENCE)

(1) CALENDAR

a. In any Dissolution, Nullity, Legal Separation, Termination of a Domestic Partnership, Custody and Support, or Uniform Parentage Act case:

i. When the Petition is filed, the Clerk of the Court will, in compliance with Family Code Sections 2450 and 2451 and Cal Rules, Rule 5.83, schedule a regular electronic case status review.

(Effective 1/1/2022)

b. On request of either party or on the Court's own motion, the Court may set any matter for a Status Conference or Case Resolution Conference at any time, or at the Court's discretion, order the parties to attend a CRC.

(Effective 1/1/2022)

(2) ORDERS AT STATUS CONFERENCE

At a Status Conference, the Court will review the status of the case and progress toward efficient resolution. At any Status Conference, the Court may:

a. Refer appropriate cases to arbitration or mediation, Early Neutral Evaluation (ENE), or a Settlement Officer Conference (SOC);

b. Inform the parties of procedural steps to reach disposition in the case;

c. Set time limits and deadlines for service of process and filing proof of service, entry of default, service of preliminary declarations of disclosure, submission of judgment, or filing a request for trial;

d. Appoint an attorney for a minor child upon stipulation, or schedule a hearing to appoint a child's attorney and/or make a fee allocation;

e. Set or reset trials, settlement conferences, or hearings, including bifurcating issues for trials;

f. Order further Status Conference;

g. Determine that the case requires a Case Resolution Conference (CRC) under the factors described in Cal. Rules, Rule 5.83(c)(7) and schedule a CRC;

(Effective 7/1/2013)

h. Take any other actions permitted by law that would promote a just and efficient disposition of the case.

i. To document the orders made at the Status Conference, the parties must prepare the Order After Status Conference on Local Form FM-1123, and present to the Court for signature at the conclusion of the hearing, unless otherwise ordered by the Court. Self-represented parties may seek the assistance of the Family Court Clinic to prepare the Order.

(Effective 1/1/2022)

(3) ATTENDANCE

a. Attorneys and self-represented parties must attend each Status Conference unless excused in advance by the Court, the case has been dismissed, or a Judgment resolving all issues has been entered. An initial Status Conference will be continued if an SOC is calendared before the Status Conference. Parties represented by an attorney do not have to attend a Status Conference unless ordered by the Court to appear.

(Effective 1/1/2022)

b. Parties and attorneys may appear remotely by video or phone using the Remote Hearings Links located on the Court's website at www.scscourt.org. On a case by case basis, the Court may require personal attendance at any Status Conference or CRC.

(Effective 7/1/2023)

c. Any self-represented litigant who wants assistance from the Court's Self-Help Center on the day of the Status Conference or CRC must appear in person.

d. If no party appears at a scheduled Status Conference without advance excuse by the Court, a further Status Conference will be scheduled in approximately one hundred eighty (180) days. The Calendar Clerk will mail a notice of the Status Conference, notifying the parties if they fail to appear in Court, the case may be subject to dismissal. A third failure to appear at a scheduled Status Conference or CRC will lead to notice sent by the Calendar Clerk that unless steps are taken by the parties to pursue the case, the case will be subject to dismissal. No further Status Conference will be scheduled unless one of the parties schedules a hearing, Status Conference, or takes other action to pursue the case.

(Effective 1/1/2022)

e. Alternative Dispute Resolution (ADR): Parties who file a Request to Change Status or Resolution Conference Date (Local Form FM-1059) prior to the Status Conference or CRC indicating they are participating in ADR and actively negotiating or mediating their case will be exempt from the Status Conference or CRC for one hundred eighty (180) days, and a new Status Conference will be set in approximately one hundred eighty (180) days. If a judgment or dismissal is not filed within one hundred eighty (180) days of the filing of Local Form FM-1059, the Court will proceed with the Status Conference.

(Effective 1/1/2022)

f.. Reconciliation: Parties who file a Request to Change Status or Resolution Conference Date (Local Form FM-1059) prior to the CRC or Status Conference indicating they are attempting reconciliation will be exempt from the Status Conference or CRC for one hundred eighty (180) days, and a new Status Conference will be set in approximately one hundred eighty (180) days. If a judgment or dismissal is not filed within one hundred eighty (180) days of the filing of the Local Form FM-1059, the Court will proceed with the Status Conference.

(Effective 1/1/2022)

C. SETTLEMENT OFFICER CONFERENCE (SOC) AND CASE STATUS CONFERENCE

(1) PURPOSE

At an SOC and Status Conference with the FCSO, the Family Court Settlement Officer (FCSO), temporary judge, or settlement attorney will assist the parties to settle or to streamline all non-custody or visitation issues or to assist in determining the issues for trial. Upon agreement of the parties, the Court may also appoint the FCSO as a temporary judge for the listing and sale of real estate. The FCSO will conduct a Status Conference to address any outstanding procedural milestones that have not been met. The FCSO has the discretion to set return SOC appointments without the agreement of the parties. If the case does not settle and no further SOC appointment is set, the FCSO will set the matter for a Status Conference with the APJ, or if the case requires a CRC under Family Code Section 2451(a)(2) and Cal. Rules, Rule 5.83(c)(7), the FCSO will schedule a CRC with the APJ, on a date convenient to the parties and the Court, but in no event more than one hundred eighty (180) days after the completion of the SOC. Parties attending an SOC will have satisfied the requirement to attend a Status Conference for that one hundred eighty (180) day period. Another Status Conference, SOC, or CRC will be scheduled at the conclusion of the SOC to meet the scheduling requirements for the next one hundred eighty (180) day period.

(Effective 1/1/2022)

(2) CALENDAR

a. The SOC calendared by attorneys or self-represented parties must be set by agreement. Parties and attorneys may contact the Calendar Clerk at any time, but in no event later than forty (40) calendar days before the Mandatory Settlement Conference (MSC).

(Effective 1/1/2022)

b. A party may also request an SOC when filing a Request for Trial (Local Form FM-1012).

(Effective 1/1/2022)

c. The Court may order the parties to an SOC, even over an objection, at any time.

d. The SOC may be continued or vacated upon the submission of a letter copied to all counsel and self-represented parties indicating the agreement of the parties, or their attorneys, and filed with or faxed to the Court Clerk at least two (2) court days prior to the date of the scheduled SOC. An agreement to continue or vacate the SOC submitted in conformance with this Rule will be deemed approved unless the FSCO Clerk notifies the parties otherwise.

(Effective 1/1/2022)

e. In the event that the SOC is taken off-calendar without a further SOC or Status Conference set, the FCSO or Temporary Judge will refer the case for a Status Conference with the APJ and may make a recommendation for sanctions.

(Effective 1/1/2015)

(3) PROCEDURES

a. Preliminary Declarations of Disclosure must be served by all parties within the time frame specified in Cal. Rules, Rule 5.83, and in all cases at least ten (10) days prior to the SOC.

(Effective 1/1/2022)

b. All attorneys and parties must participate in the SOC. The Court or the Family Court Settlement Officer may permit parties or attorneys to attend by telephone or video so long as the request has been made in advance of the SOC.

(Effective 1/1/2022)

c. No Settlement Conference Statement is required at the SOC, but the parties should have available all necessary information.

(Effective 1/1/2013)

(4) ORDERS AFTER SOC AND STATUS CONFERENCE

To document the orders made at the SOC and Status Conference, and at the discretion of the FCSO, the parties may use the Order After Status Conference on Local Form FM-1123, or other order issued by the FCSO.

(Effective 1/1/2022)

D. REQUEST FOR TRIAL

(1) Trials may be requested at a Status Conference, at a CRC, or in a filed Request for Trial, a local form that is not required. (Local Form FM-1012.) A Request for Trial, however, may not be used for trials on custody or visitation issues or Domestic Violence Prevention Act restraining orders. After the Request for Trial is filed, the Clerk's Office will schedule a Status Conference, unless the Court orders the case to a CRC.

(Effective 1/1/2022)

(2) If one party files a Request for Trial and the other party contends that the matter is not ready for trial or disagrees with the time estimate, that party must file a Request for Trial form (Local Form FM-1012), explaining that disagreement.

(Effective 1/1/2022)

E. CASE RESOLUTION CONFERENCE (CRC)

(Effective 7/1/2013)

(1) CALENDAR

a. In any Dissolution, Nullity, Legal Separation, Termination of a Domestic Partnership, Custody and Support, or Uniform Parentage Act case, a CRC may be scheduled as follows:
   1) at the direction of the Court at any time;
   2) at the request of the FCSO; 2) at the request of the FLFO;
   3) at the request of a party approved by the Court; or,
   4) following a Request for Trial.

b. In deciding that a case requires a CRC, the Court should consider, in addition to procedural milestones, the factors described in Cal. Rules, Rule 5.83(c)(7).

c. In order to change the date of a CRC in advance without attending, attorneys or self-represented parties must complete and submit a Request and Order to Change Case Status or Resolution Conference Date (Local Form FM-1059) at least ten (10) calendar days before the CRC. Appearance at the CRC is required unless the judicial officer approves the change.

(Effective 1/1/2022)

(2) CASE RESOLUTION PLAN ORDERS AT CRC

(Effective 7/1/2013)

At a CRC, the Court will review the status of the case and progress toward efficient resolution. At any CRC, the Court may:

a. Make any of the orders that could be made at a Status Conference;
b. Limit, schedule, or expedite discovery, including the disclosure of expert witnesses;
c. Appoint court experts upon stipulation and allocate their expenses, or schedule a hearing for appointment of Court experts and the allocation of the expenses;
d. Appoint an attorney for a minor child upon stipulation or schedule a hearing on the appointment and the fee allocation;
e. Order or review a Family Centered Case Resolution Plan in accordance with Family Code Sections 2450 and 2451;

(Effective 1/1/2022)

f. Set or reset trials, settlement conferences, or hearings, including bifurcating issues for trials;
g. Make orders relating to subpoenas issued to Family Court Services personnel;
h. Order further Status Conference or CRC; and
i. Take any other actions permitted by law that would promote a just and efficient disposition of the case.
j. To document the orders made at the CRC, the parties must prepare the Order After Case Resolution Conference on Local Form FM-1123, and present to the Court for signature at the conclusion of the hearing, unless otherwise ordered by the Court. Self-represented parties may seek the assistance of the Family Court Clinic to prepare the Order.

(Effective 1/1/2022)

(3) ATTENDANCE

a. Attorneys and self-represented parties must attend each CRC unless excused in advance by the Court, the case has been dismissed, or a Judgment resolving all issues has been entered. The Court may permit parties to attend by telephone by advance order as provided above in Rule 6(B)(3)b. Parties represented by an attorney do not have to attend a CRC unless ordered by the Court to appear.

(Effective 1/1/2022)

b. If the Court determines that appearances at a CRC are not necessary, the Court may notify the parties and, if stipulated, issue a FCCRP order without an appearance at a conference.

(4) STATUS OR CASE RESOLUTION CONFERENCE QUESTIONNAIRE

If a party requests a trial or long cause hearing, each self-represented party or attorney must file and serve on the other self-represented party or attorney a completed Status or Case Resolution Conference Questionnaire (Local Form FM-1010) at least ten (10) calendar days before any scheduled Status Conference or CRC. If no trial or long cause hearing has been requested, the Questionnaire (Local Form FM-1010) is optional. If a Questionnaire is filed by a party, that party must bring two (2) copies of his or her Questionnaire to the Status Conference or CRC.

(Effective 1/1/2022)

F. MANDATORY SETTLEMENT CONFERENCE (MSC)

(1) CALENDAR

a. An MSC will be set in all family law cases set for trial. An MSC may be set for any long cause hearing. The MSC will be conducted approximately two (2) weeks before trial or hearing. Family law matters are usually set for an MSC and trial or long-cause hearing at Status Conference, CRC, or a Custody Settlement Conference.

(Effective 1/1/2022)

b. Once a trial (or long cause hearing) and MSC are set, no continuances will be granted except upon noticed motion for good cause. The parties may stipulate that the matter may go off calendar subject to Court approval, by notifying the clerk of the

APJ and the calendar secretary at least one (1) week before the scheduled trial date or MSC. Any case that has been taken off the trial calendar by stipulation, can be restored to the trial calendar either by noticed motion or by requesting a further Status Conference or CRC.

(Effective 1/1/2022)

(2) MANDATORY ATTENDANCE

All parties must attend the MSC fully prepared for trial on all calendared unresolved issues. Attorneys must hold at least one (1) face-to-face or telephone settlement discussion and have made a full exchange of all relevant information before the MSC. If a party lives outside of California, the Court may exempt that party from appearing if requested in advance, and (1) the party is available on telephone standby and (2) the other party has been previously notified by letter.

(Effective 1/1/2022)

(3) SETTLEMENT CONFERENCE STATEMENT

At least ten (10) calendar days before the MSC, or fifteen (15) calendar days if service is by mail, each party must file and serve on the other party a Settlement Conference Statement. If the case has been previously set for an MSC, the Settlement Conference Statement previously filed may be resubmitted by letter. The Settlement Conference Statement must contain detailed statements of the party's position on each issue to be decided at the long cause hearing or trial. If some issues were previously resolved, the Settlement Conference Statement must describe that resolution and refer to any filed supporting documents. If attachments to the Settlement Conference Statement collectively exceed twenty (20) pages, the attachments should be lodged with the Court separately from the Statement, and will be returned to the party at the conclusion of the MSC.

(Effective 1/1/2022)

G. FAMILY LAW JUDICIAL SETTLEMENT PROGRAM

Parties may apply at the earliest opportunity to participate in a settlement session with a sitting judicial officer who has agreed to participate in the program. The program is governed by the following rules:

(1) ELIGIBILITY/CRITERIA FOR PARTICIPATION

a. The case will consume significant court resources, and would be set for a lengthy trial in the Civil Division.
b. The parties and their attorneys represent in good faith that they desire to resolve the case, and that they agree to participate in a settlement session with an agreed-upon judicial officer.
c. The parties are prepared to complete a settlement session as soon as the case is accepted into the program.
d. The Court has obtained jurisdiction over all necessary parties so that a resolution resulting from a settlement session will be final.
e. The Supervising Family Judge accepts the case for the program despite the failure to satisfy one or more of the above-stated criteria.
f. This settlement program may not be appropriate in cases involving domestic violence. If requested in such cases, the Settlement Judge may schedule separate sessions with the parties, or provide separate locations for the parties during the session.

(2) PROCEDURE

a. Application must be made on the Family Law Judicial Settlement Program Stipulation and Order form (Local Form FM-1119). The application must be signed by all counsel and self-represented parties. The All-Purpose Judge (APJ) also may request that certain cases apply to the program, with the agreement of all parties and counsel.

(Effective 1/1/2022)

b. The application must be submitted to and approved by the Family Supervising Judge.
c. When the application is approved, counsel and/or self-represented parties must promptly contact the department of the judge selected to conduct the settlement session, to schedule the session. Settlement sessions will be conducted on a day selected by the Settlement Judge.
d. When the application is approved, all law and motion and discovery proceedings will be stayed until completion of the settlement session, except as otherwise agreed by the parties or ordered by the Court.

(Effective 1/1/2022)

(3) TIMELINE

a. The settlement session must commence within thirty (30) days of approval of the application, and must be completed no later than sixty (60) days after approval of the application, except as otherwise ordered by the Court.

(Effective 1/1/2022)

b. The case will be set for Settlement and Case Status Review approximately seventy (70) days after approval of the application with the APJ.

(Effective 1/1/2022)

(4) PERSONS ATTENDING/STATEMENTS

a. Lead trial counsel, parties, and persons with full authority to settle the case must personally attend the settlement session, unless excused by the Settlement Judge for good cause. If financial issues are to be discussed, the parties must bring their financial experts to the settlement session, unless excused by the Settlement Judge for good cause. The financial experts must confer prior to the settlement session to identify areas of agreement and/or disagreement. If any consent to settle is required for any reason, the person or persons with that consensual authority must be personally present at the settlement session, unless excused by the Settlement Judge for good cause.

(Effective 1/1/2022)

b. Counsel and self-represented parties must submit to the Settlement Judge and serve on all parties, but not file, full written statements of their position regarding settlement no later than five (5) calendar days before the settlement session.

(Effective 1/1/2022)

(5) SETTLEMENT CONFERENCE

a. A settlement conference conducted under the Family Law Judicial Settlement Program is conducted under Family Code Section 2451. There is no provision for confidentiality of communication, unless otherwise provided in Evidence Code Section 1152(a) or other legal authority.

(Effective 1/1/2022)

b. If a settlement session before the Settlement Judge results in either a full or a partial settlement, the agreement must be reduced to writing by the parties. Although the parties may place their agreement on the record, the Settlement Judge will not expand on or interpret any incomplete term of the settlement placed on the record if the parties are unable to finalize a written agreement after the settlement session. The parties may stipulate that the Court will retain jurisdiction over them to enforce the settlement, pursuant to Code of Civil Procedure Section 664.6.

(Effective 1/1/2022)

(6) FURTHER COURT PROCEEDINGS

a. The Settlement Judge is subject to the provisions of Evidence Code Section 703.5

(Effective 1/1/2022)

b. At the conclusion of the settlement session, and with notice to the parties, the Settlement Judge may report in writing to the APJ whether all or part of the case has settled, and/or make recommendations as to the process by which some or all of the remaining issues in the case may be most expeditiously resolved.

(Effective 1/1/2013)

RULE 7 DUTIES OF THE FAMILY LAW FACILITATOR

In addition to the duties mandated by the Family Law Facilitator Act, Family Code § 10000 et. seq., the Family Law Facilitator shall have the following duties:

(Effective 1/1/2010)

A. Meeting with parties when both sides are self-represented to mediate issues of child support, spousal or partner support, and maintenance of health insurance, subject to Family Code § 10012.

(Effective 1/1/2022)

B. Drafting stipulations, which may include issues other than those specified in Family Code § 10003. If the parties are not able to resolve issues with the assistance of the Family Law Facilitator, the Facilitator, before or at the hearing, and at the Court's request, shall review documents, prepare support schedules, and advise the Court whether the matter is ready to proceed.

(Effective 1/1/2011)

C. Assisting the clerk in maintaining records.

D. Preparing orders documenting the Court's announced order where both parties are self-represented or in those cases with one attorney where the Court refers the self-represented party because the order benefits that party.

(Effective 1/1/2011)

E. Serving as a special master and making findings to the Court, unless the Facilitator has served as a mediator in the case.

(Effective 1/1/2011)

F. Participating in the operation of the Family Court Clinic, including the training and supervision of volunteers.

(Effective 1/1/2011)

RULE 8 DEFAULT OR UNCONTESTED JUDGMENT

A. GENERAL POLICY

(1) All uncontested and default family law judgments must be obtained by declaration through the Default Clerk except that a default hearing is required for nullity of marriage cases. Additionally, the Court may set a default matter for hearing or otherwise accept stipulated default Judgments at its discretion.

(Effective 9/18/2020)

(2) Litigants are encouraged to use and file the Judgment Checklist for dissolution and legal separation cases (Form FL-182) or Family Law Parentage Judgment Checklist for parentage cases (Attachment FM-1053) with any proposed default or uncontested judgment.

(Effective 1/1/2016)

(3) Default will not be entered if Respondent's address as stated on Petitioner's Request to Enter Default (Form No. FL-165) is the same as Petitioner's address, unless Petitioner also files a declaration stating under oath that Petitioner and Respondent live at the same address.

(Effective 7/1/2014)

B. CHILD CUSTODY AND VISITATION

(1) To obtain custody and visitation orders by default in a family law judgment, at least one of the following conditions must exist:

(Effective 7/1/2014)

a. The proposed orders are based on the Child Custody and Visitation Application (Form FL-311) that was attached to and filed with the Petition;

(Effective 7/1/2014)

b.

(Effective 7/1/2014)

There are existing custody and visitation orders; or

c.

(Effective 7/1/2014)

A settlement agreement or stipulation is being filed with the proposed family law judgment.

If none of these conditions apply, Petitioner shall file and serve, by personal delivery, a declaration in support of the proposed orders at least 15 calendar days before the Judgment is submitted. Petitioner may use the Declaration for Default Custody and Visitation Orders form (Attachment FM-1025).

(Effective 7/1/2014)

RULE 9 COUNSEL FOR MINOR CHILDREN

(Effective 7/1/2009)

A. PANEL OF COUNSEL ELIGIBLE FOR APPOINTMENT

The Family Law Division has elected, pursuant to CRC 5.240(d), to create and maintain a panel of counsel meeting the minimum qualifications set forth in the Cal. Rules, whom the Court may consider for appointment as counsel for minor children in family law proceedings. Attorneys wishing to be included on the Court's panel must submit Judicial Council form FL-322 and an Initial Application (attached form FM-1081) to the Supervising Judge. Attorneys selected for the panel who are serving as counsel for minors or who wish to remain on the panel for future appointments must submit to the Supervising Judge an updated Judicial Council form FL-322 and a Renewal Application/Eligibility Declaration (attached form FM-1082) each year no later than December 31.

(Effective 1/1/2013)

B. COMPLAINT PROCEDURE

In a family law proceeding in which the Court has appointed counsel for minor children, any party or counsel or minor child may present a complaint about the performance of appointed counsel. The complaint must be in writing, filed and served on all counsel and self-represented parties, and a copy must be delivered to the courtroom clerk for the APJ. The APJ shall respond to the complaint, either by setting the matter for hearing or by issuing a written response.

(Effective 7/1/2009)

C. APPLICATION FOR PAYMENT OF COMPENSATION

(1) Appointed counsel may apply for payment of fees and costs when counsel has billed a minimum of 10 hours or when representation has concluded. Appointed counsel shall promptly apply for payment when costs and fees at the applicable billing rate reach $4,000. Application for payment shall be consistent with any Court determinations under CRC 5.241 and shall be made ex parte, using local form Application for Payment of Fees and Costs of Children's Counsel (attached form FM-1067), and following the procedures set out in that form.

(2) Any response by a party to appointed counsel's application for payment shall use the Response to Application for Payment of Fees and Costs by Children's Counsel (attached form FM-1068), following the procedures set out in that form.

(Effective 1/1/2009)

D. EX PARTE APPLICATION TO BE RELIEVED AS COUNSEL FOR MINOR CHILD

Appointed counsel may apply via an ex parte application and order to be relieved as the counsel for minor child. The attorney for the minor(s) shall serve the parties or attorneys for the parties the Ex Parte Application and Order to be Relieved as Counsel for Minor Child (attached form FM-1187) along with a blank Response to Application to be Relieved as Counsel for Minor Child (attached form FM-1188). Parties or attorneys for the parties will have 21 calendar days from date of the application to respond to the request. Responses shall be served on the counsel for the minor child and all other parties. If no response is received, the court may grant the request if good cause exists.

If a response is received and the party or counsel for a party objects to the request to be relieved, a Status Conference may be set by the court to consider the objection.

(Effective 7/1/2019)

APPENDIX

DISCRETIONARY POLICY STATEMENTS FAMILY LAW DIVISION

These policies are not Local Rules and do not have the force of law, and they do not replace judicial discretion.

These policies are published to provide parties and counsel an understanding of decisions the Court is likely to make in specific factual situations commonly found in family law litigation, but not covered by case law or statute.

These policies are general statements describing how the Court will usually deal with the specific issues set forth below. The intent of the Court in adopting these statements is to encourage and assist parties and counsel to resolve disputes.

These policies will apply to temporary and permanent orders, in the Court's discretion. They will not apply to a given case when contrary to law or when the application results in undue hardship.

A. SPOUSAL OR PARTNER SUPPORT

1. Determination of Income
   The incomes of the payor and the payee will generally be determined in the same manner as set forth in the applicable provisions of current statutory child support law, with due consideration of applicable spousal or partner support statutes.
2. Standard of Living During Marriage or Domestic Partnership
   In determining the standard of living during marriage or domestic partnership, as provided in current statutory and case law regarding the standard of living, the Court will usually base its findings on the combined gross incomes of the parties at the time of separation.
3. Application of Local Spousal or Partner Support Formula
   The Court will use the local spousal or partner support formula at temporary spousal or partner support hearings except in the following circumstances:
   a. The application would be inequitable; or
   b. The demonstrated need for the requested support is below the formula amount.
   In the interest of avoiding unnecessary litigation on this issue, the Expense Declaration of the payee will not be viewed as determining or fixing need, but as indicating the level of expenditure under the existing circumstances.

(Effective 1/1/2005)

B. PARENT/CHILD TIME SHARING PERCENTAGES

The Parent/Child Time Sharing Percentages listed below may be used in calculating guideline child support in addition to similar charts which are part of the Judicial Council approved child support software. The appropriate percentage for the time share with the children is a question of fact for the Court.

(Effective 1/1/2005)

(1) Time Sharing Arrangements

	Days	%
a. 1 weekend per mo.	24	7
b. 1 extended weekend per mo.	36	10
c. 2 weekends/mo	48	13
d. 1 weekend/mo + 1 evening/wk	50	14
e. Alternate weekends	52	14
f. Alternate weekends + 2 wks summer	67	18
g. Alternate weekends & 1/2 holidays + 2 wks summer (If CP has 2 wks over summer too, then)	69	19
h. Two extended weekends/month	72	20
i. Alternate weekends + 1 evening/wk	78	21
j. Alternate weekends + 1 overnight/wk	104	28
k. Alternate extended weekends	78	21
l. Alternate weekends & 1/2 holidays + 4 wks summer,(with alternating weekends continuing in summer, and makeup if weekends lost due to the 4 weeks)	77	21
m. Alternate weekends & 1/2 holidays +4 weeks summer (with no alternating weekends all summer)	75	21
n. Alternate weekends & 1/2 holidays + 1/2 summer (with or without alternate weekends in summer)	82	22
o. Alternate extended weekends + 1 evening/wk	104	28
p. Alternate extended weekends + 1 overnight/wk	130	36
q. Alternate weekends & 1/2 holidays, 1 evening/wk, + 4 wks summer (with alternating weekends continuing in summer, and makeup if weekends lost due to the 4 weeks)	103	28
r. Alternate weekends and 1 evening/wk when school is in session, + 1/2 school vacations	104	28
s. Three days/wk	156	43
t. First, third, and fifth weekends	56	15
u. First, third, fifth, extended weekends	84	23
v. First, third, and alternate fifth weekends	52	14
w. First, third, alternate fifth extended weekends	78	21

(Effective 1/1/2004)

(2) Definitions

a. Weekend - 6 p.m. Friday – 6 p.m. Sunday (2 days)
b. Extended Weekend - School closing Fri. – school opening Mon. (3 nights, 2 days)
c. 1st & 2nd; or 2nd & 4th Weekends - Same as Two Weekends per month

d. 1st & 3rd, & alternating 5th Weekends Same as Alternate Weekends
e. Afternoon - After school until evening without dinner (1/4 day)
f. Evening - After school – after dinner
(½ day; 1 eve./wk=26 days/year)
g. Overnight - School close mid-week – School opening next day (1 day) (1 day; 1 overnight/week = 52 days/year)
h. Holidays - New Year's, President's Day, Easter, Memorial Day, Mother's Day or Father's Day, July 4, Labor Day, Thanksgiving (2 days), Christmas, (½ holidays = 5 days/year)
i. Summer - 10 weeks (70) days; some schools may vary, such as those using an all year calendar
j. School Vacations - Summer, 2 wks Christmas, 1 wk Spring, (13 wks/year; ½ vacations = 45.5 days/year, not counting subtraction of NCP's ordinary alternate weekend and mid-week visits and CP's cross visits

(Effective 1/1/2002)

C. TRAVEL EXPENSES FOR VISITATION

Travel expenses the Court will usually consider in setting child support include, but are not limited to, air travel costs, bus or train travel costs, and automobile travel costs outside the Greater Bay Area, or a comparable distance.

(Effective 1/1/1998)

JUVENILE RULES

INTRODUCTION

These Local Rules are intended to supplement state statutes which are principally found in the Welfare and Institutions Code. In addition, they supplement the California Rules of Court relating to Juvenile Court matters (see CRC 5.500 et seq.).

Definitions: Juvenile Court refers to Juvenile Dependency Court and Juvenile Justice Court. For Juvenile Dependency Court, these Rules refer to those under the age of 18 as "minors" or "child/children" to distinguish them from the "non-minor dependents," who are ages 18-21. Dependency Court Rules that refer to "youth" apply to minors (those ages 0 to 17) and non-minor dependents (those ages 18-21). For Juvenile Justice Court matters, the term "youth" refers to all those involved in Juvenile Justice Court, no matter their age. Where Juvenile Justice Rules apply to those under the age of 18, the term "minor" is used.

There are four sections to these Local Rules. The first includes general provisions which apply to all Juvenile Court matters. The second applies to Juvenile Dependency proceedings (W & I Code Section 300, et cetera). The third applies to Juvenile Justice proceedings. The fourth applies to the different relationships of Divisions of the Superior Court.

To the extent that any of these Rules conflicts with either state statute or Rule of Court, the Local Rule is of no legal effect. These Rules cover Juvenile Court law, but not Juvenile Traffic hearings or Traffic hearing appeals.

These Rules adopt the rules of construction and the severability clause in CRC 5.501(c) and (d).
(Effective 1/1/2022)

RULE 1 GENERAL PROVISIONS OF THE JUVENILE COURT

A. JUDICIAL ADMINISTRATION

(1) Presiding Judge of the Juvenile Court
A Presiding Judge of the Juvenile Court will be appointed. The Presiding Judge will be selected by the Presiding Judge of the Superior Court. To the extent possible, the Presiding Judge of the Juvenile Court will remain in that position for at least three (3) years.

(2) Juvenile Court Actions
The Juvenile Court hears both Dependency and Juvenile Justice actions. Juvenile Justice actions were formerly called "Delinquency" actions. All references to Juvenile Delinquency Court, Delinquency judicial officers, Delinquency, Juvenile Delinquency, and Delinquency actions, cases, calendars, or matters will now be referred to as Juvenile Justice Court, Juvenile Justice judicial officers, Juvenile Justice, and Juvenile Justice actions, cases, calendars, or matters.

(3) Supervising Judge in the Juvenile Court
A Supervising Judge of both the Dependency and Juvenile Justice actions in the Juvenile Court will be appointed. The Presiding Judge of the Juvenile Court in most cases will be the Supervising Judge of either the Dependency or the Juvenile Justice calendars.

B. RELATIONSHIP OF THE JUVENILE COURT TO OTHER CALENDARS

(1) Assignment of Juvenile Court Cases
It is the policy of the Juvenile Court to have all matters heard by a judicial officer assigned to the Juvenile Court. All cases in Juvenile Court will be subject to assignment to a judicial officer for all purposes at the time of filing of the action who will thereafter handle all proceedings, if possible, involving the matter, including trial, except as otherwise provided or required by law.

(2) Master Calendar Referrals (Long Cause Cases)
Only the Presiding Judge of the Juvenile Court, the Supervising Judge of the Dependency/Juvenile Justice calendar, or some judicial officer acting in one of those capacities will assign any case to the Supervising Judge of the Civil Division in all Dependency cases, and to the Supervising Judge of the Criminal Division in all Juvenile Justice cases.

(3) Cases Involving Employees
If a court employee or deputy sheriff working at Juvenile Court, or a member of his or her family, is a party to a case, the clerk or Presiding Judge of the Juvenile Court will transfer the case to another facility or Division.

C. MOTIONS

No motion will be accepted by the Court Clerk unless it is accompanied by a proof of service.

D. FORMAT OF DOCUMENTS SUBMITTED FOR FILING REQUIREMENTS

(1) MANDATORY ELECTRONIC FILING AND SERVICE

a. Refer to Rule 6 of the General Court and Administration Rules.

b. Represented Parties Entitled to Service
Represented parties in Juvenile Dependency cases who are entitled to service are not required to receive documents electronically, but may agree to receive electronic service by filing with the Clerk of the Court and serving on all parties, either electronically or by non-electronic means, a Consent to Electronic Filing and Service and Notice of Electronic Service Address

(Effective 1/1/2022)

(Local Form CW-9024).

(2) FORMAT OF DOCUMENTS SUBMITTED FOR FILING

a. Documents that exceed ten (10) pages must be submitted held by binder clips or two prong fasteners.

b. Exhibit attachments to pleadings must be separated by a standard size sheet of paper with a title identifying the sequence of the exhibit. No tabs may be included in any documents submitted for filing.

E. PROPOSED ORDERS

Any proposed order submitted to the Court for signature must contain a footer with the title of the order on every page, including the signature page, unless it is a Judicial Council form. In addition, the Court signature and date lines must not be on a page by themselves; the signature page must contain some text of the order.

F. PRE-HEARING DISCOVERY

(1) Timely Disclosure of Informal Discovery

Pre-hearing discovery will be conducted informally. Except as protected by privilege, all relevant material must be disclosed in a timely fashion to all parties to the litigation. (CRC 5.546).

(2) Formal Motions

a. Formal Discovery

Only after all informal means have been exhausted may a party petition the Court for discovery. Any noticed motion must state the relevancy and materiality of the information sought and the reasons why informal discovery was not adequate to secure that information. The motion must be served on all parties at least five (5) Court days before the hearing date. The date for the hearing will be obtained from the Juvenile Division Court Clerk. A courtesy copy must be delivered to the Court before whom the matter is scheduled to be heard.

b. Any responsive papers must be filed and served two (2) Court days prior to the hearing.

c. Civil Discovery

In order to coordinate the logistics of any such discovery, no depositions, requests for production of documents, interrogatories, requests for admissions, or other similar types of civil discovery are permitted without approval of a judicial officer of the Juvenile Court upon noticed motion.

G. EX PARTE ORDERS

(1) Before submitting ex parte orders to a judicial officer for approval, the applicant must give notice of, and a copy of the application for ex parte orders, to all counsel, social workers, the Probation Department, and parents and/or legal guardians who are not represented by counsel or explain the reason notice has not been given.

(2) The party requesting ex parte orders must inform the judicial officer that notice has been given by completing Declaration Re Notice of Ex Parte Application (Local Form JV-2000). The original Declaration and accompanying Application for Order must be submitted to the courtroom clerk in the Juvenile Department where the pending action would normally be heard or eFiled in accordance with Rule 6.

(3) An opposing party must present any written opposition to a request for ex parte orders to the courtroom clerk within forty eight (48) hours of receipt of notice or may have their opposition noted on the Application form. The Court may render its decision on the ex parte application or set the matter for hearing. The applicant is responsible for serving all noticed parties with copies of the Court's decision or notice that the Court has calendared the matter. The applicant must also notify all persons entitled to notice of any hearing date and time set by the Court.

(4) Notice may be excused if the giving of such notice would frustrate the purpose of the order and cause the child/youth to suffer immediate and irreparable injury.

(5) Notice may also be excused if, following a good faith attempt, the giving of notice is not possible, or if the opposing parties do not object to the requested ex parte orders.

H. ATTENDANCE AT HEARINGS (CRC 5.530)

Unless excused by the Court and except as indicated in Local Juvenile Rule 2 (E)(2), and subject to the conditions in Local Juvenile Rule 1(G)(1) regarding youth's attendance at Juvenile Justice hearings, each party and attorney must attend each scheduled Juvenile Court hearing.

(1) Youth Attendance at Juvenile Justice Hearings

a. Youth must attend all Juvenile Justice hearings unless specifically excused by the Court. All parties may appear remotely by videoconference. If the parties are not available for videoconference, they may appear telephonically.

b. Waiver of a youth's presence may be made only by the Court. A waiver of appearance will only be for good cause, requiring extraordinary reasons. If a request is made to excuse the youth's presence on the ground that it will inconvenience the youth, the Court will make every effort to continue the case to a time certain when the youth can appear without the inconvenience.

I. SETTLEMENT CONFERENCES

(1) Settlement conferences will be held prior to every contested hearing, unless expressly deemed unnecessary by the judicial officer setting the contested hearing.

(2) All represented parties must electronically send all briefs, motions in limine, and witness lists to all parties.

(3) The trial attorneys and all parties must be present at the settlement conference, unless expressly excused by the Court.

(Effective 1/1/2022)

(4) Prior to the calling of the case, the parties or their attorneys must meet in order to determine the issues to be tried and any areas of agreement.

J. ACCESS TO COURTROOM BY NON-PARTIES (W & I CODE SECTIONS 345, 346, 676)

(1) Unless specifically permitted by statute, Juvenile Court proceedings are confidential and will not be open to the general public. Upon a sufficient showing, the Court may permit relatives and any-nonrelative extended family members of the youth as well as advocates, mentors, and members of the Court's partner agencies to be present at the hearing and address the Court. The Court will hear from all parties before granting such permission.

(2) The Court encourages interested persons, including trainees and students, to attend Juvenile proceedings in order to better understand the workings of the Juvenile Court. The Court retains the discretion to determine in each case whether any such interested party will remain in the courtroom.

(3) The Court or its agent will remind each such nonparty that the names of parties and/or identifying information from any case are confidential and may not be repeated to anyone outside Court. Any such person may be required by the Court to sign an acknowledgement and agreement relating to his/her observation of Court proceedings.

K. RELEASE OF INFORMATION RELATING TO JUVENILES

W & I Code Section 827, CRC 5.552, and Local Juvenile Rules control the review, copying, and use of Juvenile Court records. These statutes are designed to balance the right to access which may be provided by law to a specific individual, with the Court's obligation to protect and apply all applicable privileges and protections to be afforded as determined by the nature of the documents at issue. Juvenile case files are not discoverable by subpoena (CRC 5.552(b)).

(1) Discovery of Juvenile Documents or Records

a. Inspection of Juvenile Case Files

i. Except as indicated within this Rule, any Standing Orders, or as specified in W & I Code Sections 827 and 828 and CRC 5.552, in all cases in which a person or agency seeks access to Juvenile Court documents or records, including documents records maintained by the Juvenile Court Clerk, the Department of Family and Children's Services ("DFCS"), or the Probation Department, the person or agency must first inspect the Juvenile Court file if such person or agency is authorized by law to do so under W & I Code Section 827(a). However, should the child be adopted out through the Dependency Court, their counsel's right of access will be terminated.

ii. If the person or agency is not statutorily or otherwise authorized to inspect the Juvenile Court file, the person or agency must petition the Juvenile Court for permission for such inspection by filing a Request for Disclosure of Juvenile Case File (Judicial Council Form JV-570). Such petition must make a prima facie showing of sufficient relevance and necessity for inspection and provide notice to the relevant parties. If the showing is made, the judicial officer may grant an Order of Inspection permitting the party to inspect the Juvenile Court file.

iii. All parties, including those statutorily entitled to inspect, must file a Declaration for Juvenile Court Records (Local Form JV-2002 or JV-2002a) for the appropriate division prior to commencing the inspection.

b. Copies of Documents or Records

Persons or agencies specified in W & I Code Section 827(a)(1)(A), (B), (C), (D), (E), (F), (H), (I), (J), and (P), identified below, may copy documents or records without Court authorization. All other persons or agencies must obtain the approval of the Supervising Judge of the Juvenile Court pursuant to the filing of a W & I Code Section 827 Petition. Such permission may be granted through an Order of Inspection.

i. District Attorney's Office, City Attorney's Office, or City Prosecutor authorized to prosecute criminal or juvenile cases under state law.

ii. The child/youth who is the subject of the proceeding.

iii. The child/youth's parent or guardian.

iv. The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child/youth.

v. The county counsel, city attorney, or other attorney representing the petitioning agency in a dependency action.

vi. Members of the child protective services agencies as described in Penal Code Section 11165.9.

vii. Authorized staff who are employed by, or authorized staff of entities who are licensed by, the State Department of Social Services, as necessary to the performance of their duties related to resource family approval, and authorized staff who are employed by the State Department of Social Services as necessary to inspect, approve, or license, and monitor or investigate community care facilities or resource families, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate, and to ascertain compliance with the rules and regulations to which the facilities are subject.

viii. The Department of Justice, to carry out its duties pursuant to Penal Code Sections 290.008 and 290.08 as the repository for sex offender registration and notification in California.

c. Petition for Juvenile Case Files

i. After inspection, the person or agency must file a Request for Disclosure of Juvenile Case File (Judicial Council Form JV-570). The Petition must be filed even if no action has been commenced in Juvenile Court under W & I Code Sections 300, 601, or 602. The person or agency seeking the documents or the records must give notice to all necessary parties (See W & I Code Section 827 and JV-570).

ii. The Petition must state with specificity the information sought and the relevance to any related legal action, including the specific details of the related legal action. The Petition must be supported by a declaration of counsel and/or a Petitioner, and, if necessary, a memorandum of points and authorities.

iii. The Petition must include two (2) copies of the Juvenile Court documents or records requested for release in a sealed envelope marked "confidential" with a notation that the copies are lodged for review by the Court in connection with the W & I Code Section 827 Petition. Of the two (2) copies, one (1) set must be the unredacted version of the original documents selected from the Juvenile Court file, unaltered in any fashion. The second set must be submitted with redaction of all content that is not relevant to the underlying action for which any document is sought, and redaction of all content that may be inappropriate for release. The Petition must identify with particularity as to each document, the reasons that the document should be released pursuant to the requirements of CRC 5.552.

(Effective 1/1/2023)

iv. The Petition must also include a Proposed Order After Judicial Review (Judicial Council Form JV-574), including the following language:

"The released documents are to be used only in the above captioned Santa Clara County Superior Case. Experts are permitted to use the documents for purposes of the pending proceeding, but must return them to counsel in a timely manner. Social workers are permitted to discuss the contents of the documents, and also to testify regarding the same if called as a witness. The documents may be disclosed to necessary persons in the pending court proceedings, as determined by the trial judge and subject to any additional orders made by that judge. Except as otherwise provided herein, the documents must not be published, disseminated, copied, or placed on the Internet. Upon completion of the pending proceedings, the petitioner is ordered to either return the documents to the Court or destroy and discard them."

v. In any request for Juvenile Court records where no record is found, that fact will be noted on the JV-570 Petition for Records Form and the Form will be returned to the petitioner.

vi. Whenever a person is seeking a copy of his/her own Juvenile Court records for the purpose of providing required information to the Immigration and Naturalization Service for citizenship purposes, or to the United States Armed Forces, or to obtain employment as reflected on the Declaration for Juvenile Court Record, the petitioner will receive a redacted copy of the dismissal order or minute order bearing the youth's name, date of birth, juvenile petition number, and date of dismissal.

d. Dissemination or Use of Documents or Records

(Effective 1/1/2023)

i. A Petition pursuant to W & I Code Section 827 is required for dissemination or use of documents or records and dissemination or use of documents or records must be in compliance with the Court's order on the W & I Code Section 827 Petition, except as otherwise specified in these Rules.

e. District Attorney

(Effective 1/1/2023)

i. When submitting a Petition under W & I Code Section 827, the District Attorney must, in addition to the Proposed Order After Judicial Review (Judicial Council Form JV-574), include the following language:

"The release of the attached documents pursuant to Welfare and Institutions Code section 827 is subject to the conditions set forth below.

Welfare and Institutions Code section 827, subdivision (a)(4), provides in part that: "A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court." While this provision prohibiting dissemination speaks only of dissemination by receiving agencies, it has been held to prohibit the dissemination of juvenile court records by individuals as well as agencies.

The released documents are to be used only in the above captioned Santa Clara County Superior Court Case. Experts are permitted to use the documents for purposes of the pending proceeding, but shall return them to counsel in a timely manner. The District Attorney is also authorized to give to defense counsel properly redacted copies of any portions of these documents that are exculpatory in nature and as required by the Brady Rule or as required to be discovered pursuant to Penal Code Section 1054.1. When documents are released to defense counsel due to the Brady Rule, that document must be released with a copy of this protective order.

Social workers are permitted to discuss the contents of the documents, and also to testify regarding the same if called as a witness. The documents may be disclosed to necessary persons in the pending criminal proceeding, as determined by the trial judge and subject to any additional orders made by that judge. Except as otherwise provided herein, the documents shall not be published, disseminated, copied, or placed on the Internet. Upon completion of the pending proceeding, the petitioner is ordered to either return the documents to the court or destroy and discard them.

Any document from this juvenile file that must be lodged in adult court will be placed under seal and/or a confidential envelope within the court file."

ii. District Attorney Obligation Where Petition is Filed by a Party to a Criminal Case. If the District Attorney has informed a party in a criminal case that information relevant to that case may be found in a Juvenile Court record, and the District Attorney is served with a copy of a W & I Code Section 827 Petition filed by that party, then not later than ten (10) Court days after service of the Petition, the District Attorney must lodge two (2) sets of copies of the relevant documents from the Juvenile Court file with the Court, in the same manner as specified in Rule 1(J)(1)(c)(iii) above.

(Effective 1/1/2023)

iii. A prosecuting attorney may, without separately filing a W & I Code Section 827 Petition, obtain and use a juvenile wardship petition charging an offense that qualifies as a strike prior and minute orders showing that the petition was sustained for the limited purpose of proving a prior strike allegation in adult Criminal Court. The right to disseminate these records is strictly limited to this purpose, and the prosecuting attorney must redact from the Juvenile Court records the name(s) of any youth co-participants and references to offenses other than the prior strike offense.

f. DFCS and Probation Department

(Effective 1/1/2023)

i. When DFCS, the Probation Department, or County Counsel in Santa Clara County is served with notice of a W & I Code Section 827 Petition calling for Juvenile Court file records, and the Probation Department and DFCS still maintains records about the child/youth, the Probation Department must continue to maintain and preserve all such records (1) until five (5) years from the date on which the jurisdiction of the Juvenile Court over the child/youth has terminated, or (2) for a period of one hundred eighty (180) calendar days following entry of the Court's order on the Petition, or until all proceedings on the appeal of any Petition have concluded. The longest period of time, above described, will govern the preservation of probation and DFCS files.

ii. DFCS is permitted to provide relevant documents to the attorney for a youth in a Juvenile Justice proceedings. The documents may include, but are not limited to, relevant portions of investigation notes or reports, progress notes, summaries, prior placements, medical and psychological evaluations, and court reports.

g. Law Enforcement

(Effective 1/1/2023)

In all cases in which a person or agency seeks records held by law enforcement, including police reports regarding youth who are the subject of Juvenile Court proceedings, the person or agency must follow W & I Section 827.9. W & I Code Section 827.9 governs the inspection, copying, and dissemination of law enforcement records. Anyone not specifically authorized by W & I Section 827.9, the Rules of Court, or other orders of the Court must submit a Petition pursuant to W & I Code Section 827. The Supervising Judge of Juvenile Justice Court or his or her designee may process these requests.

h. Criminal Cases

(Effective 1/1/2023)

i. Attorneys or defendants who are involved in a criminal proceeding in Superior Court, Santa Clara County, who seek Juvenile Court documents or records for use in the pending criminal action must, in addition to filing a W & I Code Section 827 Petition in the Juvenile Court, concurrently file a Declaration of Filing of Juvenile Court 827 Petition (Local Form CR-6082) in the criminal case.

ii. Where a defense attorney represents a client being criminally prosecuted by the District Attorney, or their designated agency pursuant to a conflict, and the Juvenile Division Court has in its possession W & I Code Section 602 Juvenile Justice records related to that client, the defense attorney may both inspect and copy that client's past Juvenile Justice records without a separate Order of the Juvenile Court.

iii. For the sole purpose of preparing and filing of statements in mitigation for sentencing or for requests to strike priors, the defense attorney may attach copies and/or refer to such records in any court documents. If said documents are used for sentencing purposes by the defense attorney, the Juvenile Justice records may also be used by the District Attorney, or the designated agency pursuant to a conflict, to supplement the record without a separate Order of the Juvenile Court.

iv. The defense attorney must seek Juvenile Justice records under this Rule only where the client is under prosecution by the Santa Clara County District Attorney or their designated agency pursuant to a conflict at the time the records are sought. This Rule does not apply to W & I Code Section 300 records.

v. When any such Juvenile Justice records in the Juvenile Court file are inspected or copied by defense counsel, the District Attorney or their designated agency pursuant to a conflict, pursuant to the provisions of this Rule, the Court's Declaration for Juvenile Court Records (Juvenile Justice) (Local Form JV-2002) must be submitted and filed, and must be dated and contain the name and state bar number of the attorney filing the request. No further dissemination of these Juvenile Court records may be made by any such attorney without further express permission from the Juvenile Court.

(2) Access to Juvenile Court Legal Files by Sixth District Appellate Program

a. Attorneys and legal assistants from the Sixth District Appellate Program are granted a right to inspect and copy Juvenile Court files in which an appeal or writ may be taken. The attorneys and legal assistants must identify themselves to the staff in the Court Clerk's office, and must present a Declaration regarding their request using Local Form JV-2002 or JV-2002a. Any records copied and all information obtained must be held in strict confidence and must not be disseminated to anyone not necessary to the litigation without further order of the Juvenile Court.

(Effective 1/1/2022)

b. The Sixth District Appellate Program must use the information gained from such files for all legitimate purposes consistent with the services they provide to the Sixth District Court of Appeal, including determining whether a notice of appeal or writ should be filed, determining the selection and recruitment of appointed appellate counsel, and assistance in perfecting appeals and writs.

c. The Declaration for Juvenile Court Records (Juvenile Justice) (Local Form JV-2002) or Declaration for Juvenile Court Records (Dependency) (Local Form JV-2002a) must be filed in the Court file.

(3) Access to Psychological Records by Juvenile Hall Medical Director

The Medical Director of Juvenile Hall or his/her designee must be provided a copy of all mental health evaluations of youth housed in Juvenile Hall. If the Probation Officer or Supervising Probation Officer finds that the contents of a diagnostic report rendered by the Division of Juvenile Justice are relevant to the duties of the Medical Director, the Medical Director must also be provided with a copy of that diagnostic report. Such reports and evaluations must be used exclusively by the medical personnel in Juvenile Hall and must not be released to any third parties without Court approval.

(4) Access to Court Files by Santa Clara County Victim Witness Assistance Center

a. The Santa Clara County Victim Witness Assistance Center staff are permitted to review any Juvenile Court file in which a youth has been committed to the Division of Juvenile Justice and when the youth has a restitution order as a condition of parole. The information gathered from any such review must be used only with respect to the Victim Witness Assistance Center carrying out its duties with regard to restitution to victims or the State Restitution Fund.

b. The staff, party, counsel, or investigator must fill out and present a Declaration regarding the request for records. (Local Form JV-2002 or JV-2002a.) A copy of Local Form JV-2002 or JV-2002a will be filed in the Court file.

c. Pursuant to Government Code Section 13954(d) and (e), law enforcement agencies must provide to the State Victim Compensation and Government Claims Board or to the Santa Clara County Victim Witness Assistance Center, upon request, a complete copy of the report regarding the incident and any supplemental reports regarding the crime, public offense, or incident giving rise to a claim of a crime victim processed by the Santa Clara County Victim Witness Assistance Center and the State Victim Compensation and Government Claims Board. The law enforcement agency supplying the information may, at its discretion, withhold the names of witnesses or informants if the release of such names would be detrimental to the parties or to an investigation currently in progress.

d. The Probation Department and social services agencies are authorized to release any information necessary to submit, determine, or verify the claim of any child victim for compensation pursuant to Government Code Sections 13950 through 13974.2. This information includes Emergency Response Services reports, including investigative findings, Probation Department and DFCS reports on the crime committed, and any petition and social report, including Court Orders or Restitution Orders.

e. The Court Clerk is authorized to release the Juvenile Court Petition and Report, including findings, for the purpose of filing or verifying claims on behalf of victims.

f. The Santa Clara County Victim Witness Assistance Center and the State Victim Compensation and Government Claims Board may use the information provided to verify and process the claim of the victim and for no other purpose without further Order of the Court.

(5) Defense Counsel Access to Juvenile Justice Case Files for Youthful Offender Parole (“YOP”) Hearings

Certain inmates serving lengthy state prison commitments are eligible for a Youthful Offender Parole ("YOP") Hearing. The law governing Youthful Offender Parole eligibility is set forth in Penal Code Sections 3051 and 3051.1. Many inmates who are eligible for YOP consideration have a Juvenile Case file with the Juvenile Justice Court. This Juvenile Case file may contain documents and/or information about the youth’s diminished capacity and other factors that can be used by defense counsel on the youth’s behalf to prepare a mitigation packet or mitigation hearing.

a. Defense counsel (or their representative) representing a youth or young adult in Santa Clara County who, on the basis of their charges and their age will be eligible for YOP, have the right to inspect, copy, and use the youth’s records for the mitigation packets that will be needed when the youth comes up for such a hearing, without separately filing a petition for disclosure under W & I Code Section 827.

b. Defense counsel must redact the names, addresses, phone numbers, social security numbers, or any other identifying information of any victim(s) contained in the Juvenile Case file. Defense counsel must also redact the names, addresses, phone numbers, social security numbers, or any other identifying information of any co-participants who were under the age of 18 at the time of the Juvenile proceedings. This does not waive the confidentiality of any other participant to the events in question.

c. The Juvenile Justice records may be used for YOP consideration in a criminal court of adult jurisdiction and/or the YOP hearings before the Parole Board.

L. RELEASE OF INFORMATION RELATING TO YOUTH BY LAW ENFORCEMENT

This Rule applies to all law enforcement agencies and officials in Santa Clara County:

(1) Identity of Youth

Arrest reports or other information in regard to the identity of individual youth under the age of 18 years who are the subject of Juvenile Court proceedings are not to be released to the press or other media or to any persons or public agency except as set forth in the Rules immediately below.

(Effective 1/1/2022)

(2) Information Regarding the Incident

The police report or information in regard to the incident may be released, with exceptions noted, to:

a. The youth, if he or she is self-represented in a Juvenile Court proceeding, or to his or her attorney consistent with W & I Code Section 827
b. The District Attorney of Santa Clara County.
c. The law enforcement agency of the youth's residence.
d. Other law enforcement agencies who require it for crime investigation or reporting purposes.
e. The Santa Clara County Probation Department.
f. Court personnel.
g. The Santa Clara County Department of Family and Children's Services.
h. The parents or legal guardian of the youth, unless there is a reference to another youth in the reports. In that situation, the request must be approved by the Juvenile Court.
i. The school attended by the youth.
j. Victims of juvenile crime may be given the names and addresses of the persons mentioned in the report, without reference to the status of any youth. The release of further information must be approved by the Juvenile Court.
k. Hospitals, schools, camps, Job Corps or placement agencies which require the information for the placement, treatment, or rehabilitation of the youth.
l. The persons entitled thereto under Vehicle Code Sections 20008-20012.
m. Any coroner or medical examiner.
n. The name of a youth 14 years of age or older taken into custody for the commission of a serious felony as defined by Penal Code Section 1192.7(c), and the offenses allegedly committed may be released at the request of any interested party if a hearing has commenced that is based upon a petition that alleges that the youth is a person within the description of W & I Section 602. (W & I Code Section 827.5.)

(3) Commission of Felony

After the law enforcement agency receives notice of the disposition of the case, if the youth was found by the Court to have committed a felony, the usual information may be transmitted to the CII, FBI, or other police agencies within California, but to no other persons or agencies except as otherwise authorized by law.

(4) Contents of Reports

This Rule does not prohibit release of information by law enforcement agencies about crimes or the contents of arrest reports, except insofar as they disclose the identity of the youth subject of Juvenile Court proceedings.

(5) Coroner's Reports

This Rule does not apply to Coroner's reports.

(6) Coroner's Reports

This Rule does not apply to Coroner's reports.

M. AUTHORIZATION FOR USE OF PSYCHOTROPIC DRUGS

(1) If a minor is adjudged a dependent child of the Court under W & I Code Section 300 and the minor has been removed from the physical custody of the parent under W & I Code Section 361, or if a minor is adjudged to be a ward of the Court on the basis that he or she is a person described in W & I Code Section 602 and is removed from the physical custody of the parent and placed in foster care as defined in W & I Code Section 727.4, only a Juvenile Court judicial officer has the authority to make orders regarding the administration of psychotropic medications for the minor. The Juvenile Court judicial officer may issue a specific order delegating this authority to a parent upon appropriate findings. Court authorization for the administration of psychotropic medication will be based on a request from a physician in compliance with W & I Code Sections 369.5 and 739.5.

(2) Pursuant to CRC 5.640(h), in all cases concerning the administration of psychotropic medications for a minor declared a ward of the Court under W & I Code Section 602 and removed from the custody of the parent or guardian for placement in a facility that is not considered a foster care placement, the parent or guardian will continue to have the authority to authorize the administration of psychotropic medications. However, if the parent or guardian is unwilling or unable to make decisions concerning the administration of psychotropic medications, the decision will be made by Juvenile Court judicial officers utilizing the procedures outlined in W & I Code Section 739.5 and Judicial Council Forms JV-219 through 223.

(3) In all cases where a child is in custody in Santa Clara County before wardship, the parent or guardian will continue to have the authority to authorize the administration of psychotropic medications. However, if the parent or guardian is unwilling or unable to make decisions concerning the administration of psychotropic medications, in accordance with the Juvenile Court judicial officer's duty to review, order, and enforce the delivery of services and to secure for the child the care and discipline as nearly as possible equivalent to that which should have been given by his or her parents consistent with his or her best interest, the decision will be made by the Juvenile Court judicial officers, utilizing the procedures outlined in W & I Code Section 739.5 and Judicial Council Forms JV-218 through 223. (See W & I Code Section 202 and Standards of Judicial Administration, Standard 24 (e)(3)).

(Effective 1/1/2022)

a. INITIATION OR CHANGES IN MEDICATION

i. The Court finds that immediate and special mental health intervention may be necessary for disturbed, psychotic,

depressed, or suicidal children who are impacted by the unusual life situations and the stress of institutional placements. Accordingly, the administering psychiatrist has the discretion to initiate the use of psychotropic drugs as provided by CRC 5.640(g) while attempting to obtain parental or guardian consent or Court authorization if, after weighing the risks and benefits of such medication, the psychiatrist concludes there is no significant risk of irreversible side effects. However, in all cases where consent from a parent or guardian has not been obtained or the Court has retained the right to make the decision, the administering psychiatrist must approach the Court as soon as possible but never more than two (2) Court days after administering the psychotropic medication, utilizing the procedure to obtain authorization set forth in CRC 5.640(c).

ii. If the parent, guardian, or attorney for the child objects to the utilization of such drugs, the matter will be set for hearing before a Juvenile Court judicial officer on an expedited basis.

b. The psychotropic medication authorization by the Juvenile Court will be reviewed by the Juvenile Court at a regularly set review hearing or at a special hearing regarding psychotropic medications to determine that it is still necessary and proper unless the Court has previously delegated authority to the parents for the administration of psychotropic medications. Further, pursuant to CRC 5.640(f), any Order for authorization by the Court is effective until terminated or modified by the Court, or until one hundred eighty (180) calendar days from the Order, whichever is earlier.

c. CONTINUATION OF MEDICATION UPON CHANGE IN PLACEMENT
Whenever a dependent child of the Court is moved to a new placement or to a facility pursuant to W & I Code Section 5000, et seq., and the child is receiving prescribed medication, the medical or other supervisor at the new placement may continue to administer that medication under supervision of the medical staff or the child's physician. No further order of the Court is required and the child's medication is not to be abruptly discontinued for lack of such an order.

d. This Rule does not override any inherent authority a physician may have to provide treatment and care in emergency situations. (Cal. Code Regs., Title 9, Section 853.)

N. LINE-UPS

No youth who is detained in any County facility (Juvenile Hall, Juvenile Rehabilitation Facility or DFCS-operated temporary shelter-like setting) in Santa Clara County or who has a pending Court hearing must participate in any line-up conducted by law enforcement or probation without Court authorization. Authorization must be sought by noticed motion before the Supervising Judge of the Juvenile Justice Court if the youth is pending a Juvenile Justice matter, or before the Supervising Judge of the Dependency Court if the child is pending a Dependency matter. All parties will receive notice of any such motion.

O. EDUCATIONAL RIGHTS IN JUVENILE COURT

(1) At every hearing in Dependency and Juvenile Justice Court, including detention, jurisdiction, and disposition hearings, as well as all review hearings, the Court, to the extent that information is available, must consider who holds the educational rights of the child and whether the parent or guardian's educational rights should be limited, and whether the Court will reserve those rights, appoint a responsible adult, or appoint an educational representative.

P. CHILD AND YOUTH ADVOCATES

(1) The Advocate Programs

The Juvenile Court may appoint advocates to represent the interests of dependent youth, Juvenile Justice youth, and youth with a parent, guardian, or other person having control or charge of a minor subject to proceedings under Education Code section 48293. In order to qualify for appointment, the advocate for dependent youth must be trained by and function under the auspices of a Court Appointed Special Advocate ("CASA") program, formed and operating under the guidelines established by the California Judicial Council (W & I Section 356.5), and, to qualify for appointment for Juvenile Justice youth, the advocate must be trained by and function under the Court Appointed Friends and Advocates Program ("CAFA"), pursuant to a Memorandum of Understanding between the CAFA organization and the Juvenile Court.

(Effective 1/1/2024)

The advocate programs must report regularly to the Presiding Judge of the Juvenile Court with evidence that they are operating under the guidelines established by the National Court Appointed Special Advocate Association and the California State Guidelines for Child Advocates or the Memorandum of Understanding with the CAFA program.

(2) Youth 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:

i. to support the youth throughout the Court proceedings;
ii. to establish a relationship with the youth to better understand his or her particular needs and desires;
iii. to communicate the youth's needs and desires to the Court in written reports and recommendations;
iv. to identify and explore potential resources which will facilitate early family reunification or alternative permanency planning;
v. to provide continuous attention to the youth's situation to ensure that the Court's plans for the youth are being implemented;

(Effective 1/1/2022)

vi. to the fullest extent possible, to communicate and coordinate efforts with the case manager (probation officer/social worker);
vii. to the fullest extent possible, to communicate and coordinate efforts with the youth's attorneys; and
viii. to investigate the interests of the youth in other judicial or administrative proceedings outside Juvenile Court; report to the Juvenile Court concerning same; and, with the approval of the Court, offer his/her services on behalf of youth to such other courts or tribunals.

b. Sworn Officer of the Court

An advocate is an Officer of the Court and is bound by these Rules. Each advocate must be sworn in by a judicial officer before beginning his/her duties, and must subscribe to the written oath set forth in the Court Designated Child Advocate Oath (Local Form JV-2003) or Court Appointed Friend and Advocate Oath (Local Form JV-2030).

c. Specific Duties

The Court will, in its initial order of appointment, and thereafter in 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 youth and other appropriate individuals, reviewing appropriate records and reports, consideration of visitation rights for the child's grandparents and other relatives, and reporting back directly to the Court as indicated. If no specific duties are outlined by Court order, the advocate must discharge his/her obligation to the youth and the Court in accordance with the general duties set forth in these Rules.

d. Procedures in Juvenile Justice Cases

i. A request for appointment of a youth advocate in a Juvenile Justice case may be made orally or in writing in open court or ex parte by the probation officer or any party to the case, or by the Court on its own motion. In the case of a dually involved youth who already has a CASA advocate who wants to continue in the Juvenile Justice Division, the Court will sign a new Order Appointing Court Designated Child Advocate (Local Form JV-2005). In all other cases, the Court will order the case to be referred to the CAFA program for screening.
ii. When CAFA receives a referral, it must screen it, and, if it determines that the youth is a suitable subject for the appointment of a youth advocate and if there is a suitable CAFA available for appointment, the Court will swear in the CAFA using the Court Appointed Friend and Advocate Oath (Local Form JV-2030) and sign the Order Appointing the Court Appointed Friend and Advocate (Local Form JV-2031).
iii. Any party to the proceeding may petition the Court for a hearing to reconsider the appointment.
iv. A youth advocate may petition the Court to set the youth's case for a review hearing. (Local Form JV-2009).
v. The youth advocate serves at the pleasure of the Court, and the appointment of the youth advocate may be terminated by the Court. Any party or the director of the youth advocate program may file a motion for termination of a youth advocate. The Court will determine whether there will be a hearing on such a motion.
vi. Any youth advocate with a grievance concerning such termination may petition the Court for a hearing. Such petition must include facts indicating that the youth advocate has exhausted all remedies available to him or her within the youth advocate program. The Court will determine whether there will be a hearing on such a petition.

e. Procedures in Dependency Cases (W & I Code Section 300)

i. The term "child advocate" refers to the advocate trained and supervised by the CASA program, regardless of whether the child advocate is appointed for a minor or a non-minor dependent.
ii. A request for appointment of a child advocate in a Dependency case may be made orally or in writing in open court or ex parte by the social worker, any party to the case, or by the Court on its own motion. Unless there is opposition, the referral will be forwarded to the child advocate office for screening and assignment.
iii. When an appropriate child advocate has been identified, that person's name must be submitted to the Court for appointment (Local Form JV-2007).
iv. Any party to the case may petition the Court for a hearing to reconsider the appointment.
v. The child advocate serves at the pleasure of the Court, and the appointment of the child advocate may be terminated by the Court. Any party or the Director of the Child Advocate program may file a motion for termination of a child advocate. The Court will determine whether there will be a hearing on such a motion. (Local Form JV-2006).
vi. Any child advocate with a grievance concerning the termination may petition the Court for a hearing. Such petition must include facts indicating that the child advocate has exhausted all remedies available to him or her within the Child Advocate program. The Court will determine whether there will be a hearing on such a petition.

(3) Release of Information to Advocate

a. To Accomplish Appointment

To accomplish the appointment of an advocate, the judicial officer making the appointment will sign an order granting the advocate the authority to review specific relevant documents. In addition, the advocate will have the authority to interview parties involved in the case, and other persons having significant information relating to the youth. The advocate has the same authority as any other officer appointed to investigate proceedings on behalf of the Court.

(Effective 1/1/2022)

a. Access to Records
An advocate has the same legal right to records relating to the youth he/she is appointed to represent as any case manager (social worker or probation officer) with regard to records pertaining to the youth 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 must present his or 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 youth.

b. Report of Child Abuse
An advocate is a mandated child abuse reporter with respect to the case to which he/she is appointed.

c. Communication
Ongoing, regular communication concerning the youth's best interests, current status, and significant case developments maintained among the advocate, case manager, youth's attorney, attorneys for parents, relatives, foster parents and any therapist for the youth is required.

(4) Right to Timely Notice
In any motion concerning the youth for whom the advocate has been appointed, the moving party must provide the advocate timely notice.

(5) Calendar Priority
In light of the fact that advocates are rendering a volunteer service to youth and the Court, matters on which they appear should be granted priority on the Court's calendar, whenever possible.

(6) Visitation Throughout Dependency
Child advocates have the right to regular unsupervised contact with the child. A child advocate must visit the child regularly until the child is secure in a permanent placement. Thereafter, the child advocate must monitor the case as appropriate until Dependency is dismissed.

(7) Advocacy in a Family Court Case
Should the Juvenile Court dismiss Dependency and issue Family Law Orders pursuant to W & I Code Section 362.4, the child advocate's appointment may be continued in the Family Law proceeding, in which case the Juvenile Court order will set forth the nature, extent, and duration of the child advocate's duties in the Family Law proceeding.

(8) Right to Appear
A child advocate has the right to be present and be heard at all Court hearings, and will not be subject to exclusion by virtue of the fact that he/she may be called to testify at some point in the proceedings. A child advocate will 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, has the authority to grant the child advocate amicus curiae status, which includes the right to appear with counsel.

RULE 2 RULES RELATING TO JUVENILE DEPENDENCY PROCEEDINGS

A. DE FACTO PARENTS/RELATIONS/INTERESTED PERSONS

(1) De Facto Parents

a. Upon a sufficient showing, the Court may recognize the child's present or previous custodians as de facto parents and grant standing to participate as parties in dispositional hearings and any hearings thereafter at which the status of the dependent child is at issue. The person seeking de facto parent status must file a noticed motion before the Court setting out the reasons in support of the motion, unless the Court, for good cause, permits an oral motion to be made. (Judicial Council Forms JV-295-298).

b. The de facto parent has the rights outlined in CRC 5.534(a).

B. MOTION TO CHALLENGE LEGAL SUFFICIENCY OF PETITION

(1) In any Dependency proceeding, the Court may entertain a pre-hearing challenge to the petition's sufficiency by a motion akin to a demurrer. Such a motion may be made in writing or orally, but must be made as early in the proceedings as possible.

(2) The Court may rule on the motion at the hearing at which it is made, or may continue the hearing on the motion to another date in order to receive points and authorities from counsel.

(3) If the Court sustains the motion, the Court may grant leave to amend the pleading in the petition upon any terms as may be just and may fix the time within which the amendment or amended petition must be filed within the statutory time for the hearing on jurisdiction. (CCP 472(a)).

C. PRESENTATION OF EVIDENCE

(1) Offers of Proof
The party presenting evidence may utilize an offer of proof with regard to any witness. Other parties will have an opportunity to examine the witness after any offer of proof is made.

D. REPRESENTATION OF PARTIES (W & I Code Sections 317, 317.6; CRC 5.660)

(1) Experience, Training and Education of Attorneys

(Effective 1/1/2022)

a. General Competency Requirement
All Court-appointed attorneys appearing in Juvenile Dependency proceedings must meet the minimum standards of competence set forth in these Rules.

b. Standards of Education and Training
i. Each Court-appointed attorney appearing in a Dependency matter before the Juvenile Court must complete the following minimum training and educational requirements. The attorney must have either:
1. Participated in at least thirty six (36) hours of training and education in Juvenile Dependency law and practice, which training includes comprehensive information on W & I Code Sections 202, 213.5, 214, 241.1, 281.5, 300 et seq.; Family Code Sections 7900 et seq. (Interstate Compact), and 7600 et seq. (Uniform Parentage Act); Education Code Sections 56000 et seq. (Special Education Programs); 8 United States Code (USC) Section 1101 (Special Immigrant Status for Undocumented Dependent Children), 25 USC Sections 1901 et seq. (Indian Child Welfare Act), 28 USC Section 1738 (Parental Kidnapping Prevention Act), and 42 USC Section 670 et seq. (Adoption and Safe Families Act); the California Rules of Court; the rules of evidence as set forth in the California Evidence Code; and the applicable case law as well as practical training on Judicial Council forms, motions, writs and mediation, family group conferencing, team decision making, the Family to Family initiative, domestic violence projects (the Greenbook Project, for example), child development, child abuse and neglect, family reunification and preservation, restraining orders, rights of de facto parents, reasonable efforts, or
2. At least six (6) months of experience within the last twelve (12) months in Dependency proceedings in another county in which the attorney has had primary responsibility for representation of his or her clients in said proceedings. In determining whether the attorney has demonstrated competence, the Court will consider whether the attorney's performance has substantially complied with the requirements of these Rules.

ii. Each Court-appointed attorney who practices before the Juvenile Dependency Court must complete within every one (1) year period at least twelve (12) hours of continuing education related to Dependency proceedings. Evidence of completion of the required number of hours of training or education must be retained by the attorney and may include a copy of a certificate of attendance issued by a California MCLE provider or 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. Attendance at a Court sponsored or approved program will also fulfill this requirement.

iii. The attorney's continuing training or education must be in the areas set forth in subdivision i of this Rule (immediately above).

iv. To enhance the practice of law before the Juvenile Dependency Court of this County, and to recognize the unique qualities of Juvenile Dependency law, a standing committee of the Juvenile Court will review and recommend modifications to these Rules in the areas of training, education, and standards of representation.

c. Standards of Representation
All Court-appointed attorneys appearing in Dependency proceedings must meet the following minimum standards of representation:
i. Attorneys are expected to meet regularly with clients, including clients who are children, 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 hearing, and to adhere to the mandated time lines.
ii. If the client is a child, the attorney or attorney's agent should have contact with the client prior to each hearing. The attorney or attorney's agent must interview all children four (4) years of age or older in person unless it is impracticable. Whenever possible, the child must be interviewed at the child's placement. The attorney or attorney's agent should also interview the child's caretaker, particularly when the child is under four (4) years of age.
iii. If the client is not the child, the attorney or attorney's agent must interview the client at least once prior to the jurisdictional hearing unless that client is unavailable. Thereafter, the attorney or the attorney's agent must contact the client at least once prior to each hearing unless that client is unavailable.

d. Pursuant to W & I Code Section 903.l, a parent/guardian or person responsible for support of a child is liable for the costs of appointed counsel for a parent/guardian and child in Dependency Court. For each matter before the Court, the parent/guardian must fill out the Advisement and Acknowledgement re Right to Counsel in Juvenile form (Local Form JV-2022). If applicable, the parent/guardian must also fill out the Advisement and Waiver of Right to Counsel (Local Form JV-2023). At a financial hearing, the judicial officer will assess the repayment amount after a review of the Financial Declaration/Subsequent Financial Declaration (Local Form JV-2020). An Order on Assessment and Repayment of Attorney Fees (Local Form JV-2021) will be prepared and served on the responsible party and appointed counsel at the conclusion of a financial hearing.

(2) Complaints

a. Any party to a Juvenile proceeding may lodge a written complaint with the Court concerning the performance of his/her appointed attorney in a Juvenile Court proceeding as follows:

(Effective 1/1/2022)

i. Complaints or questions will initially be referred to that attorney's supervisor within the agency, association, or law firm appointed to represent the client.

ii. If the issue remains unresolved or if there is no designated agency, association, or law firm, the party may submit a written complaint to the Court in which the matter is pending. The Court will, within ten (10) days, conduct its own review of the complaint or question. That review may include a hearing in chambers. The Court may take any appropriate action required, including relieving counsel and appointing new counsel and/or holding a formal hearing on the matter.

b. In the case of a complaint concerning the performance of an attorney appointed to represent a child, the complaint may be lodged by the child or on the child's behalf by the social worker, a caretaker, a relative, a foster parent, or a child advocate.

(3) Informing the Court of the Interest of the Child At any time during the pendency of a Dependency proceeding, any interested person may notify the Court that the child who is the subject of the proceeding may have an interest or right that needs to be protected or pursued.

a. This may be done by filing a petition to modify a previous order, under W & I Code Section 388 (Judicial Council Form JV-180). The petition must set forth the nature of the interest or right to be protected and the action on the child's behalf that is being requested.

b. If counsel for the child becomes aware that the child may have a right or interest that needs to be protected or pursued in another judicial or administrative forum, counsel for the child must notify the Court in the manner indicated above as soon as it is reasonably possible to do so.

c. The Court, upon receiving such notification, may make any orders that are appropriate to protect the rights of the child, including, but not limited to,:

i. Determining if the child's attorney is willing and able to pursue the matter on the child's behalf. If the Court finds that the child's attorney is willing and qualified to initiate and pursue appropriate action, it may make any orders necessary to facilitate this representation;

ii. Appointing counsel for the child specializing in the practice before the agency or Court in which the proceeding will occur;

iii. Appointing a guardian ad litem for the child to initiate or pursue the proposed action;

iv. Joining an administrative agency to the Juvenile Court proceedings pursuant to W-& I Code Section 362; and

v. Taking any other action to protect the interests and rights of the child.

d. The person filing the W & I Code Section 388 petition or an Application for Order and Order re Interest of the Child must serve a copy of the notice on each of the parties or their attorneys, the child advocate, and others as prescribed by law. Notice may be dispensed with upon Order of the Court.

E. ACCESS TO YOUTH PETITIONED PURSUANT TO WELFARE AND INSTITUTIONS SECTION 300

(1) No party or attorney (other than the social worker) in a Dependency proceeding may interview the minor about the events relating to the allegations in the petition(s) on file without permission of the minor's attorney or Court order.

(2) No party or attorney in a Dependency proceeding may cause the minor to undergo a physical, medical, or mental health examination or evaluation except as authorized by law.

(3) The Court will make the selection of the person to perform any such examination. Each party has the right to notice and to be heard on the person to be selected.

(4) Interviewing Minors Who Are Alleged Victims of Child Abuse

All Dependency investigators in the Department of Family and Children's Services, all attorneys representing parties in a Dependency case in which child abuse has been alleged, and other participants in the case, including a child advocate, must attempt to minimize the number of interviews of the minor relating to the events surrounding the alleged abuse. To this end, anyone wishing to learn facts about the alleged incident must first review the comprehensive interview taken by the investigating officer.

(5) Presence of Youth in Court

a. All youth are entitled and encouraged to attend Court hearings. Every youth four (4) years or older must be told of his or her right to attend Court hearings by the investigating/supervising social worker and attorney for the youth.

b. Appearances may be excused for any of the following reasons:

i. the youth's attorney waives the youth's appearance;

ii. the youth chooses not to attend;

iii. the youth is excused by the Court; or

iv. the youth is hospitalized or physically unable to attend.

c. If the youth is present, the judicial officer hearing the case may view and speak with the youth.

(6) Notice Regarding Change in Placement

In order to ensure that proper notice is received by attorneys for parents and children of any change in a child's placement after the original dispositional hearing, the following must occur:

a. In non-emergency situations, DFCS must give notice at least five (5) working days prior to the change in placement.

b. Prior to removal of a child from one county to another, DFCS must provide notice of at least fourteen (14) calendar days unless emergency circumstances prevent such notice (Judicial Council Form JV-555). Those objecting to the out-of-county placement must file an Objection to Out-of-County Placement and Notice of Hearing (Judicial Council Form JV-556).

(Effective 1/1/2022)

c. In emergency circumstances, DFCS must give notice immediately following the child's change in placement.

d. Notice may be given in writing or orally and by telephone.

F. CREATION OF A FAMILY COURT ORDER IN JUVENILE COURT

(1) Petition for Dismissal

Whenever any interested party believes that Juvenile Dependency Court intervention on behalf of a child is no longer necessary, application may be made to the Dependency Court pursuant to W & I Code Section 388 or at any regularly scheduled hearing to have the case dismissed.

(2) Juvenile Dependency Court Custody Order

a. If the Juvenile Court determines that jurisdiction of the Dependency Court is no longer necessary for the protection of the child, the Court may issue a custody order on Judicial Council Form JV-200 consistent with the needs of the child and thereafter dismiss the Juvenile Dependency petition and case (W & I Code Sections 361.2, 362.4). Any party may object to the proposed dismissal and be heard on the issues.

b. Requests to modify the Juvenile custody order within one (1) year of the dismissal of the Juvenile petition and the issuance of the custody order on Judicial Council Form JV-200, where possible, must be returned to the judge who presided over the Juvenile Dependency case for hearing to ensure there is a significant change in circumstances to warrant modification of that order as set forth in W & I Code Section 302(d). The Juvenile Dependency judge will sit as a Family Court judge for purposes of hearing the motions regarding modification of custody and/or visitation. Thereafter, any future litigation relating to the custody, visitation, and control of the child will be heard in the Family Court.

(3) Maintenance of Juvenile Custody Orders (Judicial Council Form JV-200) in Court Files

a. Juvenile Court

The original Court Juvenile Custody Order (Judicial Council Form JV-200) will be filed in the Family Court and endorsed copies will be filed in the Juvenile Dependency Court file. A copy of the endorsed-filed Order will be mailed to the attorneys and parties.

b. Superior Court

If no Court file exists in the Family Court or other Superior Court division or in any other jurisdiction, the Court Clerk will create a file under the names of the child's parents. The file will contain the original Juvenile Court Order (Judicial Council Form JV-200). There will be no filing fee. (W & I Code Section 362.4).

G. GUARDIANS AD LITEM

(1) General Provisions

a. The Court may appoint a guardian ad litem to represent any incompetent parent, guardian, or non-minor dependent before the Juvenile Court pursuant to a Dependency petition (W & I Section 300 et seq.). The determination of incompetency may be made by the Court at any time in the proceeding based upon evidence received from any interested party.

b. The parent or guardian must be present in Court for the informal closed proceeding, and the Court will explain the proceeding to the parent or guardian in plain language. If the Court finds by a preponderance of the evidence that the parent or guardian does not understand the nature of consequences of the proceeding, or that the parent or guardian cannot assist their attorney in the preparation of their case, then the Court may appoint a guardian ad litem.

c. Where the Dependency Court has appointed a guardian ad litem to protect the interest of the minor under Rule 2(D)(3)(c)(iii), the guardian ad litem's role is to protect the rights of the minor. He or she has the right to control the litigation on behalf of the minor. Among the guardian's powers are the right to compromise or settle the action, to control the procedural steps incident to the conduct of the litigation, and, with the approval of the Court, to make stipulations or concessions that are binding on the minor, provided they are not prejudicial to the minor's interests. The guardian ad litem's role is more than an attorney's but less than a party's. The guardian ad litem may make tactical and even fundamental decisions affecting the litigation, but always with the interest of the minor in mind. However, the guardian may not compromise fundamental rights, including the right to trial, without some countervailing and significant benefit.

(2) Notice to Guardians ad Litem, Access to Records, Right to Appear

a. The guardian ad litem must be given the same notice as any party in all proceedings.

b. The guardian ad litem has the same access to all records relating to the case as would any party.

c. The guardian ad litem has the right to appear at all hearings.

H. PARENTAL VISITATION

(1) Visitation Before Detention Hearing

a. Any minor taken into temporary custody must have supervised visitation with one or both parents or guardians before the detention hearing takes place unless the social worker has a reasonable belief that the minor or his or her temporary custodian would be endangered by the disclosure of the minor's exact whereabouts or that the disclosure would cause the custody of the minor to be disturbed (W & I Section 308).

b. Whenever a minor is taken into temporary custody, the social worker must inform the parent or guardian of the minor's condition and his or her general location and offer supervised visitation pursuant to subdivision a (immediately above).

(Effective 1/1/2022)

c. Immediately after a minor is taken into temporary custody, the social worker must ensure that the minor has regular telephone contact with his or her parent pursuant to W & I Code Section 308, unless that contact would be detrimental to the child.

d. If the social worker fails to follow the procedures listed in subdivision a (immediately above), he or she must note the reasons therefore in the papers prepared for the detention hearing.

(2) Visitation After Detention Hearing

a. The determination of the right to visitation, the length of any visitation, whether any visitation will be supervised, and the frequency of visitation are a part of the judicial function and must be made by the Court. The implementation and administration of the Court's order, however, may be delegated to the social worker. These ministerial tasks that may be delegated to the social worker include the time, place, and manner of visitation. The Court may also delegate discretion to the social worker to increase the frequency and duration of the visits, and to permit unsupervised visits (sometimes with the explicit condition that the attorney for the minor be given notice). The Court's order cannot, however, delegate to the social worker, the child's therapist, or other person unlimited discretion to determine whether visitation must occur.

b. Absent exigent circumstances indicating detriment to the child, only the Court may reduce visits for a parent. Juvenile Court visitation orders may be modified by an application for modification pursuant to W & I Code Section 388, by Application and Order, or by motion of a party at a regularly scheduled review hearing.

c. Visitation should be as frequent as possible, consistent with the well-being of the child.

I. JUDICIALLY SUPERVISED SETTLEMENT CONFERENCES AND TRIALS

(1) Where the Court has set a date for a judicially supervised settlement conference or a trial, the youth's attorney must interview the youth, make an assessment of all relevant circumstances, and determine whether the youth will be called as a witness.

(2) If the youth is ten (10) years of age or older, the youth's attorney must inform the youth of the date of the judicially supervised settlement conference or trial and of the youth's right to attend the proceedings.

(3) If DFCS has changed any of its recommendations since it last provided the Court and parties with its recommendations, DFCS must provide the Court and the parties with notice of its revised recommendations no later than three (3) court days prior to the date of the judicially supervised settlement conference or trial. The Court may waive this notice requirement upon a showing of good cause or agreement of the parties.

(4) Counsel, parties, and persons with full authority to settle the case must personally attend the judicially supervised settlement conference and trial. The youth is encouraged to attend, but the youth's attendance is not required.

J. DEPENDENCY MEDIATION

(1) The Court, pursuant to W & I Code Section 350 and at any stage of the Dependency Court process, upon the request of any person who the Court deems to have a direct and legitimate interest in the particular case or on the Court's own motion, will order all parties and counsel to participate in confidential mediation in an attempt to resolve jurisdictional and/or dispositional issues in dispute, or case related problems, and to develop a related plan that is in the best interests of the child.

(2) Dependency Mediators must be either California Licensed Marriage and Family Therapists, Licensed Clinical Social Workers, or Licensed Psychologists employed by FCS who meet the training and experience requirements included within the current Santa Clara County Dependency Mediation Protocol and Dependency Mediation Domestic Violence Protocol, CRC 5.518, and the Court-connected Dependency Mediation.

(3) Calendaring and Referral.

a. The Court will calendar appointments for cases ordered to mediation with the Dependency Mediation Program. The Court will, at the time of calendaring, attempt to identify all the individuals whose participation in mediation may be helpful in resolving the case so that their participation may be either ordered or invited as appropriate.

b. The Court will complete the Dependency Mediation Referral form at the time of calendaring and referral, identifying the participants and issues referred to mediation. The Court will also indicate on that form whether domestic violence has ever been an issue in the case. The Court will also determine whether a Domestic Violence Protective Order is in effect, and, if so, forward a copy of said order to the Dependency Mediation Program along with the referral.

(4) The parties, assigned DFCS social workers, all assigned counsel, and any Court Appointed Special Advocates must attend all scheduled mediation appointments. The subject child has a right to participate in the Dependency mediation process accompanied by his or her attorney unless the child makes an informed choice not to participate.

a. Failure to attend mediation by the mandated participants may result in the imposition of sanctions pursuant to Code of Civil Procedure Section 177.5.

(5) Upon the concurrence of the Mediator(s) and counsel, other individuals will be permitted to participate in the mediation on a voluntary basis.

(6) Dependency Mediation in Santa Clara County is a confidential and non-recommending process operating in compliance with Evidence Code Sections 1115 through 1128 with the following exceptions to confidentiality: 1) Santa Clara County Dependency Mediators are mandatory child abuse reporters as defined within Penal Code Section 11166.5 and have a duty to report in the event they develop a reasonable suspicion of child abuse not formerly reported; 2) Santa Clara County Dependency Mediators have a duty when confronted with serious threats of violence against reasonably identifiable victims to make reasonable efforts to communicate such threats to the victim or victims and to a law enforcement agency (the Tarasoff warning); 3) Mediators have the duty to disclose information as otherwise may be compelled by statue or case law.

(Effective 1/1/2022)

(7) Dependency Mediation must be conducted in accordance with the Santa Clara County Dependency Mediation Protocol and Dependency Mediation Domestic Violence Protocol and CRC 5.518. Court connected Dependency Mediation must involve, at a minimum, all the mandatory participants as defined in subdivision (4) above at various stages throughout the process.

a. All mandatory mediation participants and the Mediators must appear on time for all scheduled mediation appointments.
b. Dependency Mediators must make every reasonable effort to release the attorneys involved in mediation during the middle stages of the process, consistent with their clients' need to consult with them during the course of mediations, so that the attorneys may make themselves available to the Court and facilitating the conducting of Court business in the most efficient manner possible.
c. Dependency Mediators must make every reasonable attempt to ensure that morning mediation appointments are completed no later than 11:30 a.m., and that afternoon mediation appointments are completed no later than 4:30 p.m., so that the parties and attorneys may report back to the Court in a timely manner.
d. Each area of agreement resulting from mediation must be approved by all the mandatory participants including the family members who are parties, the assigned DFCS Social Worker, all the involved attorneys, and any participating Court Appointed Special Advocate.
e. The attorney from the Office of the County Counsel assigned to represent the assigned social worker from DFCS will be responsible for recording all aspects of any partial or complete agreement, and for recording any areas of remaining disagreement.
f. Immediately upon completion of the mediation appointment, all the mandatory participants may proceed to Court. The attorney from the Office of the County Counsel will report to the Court the exact nature of any areas of agreement and/or disagreement, and/or any request for an additional mediation appointment. The Court will take whatever action is deemed necessary to confirm the nature of agreement/disagreement with the parties and attorneys, and to assure itself that all parties and attorneys understand the nature of any agreement. The Court will also approve/disapprove any request for an additional mediation appointment, and if approved, calendar the return appointment.
g. The Court will review the proposed agreement and determine whether to approve any portion or all of it. The Court will make any orders and/or findings deemed appropriate. The Court will determine any necessary subsequent action including trial setting.
h. The attorney representing the Office of the County Counsel will be responsible for preparing any orders made by the Court related to the mediated agreement. The attorney from the Office of the County Counsel must complete the Dependency Mediation Outcome Form (Local Form JV-2029) and return the form to the Mediator.

K. COURT ORDERED MENTAL HEALTH EVALUATION

Where the Court has ordered a mental health or psychological evaluation, the Court will determine what Court reports and other information will be released to the evaluator.

RULE 3 RULES RELATING TO JUVENILE JUSTICE

A. WAIVER FORMS

At every hearing in Juvenile Justice Court when the youth wishes to enter an admission or no contest plea to one (1) or more counts in a Petition, the youth and youth's attorney must use and present to the Court a Waiver Form (Local Form JV-2032) at the time of entering the admission.

B. INSPECTION OF LAW ENFORCEMENT LOCK-UPS AND ACCESS TO RECORDS

(1) Pursuant to W & I Code Section 209, the Juvenile Justice Commission will conduct an annual inspection of all law enforcement facilities in Santa Clara County which contain a lockup for adults which, in the preceding year, was used for the secure detention of any youth.
(2) The results of each inspection must be presented in writing to the Presiding Judge of the Juvenile Court or the Supervising Judge of the Juvenile Justice Court during the calendar year.
(3) The Santa Clara County Juvenile Justice Commission may inspect the case files of the Santa Clara County Probation Department Placement Unit on the condition that no information in the files may be photocopied and no information on the identity of a particular youth or family is permitted to be directly or indirectly recorded. Further, no information may be disseminated to anyone other than the members of the Juvenile Justice Commission, the Probation Department, and the Court. All information received must remain confidential.

C. YOUTH ELIGIBLE FOR DEFERRED ENTRY OF JUDGMENT (W & I CODE SECTION 790 ET SEQ.)

(1) In order to assist in determining suitability of youth for the Deferred Entry of Judgment ("DEJ") Program and to comply with CRC 5.800, the Probation Department must prepare a report with a recommendation on the suitability of the youth for DEJ utilizing the factors in CRC 5.800(d)(3)(A) once the District Attorney has determined DEJ eligibility, stamped the Petition, and filed the Determination of Eligibility – Deferred Entry of Judgment – Juvenile (Judicial Council Form JV-750) case with the Clerk's Office.

D. REPRESENTATION OF PARTIES (W & I Code Section 634.3; CRC 5.664)

(1) Experience, Training and Education of Attorneys

(Effective 1/1/2022)

a. General Competency Requirement

All Court-appointed attorneys appearing in Juvenile Justice proceedings must meet the minimum standards of competence set forth in these Rules. Such attorneys must:

i. Provide effective, competent, diligent, and conscientious advocacy and make rational and informed decisions founded on adequate investigation and preparation;

ii. Provide legal representation based on the client's expressed interests, and maintain a confidential relationship with the youth;
iii. Confer with the youth prior to each court hearing, and have sufficient contact with the youth to establish and maintain a meaningful and professional attorney-client relationship, including in the postdispositional phase;
iv. When appropriate, delinquency attorneys should consult with social workers, mental health professionals, educators, and other experts reasonably necessary for the preparation of the youth's case, and, when appropriate, seek appointment of those experts pursuant to Evidence Code Sections 730 and 952.

b. Standards of Education and Training
i. In order to be appointed to represent youth in Juvenile Justice Court, an attorney must have either 1) dedicated at least fifty percent (50%) of their practice to Juvenile Justice and demonstrate competence or 2) completed a minimum of twelve (12) hours of training during the most recent twelve (12) month period in the area of Juvenile Justice. Attorney training must include:
1. An overview of Juvenile Justice law and related statutes and cases;
2. Trial skills, including drafting and filing pretrial motions, introducing evidence at trial, preserving the record for appeal, filing writs, notices of appeal, and posttrial motions;
3. Advocacy at the detention phase;
4. Advocacy at the dispositional phase;
5. Child and adolescent development, including training on interviewing and working with adolescent clients;
6. Competence and mental health issues, including capacity to commit a crime and the effects of trauma, child abuse, and family violence, as well as crossover issues presented by youth involved in the Juvenile Justice system;
7. Police interrogation methods, suggestibility of youth, and false confessions;
8. Counsel's ethical duties, including racial, ethnic, and cultural understanding and addressing bias;
9. Cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth;
10. Understanding of the effects of and how to work with victims of human trafficking and commercial sexual exploitation of children and youth;
11. Immigration consequences and the requirements of Special Immigrant Juvenile Status;
12. General and special education, including information on school discipline;
13. Extended foster care;
14. Substance abuse;
15. How to secure effective rehabilitative resources, including information on available community-based resources;
16. Direct and collateral consequences of court involvement;
17. Transfer of jurisdiction to Criminal court hearings and advocacy in adult court;
18. Appellate advocacy; and
19. Advocacy in the postdispositional phase.

ii. To remain eligible for appointment to represent youth, attorneys must engage in annual continuing education in the areas identified in Rule 3(D)(1)(b)(i), as follows:
1. Attorneys must complete at least eight (8) hours per calendar year of continuing education, for a total of twenty four (24) hours, during each MCLE compliance period.
2. An attorney who is eligible to represent youth for only a portion of the corresponding MCLE compliance period must complete training hours in proportion to the amount of time the attorney was eligible. An attorney who is eligible to represent youth for only a portion of a calendar year must complete two (2) hours of training for every three (3) months of eligibility.
3. The twelve (12) hours of initial training may be applied toward the continuing training requirements for the first compliance period.
4. Each individual attorney is responsible for complying with the training requirements in this Rule; however, offices of the public defender and other agencies that work with youth are encouraged to provide MCLE training that meets the training requirements in Rule 3(D)(1)(b)(i).
5. Each individual attorney is encouraged to participate in policy meetings or workgroups convened by the juvenile court and to participate in local trainings designed to address county needs.

(Effective 1/1/2022)

iii. The Court may require evidence of the competency of any attorney appointed to represent a youth in a Juvenile Justice proceeding, including requesting documentation of trainings attended. The Court may also require attorneys who represent youth in Juvenile Justice proceedings to complete Declaration of Eligibility for Appointment to Represent Youth in Delinquency Court (Judicial Council Form JV-700).

RULE 4 RELATIONSHIPS AMONG DIFFERENT DIVISIONS OF THE SUPERIOR COURT

A. JUVENILE DEPENDENCY, JUVENILE JUSTICE, FAMILY, AND PROBATE COURTS EXCHANGE OF INFORMATION

(1) This Rule addresses the exchange of information between Family Court Services (FCS) staff, the Juvenile Probation Department (JPD), the Department of Family and Children's Services (DFCS), the Adult Probation Department (APD), and the Probate Court Investigator's (PCI) staff.

(2) The Court herby finds that the best interests of children, youth, and victims appearing before the Juvenile, Family, Criminal, and Probate Courts, the public interest in avoiding duplication of effort by the Courts and by the investigative and supervisory agencies serving the Juvenile Court or Court serving agency outweighs the confidentiality interests reflected in Penal Code Sections 11167 and 11167.5, W & I Code Sections 827 and 10850, Family Code Section 1818, and Probate Code Section 1513, and therefore good cause exists for the following Rule:

a. Juvenile Dependency

FCS, PCI, APD, and JPD staff may orally disclose to DFCS staff who are investigating or supervising a child abuse or neglect case the following information:

i. Whether the child, his/her parents, guardians, or caretakers are or have been the subject of a custody, Juvenile Justice, Criminal, or Probate investigation, the findings and status of that investigation, the recommendations made or anticipated to be made to the Court by FCS, PCI, APD, or JPD, the progress while under Court supervision including compliance with Court orders, and copies of any Court orders in existence with respect to the child, parents, guardians, or caretakers.

ii. Any statement made by the child of the child's parents, guardians, or caretakers which might bear upon the issue of the child's best interests in the pending child abuse or neglect case.

iii. DFCS may include this information in Court reports and keep such information in their case files.

iv. The following agencies may provide written documents to each other: JPD, PCI, APD, FCS, and DFCS. These documents may include, but are not limited to, relevant portions of investigation notes, progress notes and summaries, and Court reports containing information described in (i) and (ii) above. However, child abuse and neglect reports described by Penal Code Section 11167.5 (Suspected Child Abuse Report Form S-8572), information disclosing the identity of a reporting party, or Court-ordered psychological evaluations may not be exchanged between the agencies absent a Court order. Copies of DFCS or JPD documents used by PCI, APD, or FCS may not be made available to the public without a Court order.

b. Custody Disputes

JPD, PCI, APD, or DFCS may orally disclose to FCS staff who are mediating. evaluating, or investigating a child custody or visitation dispute the following information:

i. Whether the child or his/her parents or caretaker are or have been the subject of a child abuse, neglect, Probate, Criminal, or Juvenile Justice investigation, the findings and status of that investigation, the recommendations made or anticipated to be made to the Court by DFCS, PCI, APD, or JPD, the progress while under Court supervision including compliance with Court orders and copies of any Court orders in existence and probation conditions with respect to the child, parents, or caretakers.

ii. Any statements made by the child or the child's parents, guardians, or caretakers which might bear upon the issue of the child's best interests in the pending Family Court matter.

iii. FCS may include this information in Court reports and keep such information in their case files.

iv. The following agencies may provide written documents to each other: JPD, PCI, APD, FCS, and DFCS. These documents may include, but are not limited to, relevant portions of investigation notes, progress notes and summaries, and Court reports containing information described in (i) and (ii) above. However, child abuse and neglect reports described by Penal Code Section 11167.5 (Suspected Child Abuse Report Form S-8572), information disclosing the identity of a reporting party, or Court-ordered psychological evaluations may not be exchanged between the agencies absent a Court order. Copies of DFCS and JPD documents used by PCI, APD, or FCS may not be made available to the public without a Court order.

c. Juvenile Justice

i. FCS, PCI, APD, or DFCS staff may orally disclose to JPD staff who are investigating or supervising a Juvenile Justice case the following information:

(Effective 1/1/2022)

ii. Whether a youth or his/her parents, guardian, or caretakers have been the subject of a child abuse, neglect, custody, Criminal, or Probate investigation, the findings and status of that investigation, the recommendations made or anticipated to be made to the Court by DFCS, FCS, APD, or PCI staff, the progress while under Court supervision including compliance with Court orders, and copies of any Court orders in existence with respect to the youth, parents, guardians, or caretaker(s).

iv. Any statements made by the youth or the youth's parents, guardians, or caretakers which might bear upon the youth's status or any disposition in the Juvenile Justice proceeding.

iv. JPD may include this information in Court report and keep such information in their case files.

v. The following agencies may provide written documents to each other: JPD, PCI, APD, FCS, and DFCS. These documents may

include, but are not limited to, relevant portions of investigation notes, progress notes and summaries, and Court reports containing formation described in (i) and (ii) above. However, child abuse and neglect reports described by Penal Code Section 1116 (Suspected Child Abuse Report Form S-8572), information disclosing the identity of a reporting party, or Court-ordered psychological evaluations may not be exchanged between the agencies absent a Court order. Copies of DFCS or JPD documents used by PCI, APD, or FCS may not be made available to the public without a Court order.

d. Probate

FCS, DFCS, APD, and JPD staff may orally disclose to PCI staff who are investigating or supervising a probate guardianship or conservatorship matter the following information:

i. Whether the child or his/her parents, guardians, or caretakers have been the subject of a child abuse, neglect, custody, Criminal, or Juvenile Justice investigation; the findings and status of that investigation; the recommendations made or anticipated to be made to the Court by DFCS, FCS, APD, and JPD staff; the progress while under Court supervision including compliance with Court orders, and copies of any Court orders including probation conditions in existence with respect to the child, parents, guardians, or caretakers.

ii. Any statement made by the child or the child's parents, guardians, or caretakers which might bear upon the issue of the child's best interest in the Probation matter.

iii. PCI may include this information in Court reports and keep such information in their case files.

iv. The following agencies may provide written documents to each other: JPD, PCI, APD, FCS, and DFCS. These documents may include, but are not limited to, relevant portions of investigation notes, progress notes and summaries, and Court reports containing information described in (i) and (ii) above. However, child abuse and neglect reports described by Penal Code Section 11167.5 (Suspected Child Abuse Report Form S-572), information disclosing the identity of a reporting party, or Court-ordered psychological evaluations may not be exchanged between the agencies absent a Court order. Copies of DFCS or JPD documents used by PCI, APD, or FCS may not be made available to the public without a Court order.

f. Adult Probation

FCS, DFCS, JPD, and PCI staff may orally disclose to APD staff who are investigating a Criminal case or who are supervising a criminal defendant the following information:

i. Whether the child, his/her parents, guardians, or caretakers are or have been the subject of a custody, child abuse or neglect, Juvenile Justice, or Probate investigation, the findings and status of that investigation, the recommendations made or anticipated to be to the Court by FCS, DFCS, JPD, or PCI staff, the progress while under Court supervision including compliance with Court orders. Copies of any Court orders including probation conditions in existence with respect to the child, parents, guardians, or caretakers.

ii. Any statement made by the child or the child's parents, guardians, or caretakers which might bear upon the issue of the child's or victim's best interest in the pending criminal action.

iii. APD may include this information in Court reports and keep such information in their case files.

iv. The following agencies may provide written documents to each other: JPD, PCI, APD, FCS, and DFCS. These documents may include, but are not limited to, relevant portions of investigation notes, progress notes and summaries, and Court reports containing information described in (i) and (ii) above. However, child abuse and neglect reports described by Penal Code Section 11167.5 (Suspected Child Abuse Report Form S-8572), information disclosing the identity of a reporting party, or Court-ordered psychological evaluations may not be exchanged between the agencies absent a Court order. Copies of DFCS or JPD documents used by PCI, APD, or FCS may not be made available to the public without a Court order.

B. FOREIGN CONSULATES

Whenever there is a reason to believe that a child appearing before the Juvenile Court is a foreign national, DFCS may orally disclose to the foreign consulate the following information about each child and parent: address, phone number, date of birth, and the reason the child was brought into protective custody.

C. COURT COMMUNICATION REGARDING RESTRAINING ORDERS

(1) Procedure in Juvenile Court

(Effective 1/1/2022)

a. Subject to available resources, the Family, Juvenile, Civil, and Probate Courts will examine appropriate available databases for existing restraining or protective orders involving the same restrained and protected parties before issuing permanent CLETS Civil Restraining Orders. In the event that this information is not available to the judicial officer, inquiry may be made of the parties before issuing permanent CLETS Civil Restraining Orders.

b. Any order of the Family, Juvenile, or Probate Court that permits contact between a defendant/restrained person subject to either CLETS Civil Restraining Orders or Criminal Protective Orders and his or her children, must contain specific language setting forth the time, day, place, and manner of the transfer of the children, including the safe exchange of the children, in accordance with Family Code Section 3100. Safety of all parties is the Court's paramount concern. The Court or a Court-related agency may recommend safe and specific contact with the children and direct the defendant/restrained person and/or the victim/protected person to the process for modification of protective Orders.

c. In cases where the Court allows for property removal as an exception to the restraining order, the Other Orders-Property Removal form (Local Form FM-1102) may be used as an Attachment to the Temporary Restraining Order (Judicial Council Form JV-250) and Restraining Order After Hearing (Judicial Council Form JV-255).

(2) Modification of Criminal Protective Orders

a. Any Court responsible for issuing custody or visitation orders involving minor children of a defendant/restrained person subject to a Criminal Protective Order may modify the Criminal Protective Order if all of the following circumstances are satisfied:
   i. Both the defendant/restrained person and the victim/protected person are subject to the jurisdiction of the Family, Juvenile, or Probate Court, and both parties are present before the Court.
   ii. The defendant/restrained person has been convicted of or is currently charged with a domestic violence related offense in Santa Clara County and a Criminal Protective Order has issued and is still in effect.
   iv. The Family, Juvenile, or Probate Court identifies a Criminal Protective Order issued against the defendant which is inconsistent with a proposed Family, Juvenile, or Probate Court Order, such that the Family, Juvenile, or Probate Order is/will be more restrictive than the Criminal Protective Order or there is a proposed custody or visitation order which requires recognition in the Criminal Protective Order (item 16 or both on the Criminal Protective Order Form).
   iv. The defendant signs an appropriate waiver of rights form or enters a waiver of rights on the record.
   v. Both the victim/protected person and the defendant/restrained person agree that the Criminal Protective Order may be modified to a more restrictive order or to check item 16 on the Criminal Protective Order.

b. The Family, Juvenile, or Probate Court may not modify existing Criminal Protective Orders to be less restrictive. Only if children are not listed as protected persons, a modification of the Criminal Protective Order to check item 16 will not be considered less restrictive.

c. The Family, Juvenile, or Probate Court may, on its own motion or at the request of defendant, protected person, or other interested party, calendar a hearing before the Criminal Court on the issue of whether a Criminal Protective Order should be modified. The Family, Juvenile, or Probate Court will provide the Criminal Court with copies of existing or proposed orders relating to the matter. Notice of the hearing will be provided to all counsel and parties.

(3) Modification of Family Court Domestic Violence Restraining Orders

a. In any case in which a Family Court Domestic Violence Restraining Order ("DVRO") (Judicial Council Forms DV-110 or DV-130) includes protections for or custody orders related to a minor child subject to the jurisdiction of the Juvenile Dependency or Juvenile Justice Court, and after notice to or with the consent of the parties to the DVRO and all other interested parties, the Juvenile Dependency or Juvenile Justice Court may modify the Family Court DVRO in any of the following ways:
   i. To remove a minor child who is the subject of a proceeding under Juvenile Court Law as a protected person on the DVRO and/or modify or terminate any visitation or custody orders set forth in the DVRO which pertain to the child;
   ii. To provide in the DVRO for brief and peaceful contact with any protected person as required for Court-ordered placement of or visitation with the child;
   iii. To vacate the DVRO and issue a Restraining Order- Juvenile (Judicial Council Form JV-250) in lieu of the DVRO, but only if all the protected persons listed in the DVRO are parties to the Juvenile Court case; or
   iv. To modify or terminate any provision of the DVRO to allow the Juvenile Court to issue placement, custody, visitation, or reunification orders as determined to be appropriate by the Court.

b. Any modifications to a DVRO must be made on a Temporary Restraining Order form (Judicial Council Form DV-110) or Restraining Order After Hearing form (Judicial Council Form DV-130) and filed both under the Family Court case number and the Juvenile Court case number. Any request to modify or terminate provisions of the DVRO for protected persons not subject to the jurisdiction of the Juvenile Court will be referred to the Family Court for consideration and hearing. The Juvenile Clerk's Office will transmit a copy of the amended restraining order to law enforcement for entry into the required state data systems unless otherwise arranged, and also will transmit a copy to Family Court for inclusion in the Family Court file.

(Effective 1/1/2022)

D. FAMILY AND JUVENILE COURT MANAGEMENT OF CHILD ABUSE CASES

It is the policy of the Superior Court to identify and coordinate custody proceedings involving the same child which may appear in multiple legal settings. It is further the policy of the Superior Court to coordinate the efforts of the different Court systems so that the child's needs are served and the resources of the family and the Court are not wasted. To these ends, the Superior Court and the agencies serving the Court will cooperate to increase the exchange of information and to determine the most appropriate forum for the issues relating to the child.

(1) Report Pursuant to Penal Code Section 11166

If during the pendency of a Family Law proceeding a child abuse allegation against one of the child's parents comes to the attention of a FCS staff member or other mediator or evaluator, that person must first determine whether the allegation must be reported to a child protection agency pursuant to Penal Code Section 11166. If that person determines the allegation does not fall within the description of Section 11166, he/she need not make a report. However, any other person may report the allegation to a child protection agency.

(2) Child Abuse Investigation

When DFCS receives a report of suspected child abuse during the pendency of a Family Law proceeding, it must investigate the matter immediately or within three (3) or ten (10) days pursuant to DSS Regulations 30-132. DFCS must coordinate its investigation with the reporting police agency. DFCS must inform FCS of any decisions it makes concerning the child abuse investigation. If DFCS determines that further investigation is necessary, it must contact the investigating agency immediately so that all investigative efforts can be coordinated.

(3) W & I Code Section 329 Application

If DFCS decides not to intervene or fails to report to the reporting party within ten (10) days, any person may apply to the social worker pursuant to W & I Code Section 329. In that application, the affiant must give notice and identifying information of any pending Family Law proceeding. A copy of the application must be sent to FCS by the moving party. The social worker must respond to the application as soon as possible or within three (3) weeks after submission of the application. (W & I Code Section 329.) The social worker must orally notify FCS of the response. (See Judicial Council Forms JV-210 and JV-215 for application and order forms.)

(4) Suspension of Family Court Proceedings

a. DFCS Report

After a report of suspected child abuse has been made to a child protection agency, custody and visitation proceedings in the Family Court are suspended, except that the Family Court has the power to make temporary protective orders to ensure the safety of the child. The suspension will remain for eighteen (18) calendar days from the report or until DFCS indicates in writing that it will take no action in the matter, whichever occurs first.

b. W & I Section 300 Petition, Juvenile Court

If a petition pursuant to W & I Code Section 300 is filed in the Juvenile Court, all custody and visitation proceedings in the Family Court are suspended. Thereafter custody and visitation issues will be determined by the Juvenile Court. The Family Court will resume custody or visitation proceedings only after written authorization is received from the Juvenile Court.

(5) Review of Dependency Decision

If the DFCS social worker decides not to initiate Dependency proceedings, any person may apply to the Juvenile Court to review that decision pursuant to W & I Code Section 331. The application must include a copy of any application made pursuant to W & I Code Section 329 if one was made. The Juvenile Court will rule on the application as soon as possible and in no event later than thirty (30) days after receipt of the application. (See Judicial Council Forms JV-210 and JV-215 for application and order forms.)

(6) Informal Supervision Agreement

If during the DFCS social worker's investigation, one or both parents reach an informal supervision agreement pursuant to CRC 5.514, a copy of that agreement must be sent immediately to DFCS, to FCS, and to each parent.

(7) Family Code Section 3150 Appointment of Counsel

During Family Law proceedings in which allegations of child abuse have been made, the Family Court Judge may appoint counsel for the child (Family Code Section 3150) to protect the child's interests and/or expedite the policy stated herein and carry out the terms of this Rule.

(8) Coordination of Cases

At any time during the process described herein, the supervising judges of the Family and Juvenile Courts are encouraged to discuss problems relating to the coordination of cases involving child abuse allegations.

(Effective 1/1/2022)

E. DUALLY INVOLVED YOUTH HEARINGS (W & I Code Section 241.1)

(1) The Juvenile Dependency and Juvenile Justice Courts will follow the Santa Clara County Dually Involved Youth Protocol. Before any hearing conducted pursuant to W & I Code Section 241.1 at which the judicial officer in Juvenile Justice Court makes a finding or order affecting the legal status of the child in Dependency Court, the judicial officer making the finding or order or his/her designee will confer with the judicial officer in the other Juvenile Court proceeding by telephone or email of his or her intended finding or order. This Rule is intended to promote the best interests of children before the Juvenile Court by better communication between the Juvenile Justice and Dependency judicial officers in cases in which a child is the subject of proceedings in both Courts. Similarly, before the Juvenile Justice Court judicial officer sends the matter to the Dependency Court judge for the filing of a new Dependency Court case on behalf of the child, the judicial officer must confer and agree to move forward with the new W & I Code-Section 300 petition.

(2) In any case where judicial supervision of a child under the jurisdiction of the Juvenile Court is transferred from the Juvenile Justice Court to the Juvenile Dependency Court, the Juvenile Probation Department must serve, within ten (10) Court days of the order modifying the Juvenile Children's Services and minor's counsel in the Dependency matter, with copies of the following documents, should they exist in the child's case file:

a. Applications and Orders related to the administration of psychotropic medications, which include Judicial Council Forms JV-220, JV-220(A), and JV-223;

b. Findings and Orders related to limitations on a parent's right to make educational decisions, which include Judicial Council Forms JV-535, JV-536, and JV-537;

c. Order for Restitution and Abstract of Judgment (Judicial Council Form JV-790);
d. Individualized Educational Plans for the child; and
e. Unsealed psychological evaluations of the child conducted within twelve (12) months prior to the Court's order modifying the Juvenile Court's jurisdiction.

(Effective 1/1/2022)

PROBATE RULES

SANTA CLARA COUNTY
SUPERIOR COURT
191 North First Street
San Jose, California 95113

Probate Calendar	(408) 882-2100 x 2649
Probate Filing	(408) 882-2100 x 2654
Probate Examiner	(408) 882-2100 x 2668
Court Investigator	(408) 882-2761
Probate Staff Attorney	(408) 882-2100 x 2668
Pre approved Matter Recording	(408) 882-2100 x 2650

INTRODUCTION

These local rules describe rules of practice in probate matters in Santa Clara County not covered by the Probate Code and the Rules of Court of the Superior Court of Santa Clara County and are subject in any particular case to the discretion of the Court. All parties are directed to the California Rules of Court, Title Seven, Probate Rules.

RULE 1 ADMINISTRATION AND GENERAL POLICIES

A. ASSIGNMENT OF MATTERS

(Effective 1/1/2017)

New Probate cases are randomly assigned to a judicial officer for all purposes. The judge in that department is the All-Purpose Judge (APJ). If a case is sent for trial to the Civil Division based on its expected length or other reasons, the APJ shall still decide all issues up to trial, including any ex parte requests and motions to continue the trial. All filed documents must contain the name of the assigned APJ and department.

(Effective 3/23/2021)

B. CASES INVOLVING EMPLOYEES

If a court employee or deputy sheriff working in the Probate Division, or a member of his or her family, is a party to a case, the matter shall be transferred to the Civil Division for assignment for all purposes.

(Effective 3/23/2021)

C. PROBATE CALENDARS

(1) ESTATE, TRUST AND CONSERVATORSHIP MATTERS

Decedent's estate, trust, and conservatorship matters are heard in the Probate Division. Demurrers, motions to strike, special motions to strike (i.e. anti-SLAPP motions), motions to quash for lack of personal jurisdiction, motions for judgment on the pleadings, discovery motions, and summary judgment motions filed in decedent's estate, trust and conservatorship matters are heard on the Probate Division's motions calendar.

(2) MENTAL HEALTH MATTERS

Mental health matters under the Lanterman Petris Short (LPS) Act., firearm prohibitions, and quarantine detentions are heard in the Probate Division.

(Effective 3/23/2021)

(3) GUARDIANSHIP, ADOPTION AND RELATED MATTERS

(a) Guardianships of the person and of the estate and all guardianship accounting petitions are heard in the Probate Division.

(b) Adoptions, terminations of parental rights, and petitions for declaration of emancipation of minors are heard in the Probate Division.

(Effective 7/1/2022)

(4) MINOR'S COMPROMISE MATTERS

Minor's compromise matters will be heard in the Probate Division unless there is an existing civil case. Minor's compromise matters filed in an existing civil case will be heard by the civil case management judges.

(Effective 3/23/2021)

D. HEARING DATES

For all matters set on probate calendars, Parties are required to reserve a hearing date in the manner set forth on the Court's website (www.scscourt.org). Hearing dates for minor's compromise matters with an existing related civil case are set under the procedures set forth in Local Civil Rule 8C.

(Effective 3/23/2021)

E. TELEPHONIC APPEARANCES

Telephonic appearances on probate matters are governed by California Rule of Court (CRC) 3.670 and Local Civil Rules 12B through 12E. Telephonic appearances are not permitted for guardianship appointments, conservatorship appointments or petitions to confirm the sale of real property.

When a Petition for Writ of Habeas Corpus Re: Quarantine Detention is brought and an Order for Writ Issuance is granted, Petitioner shall directly call the department to which the case is assigned. The Probate Division direct line shall be indicated on the face of the Writ of Habeas Corpus Re: Quarantine Detention which is issued by the Clerk of the Court.

(Effective 1/1/2017)

F. CONTINUANCES

A continuance may be granted without the need for a court appearance only if all parties agree. The request may be made by a telephone call to the Probate Examiner's Office at least three court days before the scheduled hearing. The Court may deny any continuance request.

On the call of the calendar, a matter may be continued for such period as the Court in its sole discretion will determine if a party personally appears on the hearing date and requests a continuance. The Court discourages repeated continuances of a matter.

(Effective 1/1/2017)

G. OBJECTIONS

Unless the Probate Code requires written objections, the Court may hear oral objections at the noticed hearing, or the Court may require the objections to be made in writing. If written objections are required by the Court, the Court will continue the hearing and specify the date by which the objecting party must file and serve the written objections. Failure to file and serve such written objections on or before the date set may be grounds for overruling the objections. The following are local forms which may be used to object to the matters indicated:

(1) Objection to Petition to Remove Conservator (attached form PB-4035)
(2) Objection to Petition to Remove Guardian (attached form PB-4036)
(3) Objection to Petition to Remove Personal Representative (attached form PB-4037)
(4) Objection to Petition to Remove Trustee (attached form PB4038).
(5) Objection to Petition to Terminate Guardianship (attached form PB-4039)
(6) Objection to Guardianship (attached form PB-4043)
(7) Objection (attached form PB-4045)

(Effective 1/1/2017)

H. ADVANCE CASE STATUS REPORTS

The Probate Division will post Advance Case Status Reports ("ACSRs") for cases on the General Probate and Administration of Estates calendars on the court website (www.scscourt.org) generally two court days before the hearing, and no later than 5:00 p.m. on the court day before the scheduled hearing. The most common notations for each case will be "Pre-Approved", "Continued", "Parties to Appear", and/or Probate Examiner notes listing procedural deficiencies. If a party does not have access to the internet, the ASCRs may be accessed by calling Court Services at (408) 882-2515. ACSRs will not be posted for cases on the Conservatorship or Guardianship appointment calendars.

(Effective 1/1/2024)

(1) PRE-APPROVED MATTERS

Pre-approved matters are those that have been reviewed and found satisfactory by the Court before the date set for hearing. Personal appearance by the petitioning party is not required on pre-approved matters. Pre-approved matters to which objections are made may be continued. Orders for pre-approved matters will be signed upon the calling of the probate calendar. Parties may pick up their orders at that time.

(2) PROBATE EXAMINER NOTES; CORRECTING PROCEDURAL DEFECTS

(Effective 1/1/2024)

If a matter is not pre-approved, the ACSRs will include Probate Examiner notes listing procedural deficiencies. Parties may file additional submissions to correct procedural deficiencies, and the Court, in its discretion, may consider such filings in making its order. The Probate Examiner cannot discuss in detail or advise parties of corrective action that may be taken. The court may order a matter off calendar, grant subject to additional filings, order a continuance or take any other action within its discretion.

(Effective 1/1/2024)

I. CONTESTED MATTERS HEARD BY THE PROBATE DIVISION

(Effective 1/1/2024)

(1) SUBMISSION ON THE PLEADINGS

At-issue, contested matters that are ready for hearing and that parties agree to submit on the pleadings may be taken under submission or ruled upon at the scheduled hearing.

(2) EVIDENTIARY HEARING

At-issue, contested matters that are ready for hearing and for which the total hearing time does not exceed three hours may be heard by the Probate Division. Briefs for evidentiary hearings should be filed and served three days before the hearing unless otherwise specified by the Court.

(3) HEARINGS AND TRIALS LONGER THAN THREE HOURS

Matters requiring hearings or trials longer than three hours will be set on the Civil Division's master trial calendar. Local Civil Rule 9 shall govern the proceedings, except that the Probate Division shall hear all issues up to trial

(Effective 1/1/2017)

J. PRIVACY REQUIREMENTS FOR SOCIAL SECURITY NUMBERS, FINANCIAL ACCOUNT NUMBERS, AND COURT INVESTIGATOR REPORTS

(Effective 1/1/2024)

Parties are reminded to comply with CRC 1.20 which requires the redaction of certain social security numbers and financial account numbers. In addition, Court Investigator Reports are confidential documents and are not to be attached, in whole or in part, to any pleadings or other documents filed with the Court.

(Effective 1/1/2017)

K. SUBMISSION OF WILLS OR CODICILS

(Effective 1/1/2024)

Any will or codicil submitted for filing must be submitted with PB-4079, "Will Coversheet," to preserve the originality of the document.

(Effective 1/1/2021)

RULE 2 PRETRIAL MOTIONS AND EX-PARTE PROCEEDINGS

(Effective 1/1/2024)

A. LAW AND MOTION AND DISCOVERY MATTERS - TENTATIVE RULINGS

(Effective 1/1/2024)

The Court follows CRC 3.1308(a)(1) for those departments that have elected to issue tentative rulings in probate law and motion and discovery matters. Counsel and litigants are responsible for determining whether the department hearing their motion has made this election. Those departments issuing tentative rulings will do so generally by 2:00 p.m. and no later than 3:00 p.m. on the court day preceding the scheduled hearing. If the Court has not directed oral argument, a party contesting a tentative ruling must give notice of the party's intention to appear to the other side and the Court no later than 4:00 p.m. on the court day preceding the scheduled hearing. Appearances may be made by remote (Teams), telephone or in person. The tentative ruling will automatically become the order of the Court on the scheduled hearing date if the Court has not directed oral argument and if the contesting party fails to timely notice an objection to the other side and the Court. Tentative rulings will be posted on the Court's website, www.scscourt.org, where further information may be found. If a party does not have access to the internet, the tentative ruling may be accessed by calling Court Services at (408) 882-2515. Questions about these procedures may be addressed to the specific department where the matter is to be heard.

(Effective 1/1/2024)

B. PROBATE ORDERS

(Effective 1/1/2024)

1. FORMAT

   All orders in probate matters must be complete and bear the noticed hearing date and department. In addition, the court signature and date lines must not be on a page by themselves; the signature page must contain some text of the order. If a matter is taken off calendar, any order submitted will be returned to the party and a new order must be submitted for the re-noticed hearing date. All orders signed by a judge that are provided to counsel during a hearing must be filed before leaving the courthouse.

(Effective 1/1/2024)

2. DEADLINE FOR SUBMITTING PROPOSED ORDERS IN UNCONTESTED MATTERS

   In all matters where no objections are on file, a petitioning party must submit a proposed order at least four court days in advance of the scheduled hearing date or the matter may be ordered off calendar.

(Effective 1/1/2024)

3. EX PARTE ORDERS FOR PROBATE MATTERS

(Effective 1/1/2024)

Probate matters may be presented ex parte unless a noticed hearing is required by the Probate Code, Court order, or the Local Probate Rules. An ex parte petition or application must contain sufficient facts to justify the orders requested. All ex parte petitions must be accompanied by either a Probate Uncontested Ex Parte Coversheet: Matters Submitted on the Pleadings (form PB-4080) or a Probate Ex Parte Relief Checklist (form PB-4078), as specified in subsections 1 and 2 below.

(Effective 9/17/2021)

a. Certain uncontested petitions may be submitted ex parte for judicial review without a hearing. To be considered for this review, the petition must be accompanied by the Probate Uncontested Ex Parte Coversheet: Matters Submitted on the Pleadings (form PB-4080). Petitions that may be submitted under this section are:

(Effective 1/1/2024)

i. The following Estate Petitions with consents and waiver of notice:
1) Petition for Final distribution – with waiver of accounting
2) Petition for payment of creditor claims
3) Petition for payment of attorney and/or administrator fees
4) Petition to transfer a will
5) Spousal Property Petitions

(Effective 1/1/2024)

ii. The following Conservatorship and Guardianship of the Estate Petitions with consents and waiver of notice:
1) Petition for payment of attorney and/or conservator fees
2) Petition to remove money from blocked account

(Effective 1/1/2024)

iii. The following Miscellaneous petitions:
1) Petition to appoint GAL (any case type)
2) Petition to approve settlement agreement (any case type) (executed by all necessary parties)
3) Petition to increase/decrease bond (any case type)
4) Petition for small estate collection by county counsel

(Effective 1/1/2024)

b. Certain uncontested petitions may be submitted ex parte and will receive initial review by the Probate Attorney prior to submission to a Probate judge for review. To be considered for this review, the petition must be accompanied by the Probate Ex Parte Relief Checklist (form PB-4078). Petitions that may be submitted under this section are:

(Effective 1/1/2024)

i. The following Estate Petitions with consents and waiver of notice:
1) Petition for preliminary distribution
2) Petition to appoint a special administrator
3) Petition to instruct the personal representative

(Effective 1/1/2024)

ii. The following Trust Petitions with consents and waiver of notice:
1) Petition to confirm trust assets
2) Petition to fill vacancy in trustee office
3) Petition to instruct trustee/interpret trust provision
4) Petition to modify trust terms
5) Petition to confirm trust terms/existence of trust
6) Petition to approve distribution

(Effective 1/1/2024)

c. The procedures for submitting ex parte matters are as follows:

(Effective 1/1/2024)

i. The petitioner must first determine if there is anyone who would oppose the matter if they knew about it. A notice and copy of the petition and any supporting documents must be served on all parties at least 24 hours before presenting the ex parte petition to the Court. The petition, a proposed order, and any supporting documents must be submitted along with a declaration stating when and to whom notice was given; or if there is a request to waive notice, why notice should not be given. If the matter does not require immediate action, defined to mean action within the day the matter is presented to the Court, the Court will allow 48 hours, not including weekends or holidays, for the opposing party to present the opposition.

(Effective 1/1/2024)

ii. If there will be no objection, the petition, a proposed order (attached to Judicial Council Form EFS-020, if submitted by electronic filing), and supporting documents should be submitted with form PB-4078 or PB-4080, as specified in sections 1 and 2 above. Attorneys must file the documents by electronic filing. Self-represented parties may submit the documents by electronic filing or by presenting them to the Probate Filing Office.

(Effective 1/1/2024)

iii. If there will be an objection, and the matter is:
- Not urgent: Do not submit it ex parte. Instead, have the matter set for a noticed hearing on the regular Probate calendar.
- Urgent: Attorneys and self-represented parties must submit the petition, proposed order, and any supporting documents in hard copy form to the Probate Filing Office. The documents will be submitted to a Probate Judge who will determine if the matter should be set for an ex parte hearing or set on the regular calendar. The judge's courtroom clerk will notify the submitting party whether the matter will be set for ex parte hearing or not.

(Effective 1/1/2024)

iv. The above procedures do not apply to Ex Parte Petitions for Final Discharge (Form DE-295 / GC-395). Such petitions should be submitted in hard copy form to the Probate Filing Office.

(Effective 1/1/2024)

v. The above procedures do not apply to temporary guardianships and conservatorships. The procedures for those matters are set forth in Local Probate Rules 11T and 12M below.

(Effective 1/1/2024)

RULE 3 ALTERNATIVE DISPUTE RESOLUTION

A. POLICY STATEMENT

The Probate Division endorses the policy statement set forth in Local Civil Rule 2A

B. PROBATE EARLY SETTLEMENT CONFERENCE PROGRAM

The Probate Early Settlement Conference Program is available to parties who stipulate, using the Probate ADR Stipulation and Order Form (see attached form PB-4063), to have a neutral conduct a settlement conference in their case. The program is governed by the following rules:

(1) SELECTION OF NEUTRAL

The parties may, but are not required to, select the neutral from the Court's list of program neutrals available from the Court's Probate web page. If the parties do not agree on a neutral, the Court will assign the case to the next available neutral.

(2) STIPULATION

All parties must complete and file the Probate ADR Stipulation and Order form (attached form PB-4063) and must file the form in the Clerk's Office.

(3) LOCATION OF HEARING

Probate Early Settlement Conference sessions will be held in the Probate Division or at a location designated by the neutral.

(4) STATEMENTS, ATTENDANCE, AUTHORITY, CONFIDENTIALITY AND NOTIFICATION OF SETTLEMENT

Submission of settlement conference statements, attendance and settlement authority are governed by CRC 3.1380. A Probate Early Settlement Conference is not a mediation, as defined in Evidence Code § 1115. There is no provision for confidentiality of communications. If the parties are able to settle the case, counsel must promptly notify the Court.

(5) GRIEVANCES

Any grievance regarding a neutral will be handled pursuant to Local Civil Rule 2G

(Effective 1/1/2017)

C. MANDATORY SETTLEMENT CONFERENCES

Probate matters set for trial by the Civil Division are subject to Local Civil Rule 9B which governs Mandatory Settlement Conferences.

(Effective 1/1/2017)

RULE 4 APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

A. LETTERS OF SPECIAL ADMINISTRATION

Petitions for letters of special administration ordinarily will not be granted on less than 24 hours' notice to the surviving spouse or registered domestic partner, to the nominated personal representative, or to any other person who, in the opinion of the Court, appears to be entitled to notice. The petitioning party is advised to ascertain whether a bond must be posted prior to the issuance of letters of special administration.

(Effective 1/1/2005)

B. PETITION FOR PROBATE OF WILL OR CODICIL

When a petition for probate of will or codicil is filed, the original of the document being offered for probate must be lodged with the court prior to, or concurrently with, the petition. If the will or any part thereof is handwritten, a typewritten copy of the handwritten portion must also accompany the petition.

If the will is in a foreign language, a translation by an expert must be submitted at the time of filing the petition for probate. An affidavit or declaration as to the expertise of the translator must accompany the translation.

C. ALLEGATIONS RE HEIRS, BENEFICIARIES, AND FIDUCIARIES

In a petition for letters testamentary, letters of administration, letters of administration with will annexed, or letters of special administration, all heirs under Probate Code Sections 6402 and 6402.5 known to the petitioner, and all beneficiaries living at the time of the decedent's death, whether vested or contingent, who at the time of the decedent's death might be entitled to share in the distribution of the estate, whether it consists of separate or community property, must be specifically named. If any named beneficiary predeceased the decedent, that fact must be alleged in the petition with the date of death if known. All beneficiaries provided for in the will whose interests have been revoked by a subsequent codicil must also be named.

Where the will devises property to a fiduciary (e.g., trustee, custodian or guardian), the petition, in addition to giving the name and address of the fiduciary, must list the names and addresses of all known beneficiaries of the trust, custodianship, guardianship, etc., who are living or in existence at the date of death of the decedent. Alternate or successor trustees, custodians, or guardians need not be named in the petition. If a post office box is listed as the mailing address for a fiduciary or beneficiary, the street address of the fiduciary or beneficiary must also be shown if available.

D. PUBLICATION

The publication of the Notice of Petition to Administer Estate is sufficient notice of all wills or codicils that are offered for probate and filed with, and specifically referred to in, the petition. Wills or codicils not specifically referred to in the petition must be presented to the Court in an amended or subsequent petition and a new Notice of Petition to Administer Estate must be published.

Where the will has been admitted to probate, no new or additional publication of the Notice of Petition to Administer Estate is required upon the filing of a subsequent petition for letters testamentary or letters of administration with will annexed. See attached form PB-4000 for information to assist in arranging for publication.

(Effective 7/1/2006)

E. LETTERS

Where the will has been admitted to probate and either there is a vacancy in the office of the personal representative or no letters testamentary have been granted, a new petition for letters testamentary or for letters of administration with will annexed, whichever is applicable, must be filed prior to the issuance of letters.

If the will is denied admission to probate after the filing of a petition for letters testamentary or for letters of administration with will annexed, e.g., in the event of a will contest, letters of administration may be granted on the basis of the petition already on file. No new publication of the Notice of Petition to Administer Estate is required.

F. REMOVAL OF PERSONAL REPRESENTATIVE

Individuals requesting removal of a personal representative may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Personal Representative (attached form PB-4042). Anyone objecting to a petition to remove the personal representative may use the local form entitled Objection to Petition to Remove Personal Representative (attached form PB-4037).

(Effective 1/1/2008)

RULE 5 BONDS

A. AMOUNT OF BOND UNDER INDEPENDENT ADMINISTRATION OF ESTATE ACT (IAEA)

If a bond is required of the personal representative, the amount of bond required of a personal representative granted full authority under the IAEA must include the estimated value of the personal property, the estimated net proceeds of the real property that may be sold under the IAEA, and the estimated value of the annual gross income of all of the property belonging to the estate.

B. NON-RESIDENT PERSONAL REPRESENTATIVE

The Court will ordinarily require a non-resident personal representative to post bond, even if the will waives bond, unless waivers of bond from all heirs or beneficiaries are filed, in which case the Court, in its sole discretion, may not require a bond.

(Effective 1/1/2009)

C. INCREASE OR DECREASE IN AMOUNT OF BOND

When it appears to the Court that the bond of any fiduciary is insufficient, the amount of the bond must be increased at the discretion of the Court. Counsel, personal representatives, guardians, and conservators are referred to CRC Rule 7.204, with regard to their duty to petition to increase the bond. When it appears that the bond of any fiduciary is in excess of the required amount, the fiduciary may petition the Court to reduce the bond. This petition may be presented ex parte. Fiduciaries and counsel should be aware that it is their responsibility to see that the bond amount is sufficient. Conservators and guardians of the estate must seek increase in bond amounts when necessary to meet the requirements of Probate Code § 2320 and CRC 7.207.

(Effective 1/1/2009)

D. REDUCTION OF BOND IN FOLLOWING YEARS BY DEPOSITING ASSETS IN BLOCKED ACCOUNT AND PROVIDING RECEIPTS

At any time, a fiduciary may request a reduction of bond or no bond if monies and/or securities have been deposited into a blocked account in a financial institution or trust company. The order as well as the account must provide that no withdrawals be made without prior authorization by the Court.

A petition to reduce the bond by blocked account deposits may be made ex parte. It is the responsibility of the fiduciary to prepare the Judicial Council form “Order to Deposit Money into Blocked Account” (form number MC 355). This form must be presented to the court for signature at the time the petition to reduce the bond is heard. The fiduciary must also prepare the Judicial Council form “Receipt And Acknowledgement of Order for the Deposit of Money Into Blocked Account” (form number MC 356) and present it (along with a copy of the Order to Deposit Money) to the financial institution accepting the deposit for signature by an officer of that institution. The depository must file the Receipt within 15 days of the date of receipt. If the Receipt has not been filed within 45 days of the order, the fiduciary must file a written explanation with the Court stating the reason the Receipt has not been filed and when the fiduciary expects the Receipt to be filed.

Where the Court has approved such an order, the order appointing the fiduciary and letters of conservatorship or letters issued in an estate administration matter must state that the fiduciary has no authority to take physical possession of money or other property without specific court order. If a fiduciary or party is using the "Order to Deposit Money Into Blocked Account" form for deposits in other than an interest bearing savings account, the fiduciary or party should adapt the form appropriately.

A petition for withdrawal of funds must be made on Judicial Council form “Petition For Withdrawal of Funds From Blocked Account (form number MC 357), and the petitioner must submit for the Court’s signature the Judicial Council form “Order For Withdrawal of Funds From Blocked Account” (form number MC 358).

(Effective 1/1/2017)

E. BOND ON BORROWING

A petition to borrow money must contain information sufficient for the Court to determine the proper bond amount.

F. BOND NOT REQUIRED WHERE TRUST COMPANY SERVES AS FIDUCIARY

When a trust company is serving as a guardian or conservator of the estate or as a trustee, bond is not required under Probate Code § 15602.

(Effective 1/1/2009)

G. STATEMENT RE SUFFICIENCY OF BOND IN REPORTS ACCOMPANYING ACCOUNTINGS

Fiduciaries must allege in all reports accompanying accountings whether or not the bond in the case is sufficient under Probate Code § 2320 and CRC 7.207, and, if not, what steps are being taken to comply those requirements.

(Effective 1/1/2017)

RULE 6 THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

A. PETITION FOR AUTHORITY TO ADMINISTER ESTATE PURSUANT TO THE INDEPENDENT ADMINISTRATION OF ESTATES ACT (IAEA)

Full or limited authority to act pursuant to the IAEA may be requested in the petition for letters or by a separate petition.

B. EXTENT OF POWER DEPENDENT ON DATE LETTERS ISSUED

The IAEA has been amended several times. The date letters were last issued establishes the extent of the powers that can be exercised under the IAEA.

C. REPORT OF ACTIONS TAKEN UNDER THE IAEA

In a petition for preliminary distribution or final distribution, all actions taken under the IAEA must be reported as set forth in CRC Rule 7.250. Additionally petitioner must report the amount paid or received, if applicable.

(Effective 1/1/2004)

D. FILING NOTICE OF PROPOSED ACTION WITH COURT

A copy of any Notice of Proposed Action must be filed with the Court together with the proof of service.

RULE 7 SALE UNDER COURT SUPERVISION

A. PUBLICATION OF NOTICE OF INTENTION TO SELL

The notice of intention to sell must be published in decedents' estates where the personal representative has not been given the power of sale in the will. Publication is not required where the personal representative is using the Notice of Proposed Action procedure under IAEA. For sales in conservatorship and guardianship proceedings, see Probate Code §2543(b) and (c), and §2591.5.

(Effective 7/1/2007)

The report of sale must be filed within 1 year of the last published date of notice of intention to sell. It is advisable that the published notice call for "cash or such credit terms and conditions as the Court may approve." There cannot be a variance in the terms of sale between those shown in the petition and those in the published notice.

The published notice of intention to sell real property is a solicitation for offers. No offer can be accepted prior to the expiration of the notice period specified in the notice of intention to sell.

On filing an appropriate affidavit or declaration, the Court may sign an order shortening the notice period to five days, with sale permitted on the sixth day after publication. The practical effect of this order is that only one publication is necessary.

B. PETITION FOR CONFIRMATION OF SALE OF REAL PROPERTY; SALE PROCEDURE

(1) TIME FOR FILING PETITION

A petition for confirmation of sale should be filed by the personal representative within 30 days after the date of acceptance of a contract. Note that the property is initially sold by the personal representative and then returned to the Court for confirmation.

(2) CONTRACT OF SALE TO BE FILED WITH COURT

At the time of filing the petition for confirmation, the petitioner must file a copy of the contract of sale.

(3) DEED OF TRUST

Upon an appropriate showing by the petitioner, the Court may approve a sale where part of the consideration is to be secured by a deed of trust of which the personal representative is the beneficiary.

(4) SALE SUBJECT TO ENCUMBRANCE

Sale of real property will not ordinarily be confirmed when the purchaser assumes or takes subject to an existing encumbrance, if as a result the estate remains subject to a contingent liability on the encumbrance (i.e., "wraps"). The petition must set forth the facts pertinent to such assumption agreement.

(5) SALES OF FRACTIONAL INTERESTS

Where the estate owns only a fractional interest in the real property, the petition must state whether the sale by the estate is conditioned upon closing of a sale of the unowned fraction.

RULE 8 PETITION FOR INSTRUCTIONS AND OTHER INSTRUCTIONS

A. PETITION FOR INSTRUCTIONS

In decedents' estates, guardianships, and conservatorships, a petition for instructions is available only when no other procedure is provided by statute. For example, the Court will not determine how a will should be interpreted or the manner in which an estate should be distributed on a petition for instructions. Such direction can be obtained only by a petition for distribution or by a petition to determine persons entitled to distribution.

B. APPOINTMENT OF SUCCESSOR TRUSTEE

A petition seeking appointment of a successor trustee or cotrustee should include a description of the procedure required by the trust instrument for such appointment, detailed information demonstrating that the proposed trustee is qualified to be appointed as a trustee of the trust, whether some or all of the beneficiaries of the trust have been consulted about the appointment of the proposed trustee, and a recommendation for the amount of the bond of the proposed trustee or a showing of good cause why a bond should not be required.

RULE 9 ACCOUNTS, REPORTS, FEES, COMMISSIONS, AND DISTRIBUTION

A. FORM OF ACCOUNTS

(1) ACCOUNTS IN DECEDENTS' ESTATES AND IN TRUSTS.

All accounts filed in decedents' estates and in trusts, must follow the format described in Probate Code § 1061:

(Effective 7/1/2008)

a. TIME PERIOD

All accounts must set forth specifically the period covered by the account.

b. SUMMARY OF ACCOUNT

Accounts must contain a summary or recapitulation in substantially the following format:

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 reference.

CHARGES

Amount of Inventory and Appraisal (or if subsequent account, amount chargeable from prior account)

Additional Property Received (or supplemental inventories) $_____

Receipts during Account Period $_____

Other than Principal (Schedule) $_____

Gains on Sales (Schedule)

Net Income from Trade or $_____

Business (Schedule) $_____

Total Charges: $_____

CREDITS

Disbursements during Account Period (Schedule) Losses on Sales (Schedule)(e.g., property distributed, homestead or other property $ set apart)

Net Loss from Trade Or Business $_____

(Schedule) $_____

Distributions (Schedule) $_____

Property on Hand (Schedule) $_____

Total Credits: $_____

c. SEPARATE SCHEDULES

Each figure on the summary of the account must be supported by separate schedules. These must include schedules of receipts and disbursements showing the date, amount, payor, payee, and nature or purpose of each item. Whenever possible, disbursements must show check numbers. The gain and loss schedules must reflect the sales price, the inventory or carrying value, and resultant gain or loss. The schedule of assets on hand must be itemized showing the inventory or acquisition value. For all accounts, there must be an additional schedule showing estimated market value of assets on hand as of the end of the accounting period, and a schedule of the estimated market value of the assets on hand as of the beginning of all accounting periods subsequent to the initial account. The fiduciary may provide a good faith estimate for the value of real estate, a closely held business, or other assets without a ready market.

Whenever an accounting period exceeds one year, or whenever income is received from any particular source more than twelve times in an accounting period, or whenever payments are disbursed to a particular payee more than twelve times in an accounting period, it is required that the schedules for receipts and for disbursements be categorized into subschedules

reflecting the particular income sources or payees for whom there are more than twelve entries per accounting period. See 2 California Decedent Estate Practice §§ 19.19 and 19.22 (Cal CEB 1986).

When a trust accounting submitted for approval by the Court contains disbursements for trustee or attorney fees, the trustee or attorney must furnish evidence to support the disbursements for fees in a manner consistent with the requirements of the trust instrument. If the trust permits "reasonable fees" without court approval, for instance, the trustee shall furnish an explanation of how the "reasonable fee" was calculated

(Effective 1/1/2017)

d. INCOME AND PRINCIPAL ACCOUNTING

All accounts for entities that have separate principal and income beneficiaries must allocate receipts and disbursements between principal and income.

If a financial institution makes only online statements available to the fiduciary, the fiduciary may submit exact printed copies of the online statements in place of the original statements required by Probate Code § 2620 (c) and shall attach to the printed copies of the statements submitted for each account a declaration under penalty of perjury that the printed copies are exact replicas of the online statements provided by the financial institution.

(Effective 7/1/2011)

e. WAIVER OF ACCOUNT

The petition for final distribution on waiver of account must contain the information required in CRC 7.550, as well as the fair market value of assets on hand, and must comply with CRC 7.551-7.552.

(Effective 7/1/2008)

(2) ACCOUNTINGS IN GUARDIANSHIPS AND CONSERVATORSHIPS

(Effective 7/1/2008)

a. All accountings in guardianships and conservatorships filed on or after January 1, 2008, must follow the content and format required in CRC 7.575. Accountings are designated as either standard or simplified. All accountings must use Judicial Council Form GC-400 (SUM)/GC-408(SUM) for the Summary of Account. Guardians and conservators presenting standard accounts may, but are not required to, use the optional Judicial Council forms designated as GC-400. Those guardians and conservators presenting standard accountings who do not use the optional Judicial Council forms are required to use the content and format called for in those forms, but may submit accountings prepared on conventional accounting programs. Guardians and conservators presenting simplified accounts must use the Judicial Council forms designated as GC-405.

b. Organization of Schedules: All accountings must provide all information required in Probate Code §§ 1060 – 1064.

Receipts schedules must use the categories and format used by the optional judicial forms:

- Dividends; Interest; Pensions, Annuities, other Periodic Payments; Rent; Social Security, Veterans Administration, and Other Public Benefits; Other Receipts.

Schedules for Receipts of Principal, Gains on Sales, Income from Business, and Loss on Sales do not have a mandated format.

Disbursements schedules must use the categories used by the optional Judicial Council forms:

- Caregiver Expenses; Residence or Long Term Care Facility Expenses; Ward's Educational Expenses; Fiduciary and Attorney Fee Expenses; General Administration Expenses; Investment Expenses; Living Expenses; Medical Expenses; Property Sales Expenses; Rental Property Expenses; and Other Expenses. See CRC 7.575(e).

(Effective 7/1/2008)

c. At the time the Court appoints a conservator or guardian, and unless the court waives the requirement of the conservator or guardian to file periodic accountings with the Court, the court must set a compliance date for the conservator or guardian to file his or her first account and report, which must be on the Friday calendar at 10:00 a.m. no later than 60 days after the first year anniversary of the appointment of the conservator or guardian. If the conservator or guardian has filed the accounting, this will be a nonappearance matter. At the time the court hears an account and report, it must set a compliance date for the next account and report, which must be on the Friday calendar at 10:00 a.m. no later than 60 days after each subsequent biennial anniversary of the conservatorship or guardianship.

(Effective 7/1/2014)

d.

(Effective 1/1/2011)

Pursuant to Probate Code § 2620, the guardian or conservator may elect to lodge with the Court the originals of the account statements and all other documents referenced in § 2620(c). The originals of the all such documents shall be released by the Court as provided in § 2620(c)(8)

If a financial institution makes only online statements available to the fiduciary, the fiduciary may submit exact printed copies of the online statements in place of the original statements required by Probate Code § 2620 (c) and shall attach to the printed copies of the statements submitted for each account a declaration under penalty of perjury that the printed copies are exact replicas of the online statements provided by the financial institution.

(Effective 1/1/2011)

(3) STATEMENT RE SUFFICIENCY OF BOND IN REPORTS ACCOMPANYING ACCOUNTINGS

Fiduciaries must allege in all reports accompanying accountings whether or not the bond in the case is sufficient under Probate Code § 2320 and CRC 7.207, and, if not, what steps are being taken to comply with those requirements.

(Effective 1/1/2017)

B. ALLEGATIONS REGARDING CREDITOR'S CLAIMS AND REPORT OF ACTIONS TAKEN UNDER IAEA

It is not sufficient in any petition for distribution to allege merely that all claims have been paid. Petitioners must provide all information required under CRC Rule 7.403. The allegations regarding disposition of all claims must appear in the petition for final distribution even though they may have appeared in whole or in part in prior petitions. See 5.C for report of actions taken under IAEA.

C. STATUTORY COMMISSIONS AND FEES

All parties and counsel are directed to CRC Rules 7.700 and 7.701.

(Effective 1/1/2009)

(1) PAYABLE AFTER COURT ORDER

Statutory commissions and fees (herein "statutory compensation") are payable only after a Court order authorizing them.

(2) BOTH HALVES OF COMMUNITY PROPERTY PROBATED

If both halves of the community property are properly included in the probate proceeding, statutory compensation calculated on both halves of the community property will be allowed.

(3) CALCULATION

Unless statutory compensation is waived, calculation of the statutory compensation (including calculation of the fee base) and any prior payments of statutory compensation must be included in the petition for compensation.

(4) ALLOWANCE ON ACCOUNT

Allowances on account of statutory compensation will generally be allowed in proportion to the work completed.

(5) ACCOUNTING WAIVED

Where the accounting is waived, the basis of the statutory compensation shall be the inventory value of the estate plus, if applicable, receipts, on sales, less losses on sale, as provided in CRC 7.550 and 7.705. Such receipts and gains or losses must be reflected in the report of the personal representative.

(Effective 1/1/2009)

(6) PAYMENT OF COSTS, FEES, AND COMMISSIONS WHERE CASH INSUFFICIENT

Where the estate at final distribution has no cash or insufficient cash to pay costs, attorney’s fees, and/or personal representative's commissions, an explanation of the source of payment of these obligations must be submitted.

D. COMPENSATION FOR EXTRAORDINARY SERVICES

(1) EXPLANATION REQUIRED

A detailed explanation of the extraordinary services performed and the amount of compensation requested for such services must be separately stated in a declaration under penalty of perjury executed by the person rendering the services. See also the standards set forth in Local Probate Rule 9G. The explanation must include the statement of facts required by CRC Rule 7.702.

(Effective 1/1/2004)

The Court may consider the amount of statutory fees when determining compensation for extraordinary services.

(2) COURT APPEARANCE

In all cases in which there is a request for compensation for extraordinary services, the attorney for the personal representative or the personal representative must be present at the hearing, unless the matter is on the approved calendar.

(3) ALLOWANCE ON ACCOUNT

Allowances on account of compensation for extraordinary services ordinarily will not be allowed.

E. COSTS

Where reimbursement for costs incurred is requested by the personal representative or attorney, the cost items advanced by such party must be separately stated with a description of each cost item.

F. COMPENSATION FOR GUARDIANS, CONSERVATORS, TRUSTEES, AND THEIR COUNSEL, AND FOR COUNSEL FOR A CENSERVATEE OR WARD

A petition for compensation of a guardian, conservator, trustee, and counsel, or for counsel for a conservatee or ward, must be accompanied by a complete statement of the services rendered, an explanation of the value or benefit of those services to the estate, and the total amount requested for such services, made under penalty of perjury and executed by the person rendering the services. The nonexclusive factors the Court may consider in determining the fees of a guardian or conservator are listed in CRC 7.756. The nonexclusive factors the Court may consider in determining the fees of a trustee are listed in CRC 7.776. Where a trust accounting that is submitted for court approval shows payments made to the trustee, guardian, conservator, or his or her counsel, or counsel for a ward or conservatee, it must be accompanied by the information described in this paragraph, even though the trust instrument may provide for such payments without requiring court approval. All petitions for compensation to a conservator, guardian, or counselor for a conservator, guardian, conservatee, or ward, or for compensation to a trustee or counsel for a trustee in a matter where a trust has been created to hold the assets of a conservatee or ward, must be served on the Court Investigator as well as on all persons required under the law to be served. The local form entitled “Referral for Investigator - Compensation” (attached form PB-4064) must be completed and submitted at the time the Petition is filed.

(Effective 7/1/2014)

The petition shall not include charges made for time spent in clarifying or explaining billing entries to the Court for which minimal or incomplete information, in the judgment of the Court, was initially provided, or for correcting or supplementing pleadings or other papers which, in the judgment of the Court, were procedurally deficient when initially submitted.

(Effective 1/1/2016)

A conservator or guardian who is a professional may not necessarily be compensated for all services rendered at that person's ordinary professional rate. Requests for fees by family member conservators, including registered domestic partners, for visits to the conservatee will ordinarily not be approved.
(Effective 7/1/2008)

G. NO COMPENSATION WITHOUT COURT ORDERS

There is no authority for paying any compensation to an executor, an administrator, a guardian, a conservator, or an attorney for any such fiduciary, or an attorney for the conservatee or ward, from the estate in advance of a Court order authorizing such payment. There is no authority for paying any compensation to the trustee or the attorney for the trustee from a trust to which CRC 7.903 applies in advance of a Court order authorizing such payment.
(Effective 7/1/2005)

H. PROPERTY TO BE DISTRIBUTED AND DISTRIBUTEES MUST BE LISTED

A petition for distribution must describe in detail all property to be distributed as set forth in CRC 7.651-652.
(Effective 7/1/2004)

An order of distribution must be drafted so that it is complete without reference to the petition, and without reference to any documents that are not part of the order. A complete description of the property to be distributed, including legal descriptions of all assets (e.g., real property, securities, and security interests) and the specific numerical amount to be distributed and not simply percentages, and the full names of all distributees must be set forth in the petition and the order. An order of distribution should include the current address of real property and the assessor's parcel number of the property.
(Effective 1/1/2015)

I. AGREEMENTS FOR DISTRIBUTION OF ASSETS

If distribution is to be other than according to the terms of the will or the laws of intestate succession, there must be on file a written agreement signed by all parties affected by the distribution.

J. FILING OF RECEIPTS FOR PRELIMINARY DISTRIBUTIONS

Receipts for property distributed pursuant to a petition for preliminary distribution must be on file before the Court will approve a petition for final distribution.
(Effective 7/26/2000)

RULE 10 SPOUSAL OR REGISTERED DOMESTIC PARTNER PROPERTY PETITIONS

A. WHEN FILED WITH PETITION FOR PROBATE

A spousal or registered domestic partner property petition must be filed separately from a petition for probate of the will or for administration of the estate, as set forth in CRC Rule 7.301. If the two are filed simultaneously, or if probate proceedings are already pending, an additional filing fee for the spousal or registered domestic partner property petition will not be required. Both petitions must be filed under the same case number.
(Effective 1/1/2005)

B. SURVIVORSHIP CONDITION IN WILL

If the right of a spouse or registered domestic partner 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 or registered domestic partner until the expiration of the time period. If the petition is filed before the expiration of the survivorship period, a separate declaration executed by the petitioner after the survivorship period has expired must be filed with the Court.
(Effective 1/1/2005)

RULE 11 CONSERVATORSHIPS

A. PETITION FOR APPOINTMENT OF CONSERVATOR

(1) BONDS

Bond will ordinarily be required for the first year for the conservator of the estate, even though the conservatee has signed a nomination of conservator waiving bond. The provisions of Local Probate Rules 5.C through 5.F apply to conservators. The amount of the bond must include one year's income from all sources of income of the conservatee, any sums required under Probate Code § 2320(c), and the fair market value of real property for conservators authorized to sell or encumber such property pursuant to Probate Code §2590.
(Effective 7/1/2010)

(2) INDEPENDENT POWERS

A request for independent powers under Probate Code §§ 2590 and 2591 will not be granted without specifying each power requested and the specific reasons for the need for each power requested.
(Effective 1/1/2008)

(3) MEDICAL TREATMENT POWER

A petition seeking authorization to give informed consent for medical treatment of a conservatee must be supported by an appropriate declaration on the Judicial Council form as described below, furnishing evidence required by Probate Code § 813, stating that there is no form of medical treatment for which the conservatee has the capacity to give consent and the reasons therefore and signed by a medical practitioner or licensed psychologist, which must be filed with the Court prior to the hearing. This form may be filed as an Attachment to the Petition for Appointment of Conservator and served upon all persons who receive

the Petition. If this form is not attached to the Petition, it must be served separately by mail or personally, at the option of petitioner, upon the proposed conservatee. The petitioner may designate the legal capacity form as confidential by attaching two Confidential Document Cover Sheets (see attached form PB-4003) to it at the time it is filed. It is required to use Judicial Council form GC-335, "Capacity Declaration-Conservatorship," as described below:

(Effective 1/1/2009)

a. For a Conservatorship of the Person only, In Which No Dementia Powers Are Being Sought: California Rules of Court require the use of Judicial Council form GC-335 to provide the evidence necessary to support a finding by the Court that a conservatee lacks the capacity to give an informed consent for any form of medical treatment.
b. For a Conservatorship of the Person only, With Request for Dementia Powers: Attach Judicial Council form GC335A to Judicial Council form GC-335.

(Effective 7/1/2004)

If the Petitioner is not able to obtain the cooperation of an authorized declarant to complete the Capacity Declaration form, petitioner or counsel may apply for an Ex Parte Order by submitting a completed Judicial Council form GC-333, "Ex Parte Application for Order Authorizing Completion of Capacity Declaration – HIPAA," and also Judicial Council form GC-334, "Ex Parte Order Re Completion of Capacity – HIPAA" to the Probate Counter Clerk for issuance. It is recommended to have the signed order certified.

(Effective 1/1/2006)

(4) EVIDENCE REQUIRED TO SUPPORT PETITION FOR CONSERVATORSHIP OF ESTATE OR PERSON AND ESTATE

Because a Conservatorship of the Estate or of the Person and Estate is an adjudication that the conservatee lacks the legal capacity to enter into or make any transaction that binds the estate, a petitioner who seeks appointment of a conservator of the estate and is using a medical or psychological professional as declarant must submit a Judicial Council form GC-335, "Capacity Declaration – Conservatorship" with attached form PB-4015, "Capacity Declaration – Conservatorship of the Estate Attachment" attached, to provide evidence establishing that the proposed conservatee suffers from a deficit in mental functions that significantly impairs the proposed conservatee's capacity to make decisions, consistent with the requirements of Probate Code § 811.

(Effective 1/1/2009)

If the petitioner who is not relying upon a medical or psychological professional to complete the Capacity Declaration wishes to seek appointment of a conservator of the estate, the petitioner must have a lay declarant complete the "Layperson's Declaration re Legal Capacity" shown as attached form PB-4016 to these Local Rules.

(Effective 7/1/2006)

The Capacity Declaration may be filed as an Attachment to the Petition for Appointment of Conservator and served upon all persons who receive the Petition. If the Capacity Declaration is not attached to the Petition, it must be served separately by mail or personally, at the discretion of the petitioner, upon the proposed conservatee. The petitioner may designate the legal capacity form as confidential by attaching a completed Confidential Document Cover Sheets (see attached form PB-4003) to it at the time it is filed.

(Effective 7/1/2012)

If the petitioner is not able to obtain the cooperation of an authorized declarant to complete the Capacity Declaration form, petitioner or counsel may apply for an Ex Parte Order by submitting a completed Judicial Council form GC-333, "Ex Parte Application for Order Authorizing Completion of Capacity Declaration – HIPAA," and also Judicial Council form GC-334, "Ex Parte Order Re Completion of Capacity – HIPAA" to the Probate Counter Clerk for issuance. It is recommended to have the signed order certified.

(Effective 1/1/2006)

B. REFERRAL FOR INVESTIGATOR'S REPORT; TRANSMITTAL OF DOCUMENTS TO COURT INVESTIGATOR

A local form entitled "Referral for Investigator's Report-Conservatorship" (attached form PB-4002) must be completed and signed under penalty of perjury by the proposed conservator and submitted at the time the petition is filed. This form shall be confidential. The proposed conservator shall submit with the referral a color photograph of the proposed conservatee.

(Effective 7/1/2012)

C. NOTICE OF HEARING

The petitioner should determine how much time will be required for any agency (e.g., Court Investigator's office, San Andreas Regional Center, etc.) to complete its report or evaluation and set the petition for hearing accordingly.

D. DUTIES OF CONSERVATOR

To assure that their duties and obligations are understood, all proposed conservators must file with the Court, before Letters of Conservatorship are issued, the Judicial Council form entitled "Duties of Conservator." The form may be signed and submitted prior to the date set for hearing. It is not necessary for proposed conservators to check boxes on page 4 of the form relating to acquisition of the handbook. Local Probate Rule 11F.

(Effective 1/1/2006)

E. CONTESTED MATTERS

When a party becomes aware that a matter will be contested, that party must advise the Court of the estimated time necessary to hear the matter.

The Court's primary concern is the health and welfare of the conservatee. Parties in a contested matter should be prepared to proceed on the day set for hearing. The Court will ordinarily hear brief testimony of the objecting parties and render a decision forthwith.

F. PURCHASE OF HANDBOOK AND VIEWING OF FILM

Before letters of conservatorship are issued, all conservators (except corporate or institutional conservators) must obtain a copy of the handbook for Conservators published by the Judicial Council of California and view a film on the duties and responsibilities of a conservator. Proper proof of the purchase of the handbook and viewing of the film will be required.

The handbook and local supplement will be available for purchase at the Probate Clerk's Office. The cost of the handbook may be reimbursed from the conservatorship estate. The film can be viewed online at https://www.youtube.com/watch?v=A-SX6YkFsP4. If a proposed conservator does not have access to a computer to view the film they can contact the court investigator's unit, 408-882-2761, to make an appointment to view it at the courthouse. The proposed conservator will be required to complete the "Verification of Conservatorship Video Viewing" (Attachment PB-4076)

(Effective 1/1/2020)

G. ORDER APPOINTING CONSERVATOR

On the Judicial Council form entitled "Order Appointing Probate Conservator," paragraphs 8 and 22 concerning ability to vote should be left blank. The Court will make its own determination at the hearing based upon the Court Investigator's report. Paragraphs 10 and 21 concerning fees refer only to Court-appointed counsel for the conservatee. These paragraphs do not apply to the attorney for the conservator. In all cases, the following information should be inserted at paragraph 11: Court Investigations Unit, 191 North First Street, San Jose, California 95113, telephone (408) 882-2761.

(Effective 7/1/2015)

H. FILING OF INVENTORY AND APPRAISAL

The Inventory and Appraisal and the Notice of How to File an Objection must be filed and served within 90 days of appointment pursuant to Probate Code § 2610. A copy must also be served on the Court Investigator. Where the conservatorship estate consists of community property managed by a nonconservatee spouse or registered domestic partner, who either is or is not the conservator, the community property is not administered as part of the conservatorship estate, should not be part of the inventory, and should not be accounted for. (See Probate § 3051.)

(Effective 1/1/2008)

At the time of appointment, the Court will set a compliance review approximately 94 calendar days after the appointment to confirm that the Inventory and Appraisal and Notice of How to File an Objection have been filed and served. If the Inventory and Appraisal is not on file at that time, the Court may issue an order to produce the Inventory and Appraisal, which will be served by certified mail on the conservator and on the attorney for the conservator.

(Effective 7/1/2008)

I. PLACEMENT AND LEVEL OF CARE ASSESSMENT FOR CONSERVATEE

An evaluation of level of care of the conservatee in compliance with Probate Code § 2352.5 shall be filed by the conservator within 60 days of appointment. The evaluation shall be filed on the Judicial Council form entitled "Determination of Conservatee's Appropriate Level of Care (P.C. § 2352.5)." A copy must also be served on the Court Investigator.

(Effective 7/1/2012)

At the time of appointment, the Court will issue an order requiring the conservator to file the evaluation and set a compliance review approximately 64 calendar days after the appointment to confirm that the evaluation has been filed. If the evaluation has not been filed, the Court may issue an order to produce the evaluation, which will be served by certified mail on the conservator and on the attorney for the conservator.

(Effective 1/1/2012)

J. LETTERS OF CONSERVATORSHIP OF THE ESTATE

The conservator is advised to record letters of conservatorship of the estate in any county where real property belonging to the conservatee is located. (Probate Code section 1875.)

K. ACCOUNTINGS: REFERRAL TO COURT INVESTIGATOR

At the time of filing of the conservator's accounting, a "Referral For Court Investigator" form (attached form PB-4002) must be submitted, with the notice of hearing and the original accounting, for review by the Court Investigator. See also Local Probate Rule 9A. (1) and (2) on the format of accountings and on accounting compliance dates.

(Effective 7/1/2012)

L. SALE OF CONSERVATEE'S RESIDENCE

The sale of the conservatee's residence (including a mobile home) will not be approved by the Court until a Court Investigator's report showing the necessity for the sale is on file. The conservator must file a declaration complying with Probate Code section 2540(b) whenever the conservator seeks authorization to sell the conservatee's present or former personal residence. The required "Referral for Court Investigator – Conservatorship" form (attached form PB-4002) shall be submitted with the notice of hearing and the required declaration.

(Effective 7/1/2012)

Sale of the residence must comply with the procedures required for sale of real or personal property and Probate Code § 2591.5.

(Effective 1/1/2008)

M. CHANGE OF RESIDENCE OF CONSERVATOR OR CONSERVATEE

When the address of the conservatee will be changed, the Pre-move Notice of Proposed Change of Personal Residence of Conservatee or Ward (Judicial Council form GC-079), and also the Post-Move Notice of Change of Residence of Conservatee or Ward (Judicial

Council form GC-080) must be filed with the Court. This is in addition to the Notice requirements of Probate Code § 2352 and CRC 7.1063.

When the address of the conservator will be changed, the Notification of Change of Address of Conservator/Guardian (attached form PB-4047) must be filed with the Court

(Effective 7/1/2012)

N. REMOVAL OF CONSERVATEE FROM CALIFORNIA

A conservatee who is under a conservatorship of the person and who is a California resident may be moved from California only upon first obtaining the permission of the Court. Unless a longer period is otherwise specified by the Court, the conservatee must be returned to California within four months unless a conservatorship proceeding (or its equivalent) is commenced in the place of the new residence. If a conservatee is not returned to California, the conservator must file a declaration showing proof of the establishment of the conservatorship (or its equivalent) in the new jurisdiction. (See Probate Code § 2352.) Petitioner must submit with the local form entitled "Referral for Court Investigator" (attached PB-4002), the notice of hearing and the original petition to move a Conservatee from California, for review by the Court Investigator.

(Effective 7/1/2012)

O. APPOINTMENT OF LIMITED CONSERVATOR FOR THE DEVELOPMENTALLY DISABLED

If the requested conservatorship is for a developmentally disabled adult, the proceedings must comply with the limited conservatorship code sections, even though the petition requests establishment of a general conservatorship as an alternative.

A copy of the notice of hearing and the petition must be sent to the Public Defender assigned to the conservatorship calendar and to the appropriate Regional Center. The addresses for the local agencies are:

Probate Deputy
Office of the Public Defender
120 W. Mission Street
San Jose, California 95110

San Andreas Regional Center
Attn: Regional Center Psychologist
P.O. Box 50002
San Jose, California 95150

P. REMOVAL OF CONSERVATOR

Individuals requesting removal of a conservator may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Conservator (attached form PB4040). Anyone objecting to a petition to remove the conservator may use the local form entitled Objection to Petition to Remove Conservator (attached form PB-4035).

(Effective 1/1/2008)

Q. TERMINATION OF CONSERVATORSHIP

Petitioner must submit with the local form entitled "Referral for Court Investigator-Conservatorship" (attached form PB-4002) the notice of hearing and the original petition to terminate a conservatorship, for review by the Court Investigator.

(Effective 7/1/2012)

Upon termination of a conservatorship, all claims filed by the Court Investigator's unit for its services, unless waived, must be paid before the Court will sign an order settling the final account. See CRC Rules 7.1052 and 7.1054.

(Effective 7/1/2004)

R. DEATH OF CONSERVATEE

(1) TERMINATION UPON DEATH WHEN ACCOUNT IS DUE

Upon the death of the conservatee, the conservator shall turn over the conservatee's assets to the appointed personal representative or, if none, to the person or persons entitled thereto, less a reasonable reserve for closing expenses and attorney and conservator **fee**s.

(Effective 7/1/2005)

The conservator's final account shall include an account for the period ending on the date of death of the conservatee, and shall show all property on hand as of the date of death of the conservatee. Additionally, pursuant to Probate Code § 2620 (b), a supplemental accounting, to be incorporated in the final account and report, shall reflect all post-death transactions and showing property on hand as of the filing of the accounting. If a personal representative has been appointed in a probate proceeding following the death of the conservatee, then the probate case number must be set forth in the final report and account.

(Effective 1/1/2009)

(2) TERMINATION UPON DEATH WHEN NO ACCOUNT IS DUE

Upon the death of the conservatee, if no account is due, the conservator must file a notice of death of conservatee with a photocopy of the conservatee's death certificate attached.

(Effective 7/1/2012)

S. CONFIDENTIAL SUPPLEMENTAL INFORMATION

The supplemental information required of conservators by Probate Code §1821(a) at appointment must be filed on Judicial Council form GC-312 ("Confidential Supplemental Information") separately from the petition and must have one completed Confidential Document Cover Sheets (see attached form PB-4003) attached. This Confidential Supplemental Information form must be verified (Probate Code § 1021).

(Effective 7/1/2012)

T. TEMPORARY CONSERVATORSHIPS

(1) PETITION FOR APPOINTMENT

The petition for appointment of a temporary conservator may be filed only with or after the filing of a petition for appointment of a permanent conservator. The petition must state facts establishing the urgency requiring the appointment of a temporary conservator. A situation requiring immediate action to protect the health, welfare, or the estate of the proposed conservatee will be sufficient. Ordinarily, a situation requiring immediate action constitutes good cause.

(Effective 1/1/2009)

(2) IMMEDIATE NOTIFICATION OF COURT INVESTIGATOR

Petitioner or petitioner's attorney should contact the Court Investigator's Office at (408) 882-2761 as soon as possible when it appears that a temporary conservatorship may be requested in order that the Investigator can begin the investigation and report necessary for the appointment of a temporary conservator.

(Effective 1/1/2009)

(3) PRIOR REVIEW OF PETITION

All petitions for a temporary conservatorship must be presented to the Probate Examiner's office for review before presentation to the Court.

(4) NOTICE

Since a petition for temporary conservatorship is ordinarily filed only in cases requiring immediate action, the Court may dispense with the 5-day-notice requirement. Petitioner must comply with the requirements of CRC 7.1062. If notice is dispensed with by the Court, the petition may be heard on an ex parte basis.

(*Effective 7/1/2008)*

(5) LETTERS OF TEMPORARY CONSERVATORSHIP

Letters of temporary conservatorship expire on the appointment of a general conservator. Letters of temporary conservatorship should be recorded in counties where conservatees possess real property. (See Probate Code §1875.) When the temporary conservator will come into possession of personal property of the conservatee, bond as provided in Local Probate Rule 11A (1) must be posted before temporary letters of conservatorship of the estate can be issued.

(Effective 1/1/2007)

(6) POWERS OF TEMPORARY CONSERVATOR

The temporary conservator has only those powers allowed by the Probate Code or specifically granted by the Court. The Court generally grants only the powers necessary to meet the situation that has caused the application for a temporary conservatorship. There is no provision in the law for granting exclusive medical powers under a temporary conservatorship, absent a hearing for a grant of powers under Probate Code sections 1880, et seq. A temporary conservator may also seek authorization to give consent for treatment under Probate Code section 2357. The court requires that there be a grant of exclusive medical powers under section 1880 for there to be a grant of powers under Probate Code 2356.5.

(Effective 7/26/2000)

(7) CHANGE OF RESIDENCE OF TEMPORARY CONSERVATEE

When the residence of a temporary conservatee is proposed to be changed, the hearing must be calendared for the first Tuesday afternoon conservatorship appointment calendar following the date of filing of the petition. A "Referral for Court Investigator - Conservatorship" form (attached form PB-4002) must be submitted with the notice of hearing and the original petition for review by the Court Investigator. See Probate Code section 2253.

(Effective 7/1/2012)

U. PRIVATE PROFESSIONAL CONSERVATORS

(1) APPOINTMENT OF PROFESSIONAL FIDUCIARY AS CONSERVATOR

A person seeking appointment as a private professional conservator must be licensed as a professional fiduciary, as defined in Business & Professions Code §§ 6500 et seq. before the Superior Court can make such appointment. All pleadings filed by a professional fiduciary must include the fiduciary's license number as issued by the Professional Fiduciary Bureau.

(Effective 1/1/2009)

(2) DISCLOSURE OF FEE SCHEDULE

At the time a private professional conservator is nominated to serve as conservator, the petitioner must attach the private professional's fee schedule to the petition for appointment of conservator and must serve the fee schedule as part of the petition on all persons entitled to notice under Probate Code § 1822 and to the Court Investigator. If the Court appoints a private professional fiduciary who was not nominated in the petition as a temporary conservator, the private professional must attach his/her fee schedule to the order appointing temporary conservator at the time the order is filed with the court and must mail a copy of the fee schedule to all persons entitled to notice under Probate Code § 1822 and also to the Court Investigator

(Effective 1/1/2013)

The fee schedule shall not contain:

(a) Additional compensation, either in terms of a percentage or a standard monthly charge, for undesignated miscellaneous overhead or administrative expenses, or "start-up fees;"

(Effective 1/1/2014)

(b) Charges made to the conservatee's estate for time spent in clarifying or explaining billing entries to the Court, for which minimal or incomplete information, in the judgment of the Court, was initially provided; or,

(c) Increased hourly rates for conservatorship-related "litigation support."

(Effective 1/1/2013)

(d) Compensation in the form of a percentage of the sale price of a conservatee's real property, either in lieu of, or in addition to, hourly charges for services performed in connection with such sale, or,

(Effective 1/1/2014)

(e) Fees based upon a percentage of the valuation of the Conservatee's estate which exceed the private professional fiduciary's maximum hourly rate.

(Effective 1/1/2014)

(3) FILING OF ESTIMATED FEES; COMPLIANCE HEARING AND MONTHLY BILLING STATEMENTS

Within 60 days from the date of the appointment, the private professional conservator shall file with the Court a plan of estimated fees of the private professional conservator, his or her staff, and his or her counsel, to cover the first year of the conservatorship, which includes the conservatee's anticipated annual income and expenses to the extent they can be ascertained, at that time and serve a copy of the plan of estimated fees, along with notification of the date and time of the review hearing, and the time in which to file objections or concerns as to the estimated fees, on all persons entitled to notice of the original petition under Probate Code § 1822, the Court Investigator, and any persons who have requested special notice.

The Court shall set a date not more than 94 calendar days after the appointment for a review hearing, at which time the Court will address any objections or concerns as to such estimated fees. If no written objections are received within 10 calendar days prior to the review hearing, no appearance is necessary. However, despite the lack of a timely written objection being received, should someone appear at the review hearing and make an objection, or if the Court has concerns of its own as to the reasonableness of the hourly rates charged for varying levels of service, the Court shall continue the review hearing and notify all parties accordingly. The plan of estimated fees is not binding upon the conservatee, his or her estate, the conservator and/or counsel. All conservator fees and attorney fees are subject to review and approval by the Court, pursuant to Probate Code § 2640 et seq., the standards for determining just and reasonable compensation at CRC 7.756, and the Court's assessment of the extent of any "Cost-Benefit" analysis that was undertaken by the private professional prior to engaging in any activities on behalf of the conservatee.

(Effective 1/1/2015)

At the end of the first full calendar month following appointment and continuing at the end of each month thereafter, the private professional conservator shall mail a billing statement for that month itemizing all services provided to the conservatee, and all charges related thereto, to the conservatee (unless, in the opinion of the private professional conservator, receipt of such by the conservatee would be harmful to the conservatee's state of mind) or his or her attorney, the conservatee's spouse or domestic partner, his or her parents, his or her adult children, his or her siblings, the Court Investigator, and any persons who have requested special notice. (This monthly billing requirement is not imposed on those private professionals performing conservatee services pro bono, or for any month where that month's billing for services does not exceed two times the private professional's maximum hourly billing rate.) Such billing statements shall be clearly marked, "For Informational Purposes Only." Alternatively, the private professional conservator can provide to such persons "secured" access to this information by means of computer or other electronic device. Failure to provide the monthly billing statements as required above may constitute a ground for the Court to deny approval of subsequent fee requests. All requests for approval of fees shall include a statement indicating whether the private professional conservator has complied with Local Probate Rule 11.U(3).

(Effective 1/1/2015)

If the following conditions are met:

(a) There are no objections to the plan of estimated fees; or

(b) If objections to such plan were, in the opinion of the Court, adequately addressed; and,

(c) Objections as to the fee's appropriateness are not made as to a monthly statement within 20 calendar days following that statement's mailing, forty (40%) percent of the monthly statement is immediately payable by the conservatee's estate to the private professional for said uncontested monthly billing statement without further petition at that time, other than the review by the Court upon the next succeeding account of the conservator, pursuant to Probate Code § 2643 (c), that such monthly "on account" payments were for services actually rendered, and were not unreasonable. Any failure to object within the 20 calendar day period shall not constitute a waiver of such objection, and the Court retains the authority to deny approval of any fees upon the next succeeding account. The payment of the balance of these fees are to be made by noticed petition pursuant to Probate Code § 2640, which petition shall, among other things, include a statement as to the current size and nature of the conservatee's estate.

(Effective 1/1/2015)

(4) PRIVATE FIDUCIARY CONSERVATOR RATE GUIDELINES

In applying the non-exclusive standards for determining just and reasonable compensation set forth at CRC 7.756, and recognizing that CRC 7.756(c) provides that such standards are "not authority for a court to set an inflexible maximum or minimum

compensation or a maximum approved hourly rate for compensation," the following periodically reviewed guidelines rates are customarily allowed for private fiduciary conservator compensation:

(Effective 1/1/2014)

(a) From $115.00 to $170.00 per hour for professional services;

(b) Up to $100.00 per hour for case management workers in the employment of the private fiduciary; and,

(c) $25.00 to $55.00 per hour for routine, services rendered by the professional fiduciary or his or her staff (for example, office filing, collecting and opening mail, paying routine household bills, computer entry input, and when the conservatee is not accompanying the conservator, tending to the conservatee's personal needs and grocery shopping.)

(Effective 1/1/2014)

In addition to periodic rate review the Court will consider requests for compensation rates greater than the guideline rates based upon all relevant factors presented in a detailed supporting declaration that can include, but are not limited to, special expertise applicable to the services provided, circumstances of the service, relationship to the conservatee, extreme family conflict dynamics, and financial and investment complexity and enhanced liability exposure.

(Effective 1/1/2014)

V. CONSERVATEES' TRUSTS

(1) When a conservator or some other person seeks an order under the doctrine of substituted judgment to create a trust that contains assets of the conservatee, the petition should provide detailed information demonstrating that the proposed trustee is qualified to be appointed as a trustee of the trust. In addition, the proposed trust must comply with all provisions required in CRC 7.903, including but not limited to requiring a bond for the trustee and periodic accountings to the Court. The proposed trust should be attached to the petition as an exhibit. At the time of filing of the trustee's accounting, a "Referral for Court Investigator - Conservatorship" form (attached form PB-4002) must be submitted with the notice of hearing and the proposed trust for review by the Court Investigator. See also Local Probate Rules 9.A(1) and (2) on the format of accountings and on accounting compliance dates.

(Effective 7/1/2012)

If the conservator of the estate is named trustee, the conservator may elect to treat the trust estate as part of the conservatorship estate for purposes of bond and accounting and shall not be required to post a separate bond as trustee. The trustee must file the trust, the court order approving establishment of the trust, and the trustee's bond, if applicable, in a new file with a probate file number, and the filing should take place within 30 days after court approval of the trust. The trust maybe filed as a confidential document by attaching one copy of the Confidential Document Cover Sheet. (attached form PB-4003.)

(Effective 7/1/2012)

(2) When a conservator or some other person seeks appointment of a successor trustee of the conservatee's existing living trust, the court may require the successor trustee to post a bond, place the trust under court supervision, and provide accountings for the trust parallel to the accounting scheduled of the conservatorship. In such case, the trustee must file the trust, the court order approving the trust, and the bond, in a new file with a probate file number, and the filing should take place within 30 days after court approval of the appointment of the successor trustee, as the case may be. The trust may be filed as a confidential document by attaching one copy of the Confidential Document Cover Sheet. (Attachment form PB-4003.)

(Effective 7/1/2012)

W. NOTICE TO COURT INVESTIGATIONS UNIT OF SUBSTITUTED JUDGMENT PETITIONS

At the time of filing of a petition for substituted judgment, "Referral for Court Investigator - Conservatorship" (attached form PB-4002) must be submitted with the notice of hearing and the original petition for review by the Court Investigator.

(Effective 7/1/2012)

RULE 12 GUARDIANSHIPS

A. GUARDIAN OF MINOR'S ESTATE

(1) INVESTIGATION

The proposed guardian must complete and sign under penalty of perjury a "Referral for Court Investigator & Questionnaire – Guardianship" (attached form PB-4005) at the time the petition for establishment of guardianship is filed. This form is confidential. Together with the "Referral for Court Investigator & Questionnaire – Guardianship" the proposed guardian must present a signed Authorization for Release of Information form (attached form PB-4014) to enable court investigators to access the information required in Probate Code § 1513.

(Effective 1/1/2009)

(2) BOND REQUIRED

Bond will ordinarily be required for the first year for the guardian of a minor's estate even if a nomination of guardian has been signed waiving bond. The provisions of Local Probate Rules 5C through 5F apply to guardianships. The amount of the bond must include one year's income from all sources of income of the ward, any sums required under Probate Code § 2320(c), and the fair market value of real property for guardians authorized to sell or encumber such property pursuant to Probate Code § 2590

(Effective 7/1/2010)

(3) INDEPENDENT POWERS

A request for independent powers under Probate Code §§ 2590 and 2591 will not be granted without specifying each power requested and the specific reason for the need for each power requested.

(Effective 1/1/2008)

(4) FILING OF INVENTORY AND APPRAISAL

The Inventory and Appraisal and the Notice of How to File an Objection must be filed and served within 90 days of appointment pursuant to Probate Code § 2610. At the time of appointment, the Court will set a compliance review approximately 94 calendar days after the appointment to confirm that the Inventory and Appraisal and Notice of How to File an Objection have been filed and served. If the Inventory and Appraisal is not on file at that time, the Court may issue an order to produce the Inventory and Appraisal, which will be served by certified mail on the guardian and on the attorney for the guardian.

(Effective 7/1/2012)

B. PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR'S PERSON

(1) INVESTIGATION

The proposed guardian must complete and sign under penalty of perjury a "Referral for Court Investigator & Questionnaire – Guardianship" (attached form PB-4005) at the time the petition for establishment of guardianship is filed. This form is confidential. Together with the "Referral for Court Investigator & Questionnaire – Guardianship" the proposed guardian(s) must present a signed Authorization for Release of Information form (attached form PB-4014) to enable court investigators to access the information required in Probate Code § 1513.

(Effective 1/1/2008)

(2) NOTICE

The following are the local addresses for notice according to Probate Code sections 1516 and 1542:

Program Manager, Emergency Response Services
Santa Clara County Social Services Agency
333 W. Julian Street
San Jose, California 95110

Social Services Agency
Department of Family and Children's Services
333 W. Julian Street
San Jose, California 95110
(Non-relative guardians only)

The California Department of Social Services
744 P Street
Sacramento, California 95814
(Non-relative guardians only)

(Effective 7/1/2002)

(3) MINOR'S FATHER UNKNOWN

If it is alleged that the minor's father is unknown, a photocopy of the minor's birth certificate should be attached to the affidavit or declaration in support of an order dispensing with notice. Use of the terms "withheld" on the birth certificate with reference to the father does not mean "unknown," and should be further explained in the allegation.

(4) REQUEST TO DISPENSE WITH NOTICE

If a party seeks to dispense with notice because a person cannot be located, the party may use local form Request to Dispense with Notice (form PB-4068) and comply with rule 7.52 of the California Rules of Court.

(Effective 7/1/2018)

(5) EX PARTE/EMERGENCY APPLICATIONS AND ORDERS

(a) ACTIONS NOT GOVERNED BY THIS RULE

This rule does not apply to ex parte requests for temporary guardianships, general guardianship, or termination of guardianships, as the processes for those actions are otherwise statutorily prescribed.

(b) NOTICE AND SUBMISSION OF EX PARTE APPLICATIONS

All applications for ex parte or emergency orders must be submitted to the Probate Court Document Examiner. An ex parte petition or application must contain sufficient facts to justify the orders requested, including an order shortening time, if appropriate.

Notice of the application and proposed order must be served on all parties 24 hours before presenting the ex parte petition to the court unless the court orders that notice may be dispensed. The petition and a proposed order must be presented to the Probate Examiner's office with a declaration (attached form PB-4075) regarding notice or why notice has not been given.

Any application seeking temporary orders without prior notice to all parties, including orders shortening time must include a sworn statement of facts showing good cause not to give notice. The moving party may not rely on the declaration filed in support of the application for temporary orders to establish good cause not to give notice. The statement of good cause not to give notice may be provided with a declaration (attached form PB-4075).

(c) PROPOSED ORDERS

Along with the application and declaration in support of ex parte application, attorneys or self-represented parties must also submit a proposed order reflecting the orders requested in the application.

(d) OPPOSITION TO EX PARTE APPLICATION

Attorneys or self-represented parties must serve on moving party and file with the Probate Document Examiner any written response to the ex parte application within 24 hours of the ex parte application's submission to the Court, unless the Court requests an expedited response.

C. COORDINATION OF CUSTODY AND GUARDIANSHIP MATTERS

If there is pending both an action regarding the custody of a minor child and an action for Guardianship of the Person or Person and Estate of the minor child under the Family Code, the cases should be coordinated for hearing purposes and assigned for hearing to the Guardianship APJ. At the earliest opportunity, the cases shall be linked in the case management system, so that the judicial officer hearing the matter is made aware of the existence of the other case or cases. Pursuant to CRC 5.154, the proposed guardian, temporary guardian, or guardian, may be joined into the Family Court action as a party.

(Effective 7/1/2012)

D. COORDINATION OF RESTRAINING ORDER AND GUARDIANSHIP MATTERS

If there is pending an application for restraining orders under the Domestic Violence Prevention Act or the Civil Harassment Prevention Act which involves a party to a pending Guardianship matter, the hearing on the restraining orders will be scheduled and heard by the Guardianship APJ. The initial restraining order request and any temporary restraining orders shall be filed at Family Court

(Effective 7/1/2010)

E. OBJECTION TO GUARDIANSHIP

Individuals objecting to a petition to establish a guardianship may use the local form entitled Objection to Guardianship (attached form PB-4043).

(Effective 7/1/2012)

F. DUTIES OF GUARDIAN

To assure that their duties and obligations are understood, each guardian must file with the Court, before letters of guardianship are issued, the Judicial Council form entitled "Duties of Guardian." (Form GC-248). The form may be signed and submitted prior to the date set for hearing.

(Effective 1/1/2008)

G. ATTENDANCE AT THE HEARING

The proposed guardian, the petitioner, and the petitioner's attorney must attend the appointment hearing. The guardian will receive instructions concerning the guardian's duties immediately following the hearing. To document the orders made at the Guardianship Hearing, the parties may use the local form entitled Findings and Order After Hearing (attached form PB-4055).

(Effective 7/26/2000)

H. CONTESTED GUARDIANSHIP

(1) FAMILY GROUP CONFERENCES/MEDIATION

If there is a contested Guardianship of the Person or a contested Petition for Visitation in a Guardianship matter, the Court may order the parties to participate in mediation or one or more Family Group Conferences through Family Court Services (FCS) or a private mental health professional agreed to by all parties. The referral to a Family Group Conference will usually be made at the first hearing where any party objects to the guardianship or a request for visitation. Mediation is confidential, whereas Family Group Conferences are not confidential. All parties and their counsel may participate in the conferences, along with counsel for the minor(s). The minor(s) may be required to attend any Family Group Conferences at the discretion of the person conducting the conference or as ordered by the Court.

(2) EMERGENCY SCREENINGS

In any case in which an emergency exists, the Court may order a staff member of FCS to conduct as "emergency screening" (a preliminary and limited evaluation). The purpose of the screening shall be to provide the Court with recommendations regarding the temporary custody, visitation, and related conditions for the minor children who are the subject of the guardianship.

When an emergency screening is ordered, the Order shall be made on a Probate Order for Emergency Screening and the Emergency Screening Instructions (attached form PB-4046) shall be served on all parties ordered to the emergency screening.

(Effective 1/1/2011)

Emergency screenings shall be governed by, and conducted according to, Local Family Rules 2C(6) and 2D(1) through 2D(7).

(Effective 1/1/2017)

(3) Evaluations

The Court may, in its discretion, order an evaluation by FCS regarding issues relating to a contested guardianship. Such an evaluation shall be a supplement to the report of the Court Investigator. Evaluations shall be governed by, and conducted according to, Local Family Rules 2C(3) through 2C(5) and 2D(1) through 2D(7).

(4) EX PARTE APPLICATION TO BE RELIEVED AS COUNSEL FOR MINOR CHILD

Appointed counsel may apply via an ex parte application and order to be relieved as the counsel for minor child. The attorney for the minor(s) shall serve the parties or attorneys for the parties the Ex Parte Application and Order to be Relieved as Counsel for Minor Child (attached form PB-4073) along with a blank Response to Application to be Relieved as Counsel for Minor Child (attached form PB-4074). Parties or attorneys for the parties will have 21 calendar days from date of the application to respond to

the request. Responses shall be served on the counsel for the minor child and all other parties. If no response is received, the court may grant the request if good cause exists.

If a response is received and the party or counsel for a party objects to the request to be relieved, a Status Conference may be set by the court to consider the objection.

I. CHANGE OF RESIDENCE OF GUARDIAN OR WARD

When the address of the ward will be changed, the Pre-move Notice of Proposed Change of Personal Residence of Conservatee or Ward (Judicial Council form GC-079), and also the Post-Move Notice of Change of Residence of Conservatee or Ward (Judicial Council form GC-080) must be filed with the Court and a copy mailed to the Court Investigator. This is in addition to the Notice requirements of Probate Code § 2352 and CRC 7.1013.

When the address of the guardian will be changed, the Notification of Change of Address of Conservator/Guardian (attached form PB4047) must be filed with the Court and a copy mailed to the Court Investigator. *(Effective 1/1/2011)*

J. USE OF WARD'S ASSETS FOR SUPPORT

If a ward has a living parent or receives or is entitled to support from another source, prior Court approval must be obtained before using guardianship assets for the ward's support, maintenance, or education. (See Probate Code section 2422.) The petition must set forth the financial inability of the parent or parents or other circumstances that would justify use of the guardianship assets. Such request for Court approval may be included in the petition for appointment of guardian. An order granting such petition should be for a limited period of time, usually not in excess of six months or for a specific and limited purpose.

(Effective 7/26/2000)

K. ACCOUNTINGS

(1) REFERRAL TO COURT INVESTIGATOR

At the time of filing of the guardian's accounting, a "Referral for Court Investigator & Questionnaire – Guardianship" form (attached form PB 4005) must be submitted, with the notice of hearing and the original accounting, for review by the Court Investigator. See also Local Probate Rule 9A. (1) and (2) on the format of accountings and on accounting compliance dates.

(Effective 7/1/2012)

(2) ACCOUNTING REQUIRED AT TERMINATION UNLESS WAIVED; ACCOUNTING COMPLIANCE DATES

At termination of a guardianship of the estate, an accounting as required by CRC 7.1004(c), must be filed unless waived by a ward who has reached majority pursuant to Probate Code § 2627 (a). See CRC 7.1007(a); see also Local Probate Rule 9.A. (2) (form of accounting and accounting compliance dates) and Local Probate Rule 11.V (fees for a private professional fiduciary)

(Effective 7/1/2013)

L. TERMINATION OF GUARDIANSHIP OF THE PERSON

At the time of filing of a petition to terminate a guardianship a "Referral for Court Investigator & Questionnaire – Guardianship" form (Attachment PB-4005) must be submitted with the notice of hearing and the original petition for review by the Court Investigator. Individuals objecting to a Petition to Terminate Guardianship may use the local form entitled Objection to Petition to Terminate Guardianship (attached form PB-4039).

(Effective 7/1/2012)

M. TEMPORARY GUARDIANSHIPS

(1) PETITION FOR APPOINTMENT

The petition for appointment of a temporary guardian must be filed with or after the filing of a petition for appointment of a general guardian. The petition must state facts establishing the urgency requiring the appointment of a temporary guardian. A situation requiring immediate action to protect the health, welfare, or the estate of the proposed ward will be sufficient. Ordinarily, a situation requiring immediate action constitutes good cause.

(Effective 1/1/2017)

(2) PRIOR REVIEW OF PETITION

All petitions for a temporary guardianship must be presented to the Probate Examiner's office for review before presentation to the Court.

(Effective 7/1/2002)

(3) NOTICE

Since a petition for temporary guardianship is ordinarily filed only in cases requiring immediate action, the Court may dispense with the five day notice requirement. Petitioner must comply with the requirements of CRC 7.1012. If notice is dispensed with by the Court, the petition may be heard on an ex parte basis. Persons obtaining an ex parte order must reserve a date for reconsideration within 30 days, pursuant to Probate Code section 2250(d).

(Effective 7/1/2008)

(4) LETTERS OF TEMPORARY GUARDIANSHIP

Letters of temporary guardianship expire on the appointment of a general guardian.

(Effective 7/26/2000)

(5) POWERS OF TEMPORARY GUARDIAN

The temporary guardian has only those powers allowed by the Probate Code or specifically granted by the Court. The Court generally grants only the powers necessary to meet the situation that has caused the application for a temporary guardianship.

(Effective 7/26/2000)

N. REMOVAL OF GUARDIAN

Individuals requesting removal of a guardian may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Guardian (attached form PB-4041). Anyone objecting to a petition to remove the guardian may use the local form entitled Objection to Petition to Remove Guardian (attached form PB-4036).

(Effective 1/1/2008)

O. VISITATION

Individuals requesting visitation orders in guardianships may petition the Court for an order or visitation. The petitioner may use the local form titled "Probate Petition for Visitation (attached form PB-4013), and the local form titled "Visitation Order (Probate)" (attached form PB-4011) with Judicial Council Form FL-341 titled "Child Custody and Visitation Order Attachment."

(Effective 7/1/2006)

P. FIXING RESIDENCE OF A WARD OUTSIDE CALIFORNIA

The residence of a ward who is under a guardianship of the person and who is a California resident may be fixed outside of California only upon first obtaining the permission of the Court. Unless a longer period is otherwise specified by the Court, the ward must be returned to California within four months unless a guardianship proceeding (or its equivalent) is commenced in the place of the new residence. If a ward is not returned to California, a declaration must be filed showing proof of the establishment of the guardianship (or its equivalent) in the new jurisdiction. See Probate Code §2352. Petitioner must submit with the local form entitled "Referral for Court Investigator & Questionnaire - Guardianship" (attached PB-4005) the notice of hearing and the original petition to fix the residence of the ward outside of California for review by the Court Investigator.

(Effective 7/1/2012)

RULE 13 GUARDIAN AD LITEM AND COMPROMISES OF CLAIMS OF MINORS AND PERSONS WITH A DISABILITY

A. GUARDIAN AD LITEM

A guardian ad litem has no authority to accept funds on behalf of a minor or person with a disability.

(Effective 1/1/2011)

B. CONTENTS OF PETITION

The petition to compromise a minor's claim must contain, in addition to those matters required by statute and by CRC Rules 7.950 to 7.955, the names and addresses of the minor's parents.

(Effective 1/1/2004)

Where the minor's settlement is part of a larger settlement, the petition must state in detail the factual basis for the proposed allocation to the minor or the person with a disability.

(Effective 7/1/2005)

For personal injury claims of minors and persons with a disability, unless waived by the Court, the petition must have attached a current medical report (prepared within 4 weeks of the date of the petition) that gives a diagnosis and a prognosis of the condition of the individual. The report must be prepared by a licensed physician who has treated the minor or person with a disability. It is not permissible to substitute the medical records of the minor or the person with a disability for this report.

(Effective 7/1/2005)

C. PRESENCE OF MINOR OR PERSON WITH A DISABILITY

Unless excused by the Court, the minor or person with a disability, the petitioner, and at least one of the minor's parents or guardians must be present at the hearing.

(Effective 7/1/2005)

D. EX PARTE PETITIONS

In certain circumstances, in the Court's sole discretion, petitions may be presented ex parte. These cases are only those in which the net settlement to the minor or person with a disability, after deduction of attorney fees and costs, is less than $ 5,000.

(Effective 7/1/2005)

E. MEDICAL MALPRACTICE MATTERS

Medical malpractice cases may justify a higher attorney fee than that commonly awarded in compromises of claims of minors or persons with a disability. The Court will, in an appropriate case, award the maximum fee permissible under Business and Professions Code section 6146. The fee contract must be disclosed to the Court upon request.

(Effective 7/1/2005)

F. DISTRIBUTION

Upon approval of the petition to compromise, the judge must direct whether the funds are to be paid to a parent, to a blocked account, to a guardian or conservator of the estate, or to some other appropriate fiduciary. When deposit in a blocked account is ordered, parties must use the Judicial Council forms referred to in Local Probate Rule 5 above.

(Effective 1/1/2017)

It is the responsibility of the fiduciary to file a Receipt for the blocked account, signed by an officer of the financial institution accepting the deposit, within 15 days of the date of deposit. If the Receipt has not been filed within 45 days of the order, the fiduciary must file a written explanation with the Court within 45 days of the order, stating the reason the Receipt has not been filed and when the fiduciary expects the Receipt to be filed.

G. FUNDS IN BLOCKED ACCOUNT IN NON-GUARDIANSHIP CASES

A request for withdrawal of funds for the minor's support, maintenance, or education may be made ex parte if accompanied by a sufficient showing of need. However, where the minor has a living parent or the minor receives or is entitled to support from another source, the petition must contain the allegations referred to in Local Probate Rule 12J above. In such cases the Court may require that the matter be set for noticed hearing. A petition for withdrawal of funds must be made on Judicial Council form "Petition For Withdrawal of Funds From Blocked Account (form number MC 357), and the petitioner must submit for the Court's signature the Judicial Council form "Order For Withdrawal of Funds From Blocked Account" (form number MC 358).

Where there is no prior Court record of the minor's date of birth, a petition to release funds from the blocked account upon the minor's majority must be accompanied with a copy of the minor's birth certificate.

H. TRANSFER OF ASSETS OF A MINOR OR A PERSON WITH A DISABILITY TO A TRUST UNDER PROBATE CODE § 3600 ET.SEQ.

When it is proposed to put the assets of a minor or person with a disability in a trust, under Probate Code § 3600 et. seq., including a special needs trust, the petition should provide detailed information demonstrating that the proposed trustee is qualified to be appointed as a trustee of the trust. In addition, the proposed trust must comply with all provisions required in CRC 7.903, including but not limited to requiring a bond for the trustee and periodic accountings to the Court. The proposed trust should be attached to the petition as an exhibit. If the beneficiary of the trust is conserved, at the time of filing of the trustee's accounting, a "Referral for Court Investigator - Conservatorship" form (attached PB-4002) must be submitted, with the notice of hearing and the original accounting, for review by the Court Investigator. See also Rules 9A (1) and (2) on the format of accountings and on accounting compliance dates.

(Effective 7/1/2015)

The trustee must file the trust, the court order approving establishment of the trust, and the trustee's bond, if applicable, in a new file with a probate file number, and the filing should take place within 30 days after court approval of the trust. The trust may be filed as a confidential document by attaching one copy of the Confidential Document Cover Sheet. (attached form PB4003.)

(Effective 1/1/2017)

RULE 14 COMPENSATION OF REFEREES

The compensation of the referee must be subject to Probate Court authorization or approval.

RULE 15 MINOR'S EMANCIPATION

(Effective 7/1/2002)

A. INVESTIGATION

An investigation into the circumstances surrounding the minor's request for emancipation will be conducted by the Court Investigator, who will prepare a written report for the Court.

B. REPRESENTATION

Where the minor is unrepresented, he/she must have the petition and accompanying documents reviewed by an attorney. Written verification that the minor has met with an attorney must be submitted to the Court when the petition is filed.

(Effective 7/1/2002)

C. STATEMENT

The minor is to submit to the Court, with his/her petition, a personal statement, under penalty of perjury, specifying in detail the reasons for the emancipation request and describing the circumstances giving rise to the request.

(Effective 7/1/2002)

D. APPEARANCE

The minor must attend the hearing on the petition, and anyone who desires to be heard on the emancipation petition may attend. The hearing is to be non-adversarial.

(Effective 7/1/2002)

RULE 16 TRUSTS

A. TRUSTEE FEES

As to trusts that are within the Court's jurisdiction, if the will or trust instrument contains provisions for a trustee's compensation, the trustee shall receive compensation as provided therein. However, on a proper showing, the Court may allow a greater compensation when:

(1) the trustee's services are substantially greater than those contemplated by the testator or settlor at the time the will was signed or the trust was created;

(2) the compensation provided in the will or trust is so unreasonably low that a competent trustee would not agree to administer the trust; or

(3) there are extraordinary circumstances.

If the trustee's compensation is designated in the will or trust instrument as being "reasonable," with no further guidance, the trustee shall ordinarily be compensated on a quantum meruit basis according to work actually performed, and after the Court's consideration of the factors set forth in CRC 7.776, together with the provisions found at Local Probate Rule 11V(4) in the event that the trustee is a private professional fiduciary.

(Effective 7/1/2013)

B. REMOVAL OF TRUSTEE

Individuals requesting removal of a trustee may petition the Court for an order for removal. The petitioner may use the local form entitled Petition to Remove Trustee (attached form PB-4034). Anyone objecting to a petition to remove the trustee may use the local form entitled Objection to Petition to Remove Trustee (attached form PB-4038).

(Effective 1/1/2008)

RULE 17 LANTERMAN PETRIS SHORT (LPS) ACT CONSERVATORSHIP ACCOUNTINGS

A. ACCOUNTINGS – TERMINATION OF ONE-YEAR PRIVATE LPS CONSERVATORSHIPS OF THE PERSON AND ESTATE

(Effective 1/1/2012)

(1) At the end of the one-year LPS conservatorship of the estate, where the conservator is a private party and not the Public Guardian, an Order Re: Accounting directing compliance with the statutory accounting requirements, with accompanying "Declaration For Waiver Of Accounting Per Probate Code § 2628 (a)" and blank accounting forms indicating a 60 day return period, shall be mailed by the Court to the conservator's last known address.

(Effective 1/1/2012)

a. If the Declaration for Waiver of Accounting is executed, the Court shall prepare, execute, and file a "Decree Terminating Conservatorship of the Person and Estate, Discharging Conservator and Waiver of Accounting."
b. If completed accounting forms are returned and are viewed as satisfactory, the Court shall prepare, execute, and file a "Decree Terminating Conservatorship of The Person and Estate, Discharging Conservator and Settling the Final Accounting."
c. If there is no response from the conservator, the Court shall issue and set an Order to Show Cause re Contempt hearing at least 30 days thereafter.

RULE 18 PETITION FOR WRIT OF HABEAS CORPUS RE QUARANTINE DETENTION

Whenever a Petition for Ex Parte Writ of Habeas Corpus Re: Quarantine Detention is brought, the Petitioner shall use the local form entitled "Petition for Writ of Habeas Corpus Re: Quarantine Detention " (attached form PB-4052). The initial Petition shall be served on the County of Santa Clara, Office of the County Counsel. The Petition shall be filed in the Probate Clerk's Office by one of the following methods: personal delivery, direct fax or email. If the Petition is filed by fax, it shall be in accordance with CRC 2.304 and faxed to (408) 882-2694. If the Petition is filed by email, it shall be scanned, attached as a pdf file, and emailed to quarantinewrit@scscourt.org. Any response to a Petition for Writ must be filed within two court days from the date of service of the initial Petition. The judicial officer reviewing the Ex Parte Writ and any filed response shall complete the local form "Order for Writ of Habeas Corpus Re: Quarantine Detention" (attached form PB-4053). If the judicial officer grants the Petition for Writ and sets the matter for hearing, the Order shall direct the Clerk of the Court to issue said Writ indicating time and place for the court hearing. The hearing must be set no later than four days from the Petition filing date. The Clerk of the Court shall use the local form "Writ of Habeas Corpus Re: Quarantine Detention" (attached form PB-4054). The local form "Findings and Order after Hearing Re: Quarantine Detention (attached form PB-4055) shall be completed and submitted to the Court for final disposition of the case after the hearing

(Effective 7/1/2011)

RULE 19 ATTORNEY FEE DISPUTES

The following process shall govern disputes as to attorney fees:

A. Parties to attorney fee disputes shall meet-and-confer at the outset of the dispute.

B. Parties ordered to meet-and-confer shall attempt to identify factual and legal issues that are undisputed and subject to possible stipulation; the material factual and legal issues of dispute; and, the likelihood of the dispute being resolved through settlement or alternative dispute resolution.

C. Attorney fee disputes will generally be resolved on the pleadings and declarations.

D. Although encouraged to pursue informal discovery, parties to attorney fee disputes are not entitled to formal discovery or an evidentiary hearing in the absence of a showing of good cause.

E. Formal written settlement offers may be factored into the Court's determination of whether attorney fees incurred after a formal settlement offer were reasonably expended.

F. Attorney fees expended in support of a fee petition may be adjusted downward or rejected when the fees awarded by the Court are substantially less than the amount originally requested.

RULE 20 PRIVATELY RETAINED COURT REPORTERS

A. GENERAL

(Effective 1/1/2018)

Refer to Rule 7 of the General Court and Administration Rules.

(Effective 1/1/2018)

GENERAL COURT AND ADMINISTRATION RULES

RULE 1 USE OF JUROR LISTS FOR TRIAL HELD IN PLACE OTHER THAN COUNTY SEAT

When a jury trial is held in a superior courthouse, other than one located in the county seat, the names for the master jury list and the qualified jury list for that trial may be selected from the area in which the trial is held.

(Effective 1/1/2007)

RULE 2 USE OF RECORDING DEVICES IN COURTHOUSE FACILITIES

(Effective 1/1/2012)

A. COVERAGE BY PROFESSIONAL MEDIA

(Effective 1/1/2012)

This Rule 2A applies to "Media" as defined by California Rules of Court, Rule 1.150(b)(2).

(1) MEDIA REQUEST FOR COVERAGE

The media may request an order permitting media coverage using only the approved Judicial Council of California form MC-500, Media Request to Photograph, Record, or Broadcast, and form MC-510, Order on Media Request to Permit Coverage. Forms are available on the Court's website.

The forms shall be filed electronically with the Court's Public Information Officer, or another Court employee designated by the Court Executive Officer, at least five court days before the portion of the proceeding to be covered unless good cause is shown. An electronic signature on the MC-500 by a member of the media is acceptable. A signed file-stamped order will be returned electronically to the requester.

Requests for media coverage are governed by California Rules of Court (CRC) 1.150(e).

(Effective 1/1/2013)

(2) FILMING JURORS

Photographing and filming any juror or summoned prospective juror is prohibited.

(3) MEDIA IN OTHER AREAS OF COURTHOUSE

Unless approved by written order of the Presiding Judge or the Supervising Judge of that courthouse, filming, videotaping, photographing and electronic recording of any kind is not permitted in any other part of the courthouse, including but not limited to, entrances, exits, halls, stairways, escalators and elevators. Application for permission for media coverage in these areas of the courthouse shall be directed to the Court's Public Information Officer, or another Court employee designated by the Court Executive Officer, who shall be responsible for coordinating approval or denial by the Presiding Judge or the Supervising Judge of that courthouse. The Court's Public Information Officer, or another Court employee designated by the Court Executive Officer, shall serve as the onsite manager for media relations and shall use professional judgment in determining appropriateness and permissibility of approved onsite media activities.

(Effective 1/1/2013)

Cameras and recording devices shall be turned off while being transported in any area of the court unless expressly permitted by court order. Filming, videotaping and photographing of the interior of any courtroom through the glass door windows or through the double doors, or otherwise is prohibited. No recording devices shall be permitted in any courtroom unless the judge hearing a matter within the courtroom has expressly authorized such use in a written order pursuant to CRC 1.150 and this Local Rule 2A.

(Effective 1/1/2013)

B. USE OF RECORDING DEVICES GENERALLY PROHIBITED

This Rule 2B applies to all individuals. Other than "Media" as defined by California Rules of Court, Rule 1.150(b)(2)

(1) COURTHOUSE FACILITIES

Any and all "photographing" and/or "recording" and/or "broadcasting" as defined by California Rules of Court, Rule 1.150(b) of people, things, conversations, or proceedings is strictly prohibited in any courthouse facility, including but not limited to stairways, elevators, waiting areas, hallways, entrances security screening stations, service areas, through windows, through doors, and with respect to any other accessible areas of courthouse facilities, whether access was intended or not, absent written order of the Supervising Judge of the specific courthouse facility. Any device that appears capable of photographing, recording, or broadcasting is subject to confiscation.

(2) COURT PROCEEDINGS

a. Court proceedings may not be photographed, recorded, or broadcast, as defined by California Rules of Court, Rule 1.150(b), without express permission of the Court. Use of a recording device or broadcasting device of any type is not permitted in any courtroom unless the judge hearing a matter within the courtroom has expressly authorized the use of such device in a written order, or oral order on the record made during the hearing issue. Except upon approval by the judicial officer hearing the matter, all cell phones and other personal communication devices shall be turned off before entering the courtroom and stored out of sight. Any cell phone or personal communication device or device that appears capable of photographing, recording, or broadcasting which is visually observed in the courtroom is subject to confiscation.

(Effective 7/1/2017)

b. Courts have inherent supervisory or administrative duties to maintain orderly conduct of judicial proceedings. In that effort, Court security should warn all persons entering the courtroom to turn off all electronic devices. If a person is suspected of

violating this rule, a further direct verbal warning should be given to the individual. In appropriate circumstances, court security may exercise its discretion to temporarily take custody of the electronic device until the person exits the court facility. If court security concludes that a recording has already occurred in violation of this rule or if the nature of the recording otherwise could jeopardize security of the facility, the safety of parties, witnesses, court personnel or judicial officers, court security may request that the recording be erased by the owner or may ask the owner for permission to access the device. If the owner refuses to erase the material or provide access, the deputy is authorized to temporarily retain the recording device while determining whether to seek a search warrant. If no application for a warrant is made or a warrant is declined, the device will be promptly returned to the owner. All applicable laws pertaining to search warrants shall apply. If the warrant issues, court security will retain the device as directed in the warrant and/or Penal Code section 1536. If the deputy finds probable cause to conclude that a violation of a court order or a crime has been committed, the matter shall be processed for possible arrest.

(Effective 7/1/2017)

C. VIOLATIONS

Any violation of this Local Rule or an order made under this Local Rule, or of California Rule of Court, Rule 1.150, is an unlawful interference with court proceedings and may be the basis for an order terminating media coverage, a citation for contempt of court, or an order imposing monetary or other sanctions as provided by law.

(Effective 1/1/2012)

RULE 3 ACCESS, FAIRNESS AND PREVENTION OF BIAS

(Effective 1/1/2024)

A. SANTA CLARA COUNTY COURT PROCEDURE

The Santa Clara County Superior Court, its judicial officers, and its employees are committed to ensuring the integrity and impartiality of the judicial system and that all court interactions are free of bias and the appearance of bias. Any complaints about bias or the appearance of bias, including but not limited to bias based on age, ancestry, color, ethnicity, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, physical or mental disability, political affiliation, race, religion, sex, sexual orientation, socioeconomic status, and any other classification protected by federal or state law, including Government Code section 12940(a) and Code of Judicial Ethics, Canon 3(B)(5), whether that bias is directed toward counsel, court staff, witnesses, parties, jurors, or any other person, may be directed to the presiding judge, the Commission on Judicial Performance or the court's Chief Executive Officer.

(Effective 1/1/2024)

B. SANTA CLARA COUNTY BAR ASSOCIATION DIVERSITY, EQUITY AND INCLUSION COMMITTEE

(Effective 1/1/2024)

The Santa Clara County Bar Association's Diversity, Equity and Inclusion Committee will assist in maintaining a courtroom environment free of bias or the appearance of bias. To improve dialogue and engagement with members of various cultures, backgrounds, and groups to learn, understand, and appreciate the unique qualities and needs of each group, the Diversity, Equity and Inclusion Committee will:

(Effective 1/1/2024)

1. Be composed of representative members of the court community, including but not limited to judicial officers, lawyers, court administrators, and individuals who interact with the court and reflect and represent the diverse and various needs and viewpoints of court users;
2. Sponsor or support educational programs designed to eliminate unconscious and explicit biases within the court and legal communities. Education is critical to developing an awareness of the origins of bias and the impact of bias on individuals, culture, and society. Education will include:
   (A) Information as to bias based on the protected classifications listed above;
   (B) Information regarding how unconscious and explicit biases based on these classifications develop, how to recognize unconscious and explicit biases, and how to address and eliminate unconscious and explicit biases; and
   (C) Other topics on bias relevant to our community informed by the committee's independent assessment of the unique educational needs in our community.

(Effective 1/1/2024)

C. LANGUAGE ACCESS COMPLAINTS

The Court is committed to providing equal access to court users regardless of English proficiency. Members of the public who have a complaint or other feedback about the Court's language access services may complete a Language Access Complaint Form (LA-100) and submit it online, in person at any Court facility Clerk's Office, or by mail or by e-mail to:

Language Access Representative
Superior Court of California, County of Santa Clara
191 N. First Street
San Jose, CA 95113
languageaccesscomplaint@scscourt.org

The Language Access Complaint Form (LA-100) will be available in hard copy at every court facility and electronically on the Court's website.

The Court's Language Access Representative will respond to all language access complaints other than those submitted anonymously. Within 30 days of receiving a language access complaint, the Language Access Representative will acknowledge receipt of the language access complaint and will prioritize those complaints involving the availability of a spoken-language interpreter for pending court proceedings.

Within 60 days of receiving a language access complaint, the Language Access Representative will conduct a preliminary investigation of the complaint and notify the complainant of either the final action taken on the complaint or, if applicable, the need for additional investigation. If additional investigation is needed, the Language Access Officer will notify the complainant at the conclusion of that investigation of the final action taken.

If a complainant disagrees with the notice of the outcome taken on his or her complaint, within 90 days of the date the court sends the notice of outcome, he or she may submit a written follow-up statement to the Language Access Representative indicating that he or she disagrees with the outcome of the complaint. The follow-up statement should be brief, specify the basis of the disagreement, and describe the reasons the complainant believes the court's action lacks merit. The court's response to any follow-up statement submitted by complainant after receipt of the notice of outcome will be the final action taken by the court on the complaint.

The Language Access Representative does not have the authority to change any decision made by a judicial officer, and the Language Access Representative's review of the complaint does not in any way modify, extend or toll any procedural requirements or deadlines, such as the time limits for filing a notice of appeal or motion for reconsideration or set aside of a court order. Under no circumstances will the submission of a complaint negatively impact the outcome of a complainant's court case.

The Court will maintain records of the receipt, investigations and disposition of all language access complaints and will submit quarterly reports to the Judicial Council on the number and type of complaints received, the resolution of complaints, and any additional information requested by the Judicial Council to ensure implementation of the Strategic Plan for Language Access in the California Courts.

(Effective 7/1/2018)

RULE 4 TEMPORARY JUDGES AND SETTLEMENT ATTORNEYS

(Effective 1/1/2022)

A. COURT-APPOINTED TEMPORARY JUDGES

(1) APPLICATION AND TRAINING The Court appoints qualified attorneys as temporary judges pursuant to the California Rules of Court (CRC). Application forms for appointment as a temporary judge may be downloaded from the Court's website at www.scscourt.org. Attorneys applying for appointment as a temporary judge in the Small Claims or Traffic divisions who previously have not served as a temporary judge in that division must observe two (2) half-day calendars in the division conducted by judicial officers, as well as satisfy all other requirements set forth in the CRC. The two (2) half-day calendars in Traffic shall include arraignments and trials.

(Effective 1/1/2024)

(2) COMPLAINTS

Forms for lodging complaints about a Court-appointed temporary judge may be found on the Court's website at www.scscourt.org, or they are available from the Clerk's Office at any courthouse where temporary judges serve. Complaints about any court appointed temporary judge should be sent to: Temporary Judge Administrator, Santa Clara County Superior Court, 191 N. First Street, San Jose, CA 95113. Complaints related to sexual harassment may be made by phone by calling the Temporary Judge Administrator at (408) 882-2721.

(Effective 1/1/2022)

B. TEMPORARY JUDGES REQUESTED BY THE PARTIES

(1) PARTY-REQUESTED TEMPORARY JUDGES

Parties requesting Court approval that an attorney or retired judge be designated as a temporary judge on a pending case shall file the stipulation required by CRC 2.830 – 2.834 in the Clerk's Office where the case is pending.

(2) PRIVATELY COMPENSATED TEMPORARY JUDGES

Matters pending before privately compensated temporary judges are not heard at courthouses. A notice pursuant to CRC 2.830 – 2.834 will be posted on the Court website and outside the Clerk's Office of any courthouse where the Court has approved a request for a pending case to be assigned to a privately compensated temporary judge.

(Effective 1/1/2022)

C. SETTLEMENT ATTORNEYS

(1) APPLICATION AND TRAINING

In addition to temporary judges, the Court may appoint qualified settlement attorneys to assist in settlement conferences pursuant to CRC 2.812(c)(3)(D). Application forms, which include the oath, to volunteer as a settlement attorney may be downloaded from the Court's website at www.scscourt.org, or they are available from the Clerk's Office at the Downtown Superior Court. Attorneys applying for appointment as a settlement attorney must observe a Mandatory Settlement Conference, Settlement Officer Conference, or other proceeding over which they will act as a settlement attorney. Settlement attorneys must initially, and once every three years, attend a one and a half hour (1.5) training related to local rules, bias, fairness, conflicts, and Court divisions and are encouraged to attend Bench Conduct and Demeanor Training and complete the Judicial Ethics online webinar. The Presiding Judge, in his or her discretion, may grant an individual exemption to one or both requirements.

(Effective 1/1/2022)

(2) COMPLAINTS

Forms for lodging complaints about a settlement attorneys may be found on the Court's website at www.scscourt.org, or they are available from the Clerk's Office at any courthouse where settlement attorneys serve. Complaints about any settlement attorneys should be sent to: the ADR Administrator or the Family Court Settlement Officer, Santa Clara County Superior Court, 191 N. First Street, San Jose, CA 95113. Complaints related to sexual harassment may be made by phone by calling the ADR Administrator at (408) 882-2530 or the Family Court Settlement Officer at (408) 882-2932.

(Effective 1/1/2022)

RULE 5 FOOD IN COURT

Jurors and parties to lawsuits, and others who may be required to be in the courthouses for extended periods of time, will be permitted to bring food for lunch and snacks into all courthouses, in appropriate containers, as further described in this rule. Abuse of these rules or failure to use trash receptacles for refuse will result in termination of an individual privilege to bring food into a courthouse.

Glass bottles are deemed a security risk and are prohibited and will be detained at the security entrances of all courthouses, except that baby bottles with milk and juice may be brought into the courthouse by parents or other caregivers who are bringing small children into the courthouse. All bottles may be subject to inspection by security screening personnel.

No food or drink may be openly displayed or consumed in any courtroom or anteroom of a courtroom without the express permission of the judicial officer presiding over that courtroom. Permission may be sought through the clerk or bailiff in that courtroom.

Food may be carried into the Old Courthouse by persons who carry lunch and snacks; it may not be consumed or displayed in the Old Courthouse corridors or public places. However, food may be consumed in a particular courtroom anteroom with the consent of the judicial officer. Only upon approval of the Presiding Judge should food or drink be consumed in the Heritage Room.

(Effective 1/1/2011)

RULE 6 ELECTRONIC FILING

This Rule applies to filing of documents electronically with the court.

A. APPLICABLE STATUES AND RULES OF COURT

Parties must comply with all requirements and conditions for electronic filing and service as set forth in Code of Civil Procedure section 1010.6(a)(1), (3), (4), (b)(1), (2), (5) and California Rules of Court (herein either "CRC," "Rules of Court," or "Rules"), Rules 2.250 through 2.253, 2.256, 2.257, and 2.259.

(Effective 7/1/2019).

B. ELECTRONIC FILING RULES THAT APPLY ONLY TO NON-CRIMINAL CASES

(1) MANDATORY ELECTRONIC FILING AND SERVICE

As authorized by Code of Civil Procedure section 1010.6(d) and Rules of Court, Rule 2.253(b)(1)(A), all parties represented by attorneys in all civil cases (including Family, Juvenile Dependency, and Probate cases) must file and serve documents electronically, except when personal service is required by statute or rule, and excluding ex parte applications which shall be submitted to the court as directed by the Local Rules of the Division in question. Attorneys who are subject to this rule, and self-represented parties who have consented to electronic filing and service, may not object to electronic service.

Self-represented parties are not required to file and serve documents electronically. Self-represented parties may continue to file, serve, and receive paper documents by non-electronic means according to all statutory requirements and the California Rules of Court that apply to paper documents, unless the self-represented party affirmatively agrees to electronic filing and service. Self-represented parties are encouraged to agree to electronic filing and service, and may agree by filing with the Clerk of the Court and serving on all parties, either electronically or by non-electronic means, a Consent to Electronic Filing and Service and Notice of Electronic Service Address [Form CW-9024].

An attorney who is required to file, serve, and receive documents electronically under this Rule may request to be excused from those requirements by showing undue hardship or significant prejudice.

An attorney requesting to be excused from mandatory electronic filing and service must file with the Clerk of the Court and serve on all parties a Request for Exemption from Mandatory Electronic Filing and Service [Judicial Council Form EFS-007] with a Proposed Order [Judicial Council Form EFS-008]. An attorney who files and serves a Request for Exemption from Mandatory Electronic Filing and Service must be served with documents in paper form until the Court rules on the Request for Exemption. Undue hardship or significant prejudice does not include the inability to pay fees for electronic filing, as fee waivers may be requested if the party otherwise qualifies for or has been granted a fee waiver as provided in this Rule.

(2) ELECTRONIC FILING FEE WAIVER

A party who has received a fee waiver is not required to pay any fee for electronic filing and service. A party who has not already received a fee waiver may request a waiver of the fees for electronic filing and service by filing with the court an application for waiver of court fees and costs [Judicial Council Forms FW-001 and FW-002].

(3) CONFIDENTIAL DOCUMENTS

Except as provided in Rules of Court, Rules 2.500 through 2.507, an electronically filed document is a public document at the time it is filed unless it is ordered sealed under CRC, Rules 2.550 to 2.551 or filed as a confidential document pursuant to law. Unless the document is confidential and/or will be filed under seal, to protect personal privacy, parties must refrain from including,

or must redact where inclusion is necessary, the personal data identifiers from all documents, including exhibits, filed with the court under this Rule, such as social security numbers, and financial account numbers. See CRC, Rule 1.201.

A motion to file documents under seal must be filed and served electronically. Confidential documents shall be lodged or filed with the court by electronic submission in the manner described in Rule 2.551(d). Such records must not be submitted in paper form, unless an exception to the mandatory electronic filing rules applies or has been granted. A cover sheet that identifies the lodged or sealed documents must be electronically filed. Redacted versions of any lodged or sealed documents must be filed electronically at the same time.

(4) DOCUMENTS NOT FILED ELECTRONICALLY

The following documents cannot be filed electronically: bench warrants, deposits of cash or check, bonds, undertakings, wills and codicils, original orders signed by a judicial officer, and trial exhibits.

The following documents must be presented to the Clerk of the Court in paper form for issuance: Writs, Abstracts and Out of State Commissions, Sister State Judgments, Subpoenas for Out of State Actions, Local Form FN-022 (Order for Payment from Court Deposit), Local Form FN-030 (Payee Data Record), Certificate of Facts Re: Unsatisfied Judgment, Letters issued by the Probate Court, and Citations issued by the Probate Court.

During trial, a party may submit to the courtroom clerk and serve by hand any pleadings, as long as the pleadings are also filed electronically before the close of business no later than the following court day.

A party may be excused from filing any particular document electronically if it is not available in electronic format and it is not feasible for the party to convert the document to electronic format by scanning it to PDF or it may not be comprehensively viewed in an electronic format. Exhibits to declarations that are real objects also need not be filed electronically. Such a document or exhibit may be manually filed with the Clerk of the Court and served upon the parties by conventional non-electronic means. A party manually filing such a document or exhibit must file electronically and serve a Notice of Manual Filing specifically describing the document or exhibit, and setting forth the reason the document or exhibit cannot be filed electronically.

A party who is required, under these Rules, the California Rules of Court or otherwise, to lodge copies or to submit courtesy copies of certain documents at the request of the trial judge or other judge, must continue to deliver such documents in paper form. In the Civil Division, such documents must be delivered to Court Services with the Department number on the front page.

(5) PROPOSED ORDERS IN PROBATE CASES

Subject to any applicable exemptions, proposed orders submitted with moving papers before a hearing on a regularly-noticed motion or orders after hearing shall be lodged with the court electronically in PDF format attached to Judicial Council Form EFS-020. At the same time as the EFS-020 and the PDF proposed order are lodged with the court electronically, a version of the proposed order in an fully editable word processing format (preferably in MS Word format, and not PDF or PDF converted to a word format) shall be submitted to the Court by electronic mail using an address identified on the Court's website.

(6) PROPOSED ORDERS IN CIVIL DIVISION CASES

Unless ordered by the Court or otherwise required by applicable statute or Rule of Court (such as motions to be relieved as counsel, petitions for compromise of minors' claims, orders on objections to evidence in summary judgment motions, pro hac vice applications, applications for writs of attachment, etc.), proposed orders must not be submitted before a hearing on a regularly-noticed motion. If instructed to prepare an order after a hearing, proposed orders after hearing must be lodged with the court electronically in PDF format attached to Judicial Council Form EFS-020. The proposed order must not include attachments. Any description of the meet and confer process required by Rules of Court, Rule 3.1312 must be submitted by way of separate declaration. At the same time as the EFS-020 and the PDF proposed order are lodged with the court electronically, a version of the proposed order in an fully editable word- processing format (preferably in MS Word format, and not PDF or PDF converted to a word format) must be submitted to the Court by electronic mail using an address identified on the Court's website. (See Civil Local Rule 16.B.)

(Effective 8/25/2020)

C. PERMISSIVE ELECTRONIC FILING AND SERVICE FOR CRIMINAL CASES

Pursuant to Penal Code section 959.1, a criminal prosecution may be commenced by filing an accusatory pleading in electronic form. In addition, parties in criminal matters may file and serve documents electronically pursuant to Penal Code section 690.5(a), Code of Civil Procedure section 1010.6, and the authorities cited in paragraph 6(A) except for any Motion to Set Aside a Bail Forfeiture and any appeal of a denial of a Motion to Set Aside a Bail Forfeiture.

(Effective 7/1/2019)

D. ELECTRONIC FILING AND SERVICE PROCEDURES THAT APPLY IN ALL CASES, INCLUDING CRIMINAL

Parties filing documents electronically must use one of the court's approved electronic filing service providers. Information concerning the approved electronic filing service providers, including the procedures for electronically filing documents with the court and for electronically serving documents, is available on the **c**ourt's website at www.scscourt.org.

(1) FORMAT FOR EXHIBITS AND DOCUMENTS

Exhibit attachments to pleadings filed electronically must be separated by a single page with a title identifying the sequence of the exhibit. Any pleadings or documents (except for trial exhibits) that are submitted to the Clerk in paper format must not be stapled, but instead must be held together by binder clips or two-prong fasteners.

(2) TRIAL EXHIBITS NOT TO BE FILED ELECTRONICALLY

Proposed trial exhibits must not be filed electronically but instead must be lodged in paper format with the trial department once assigned, unless otherwise instructed by the Court.

(Effective 7/1/2019)

E. DOCUMENTS NOT FILED ELECTRONICALLY

The following documents must not be filed electronically: bench warrants, deposits of cash or check, bonds, undertakings, wills and codicils, original orders signed by a judicial officer, and trial exhibits.

The following documents must be presented to the Clerk of the Court in paper form for issuance: Writs, Abstracts and Out of State Commissions, Sister State Judgments, Subpoenas for Out of State Actions, Local Form FN-022 (Order for Payment from Court Deposit), Local Form FN-030 (Payee Data Record), and Certificate of Facts Re: Unsatisfied Judgment.

(Effective 1/1/2024)

During trial, a party may submit to the courtroom clerk and serve by hand any pleadings, as long as the pleadings are also filed electronically before the close of business no later than the following court day.

A party may be excused from filing any particular document electronically if it is not available in electronic format and it is not feasible for the party to convert the document to electronic format by scanning it to PDF or it may not be comprehensively viewed in an electronic format. Exhibits to declarations that are real objects also need not be filed electronically. Such a document or exhibit may be manually filed with the Clerk of the Court and served upon the parties by conventional non-electronic means. A party manually filing such a document or exhibit shall file electronically and serve a Notice of Manual Filing specifically describing the document or exhibit, and setting forth the reason the document or exhibit cannot be filed electronically.

A party who is required, under these Rules, the California Rules of Court or otherwise, to lodge copies or to submit courtesy copies of certain documents at the request of the trial judge or other judge, shall continue to deliver such documents in paper form. In the Civil Division, such documents shall be delivered to Court Services with the Department number on the front page.

(Effective 7/1/2018)

F. FORMAT OF EXHIBITS

Exhibit attachments to pleadings filed electronically shall be separated by a single page with a title identifying the sequence of the exhibit.

(Effective 6/20/2016)

G. ELECTRONIC FILING AND TRACKING OF TRIAL EXHIBITS

Proposed trial exhibits shall not be filed electronically but shall be lodged in paper format with the trial department once assigned, unless otherwise instructed by the Court.

(Effective 7/1/2018)

H. PROPOSED ORDERS

Subject to any applicable exemptions, proposed orders submitted with moving papers before a hearing on a regularly-noticed motion or orders after hearing shall be lodged with the court electronically in PDF format attached to Judicial Council Form EFS-020. At the same time as the EFS-020 and the PDF proposed order are lodged with the court electronically, a version of the proposed order in an fully editable word-processing format (preferably in MS Word format, and not PDF or PDF converted to a word format) shall be submitted to the Court by electronic mail using an address identified on the Court's website.

(Effective 1/1/2019)

RULE 7 PRIVATELY RETAINED COURT REPORTERS

A. PRIVATELY ARRANGED COURT REPORTERS SERVICES

If the services of an official court reporter are not available for a proceeding, a party may privately arrange for court reporter services at the party's own expense, pursuant to Government Code Section 68086 and California Rule of Court, rule 2.956.

B. ARRANGEMENTS FOR A REPORTER

A party must make arrangements for a reporter in advance of the proceeding if the party wishes the proceedings to be reported. Parties retaining a reporter must file a Request for Appointment of Official Reporter Pro Tempore (CV-5100) with the court at least 5 days prior to the hearing. At least one of the parties or counsel who wish the proceedings to be reported by the reporter to be appointed must sign the Request for Appointment. If the judicial officer has not received the Request for Appointment in time to approve it before the hearing, the Court has discretion to deny the request.

(Effective 1/1/2019)

(1) PRIOR TO HEARING

When a party arranges for a reporter, the reporter must be appointed as an official reporter pro tempore before the hearing begins. Every reporter must complete and sign sections 1, 2, and 3 of the Request for Appointment of Official Reporter Pro Tempore (CV-5100).

(Effective 1/1/2019)

(2) ORDER APPOINTING PRO TEMPORE

The Judicial Officer must sign the order appointing the reporter as an official reporter pro tempore, using the Request for Appointment of Official Reporter Pro Tempore (CV-5100), before the reporter may report the proceeding.

(Effective 1/1/2019)

C. STIPULATION AND APPOINTMENT

By signing the Request for Appointment of Official Reporter Pro Tempore (CV-5100), the reporter agrees to the following:

(Effective 1/1/2019)

(1) The reporter has a valid, current California Certified Shorthand Reporter License and is in good standing with the Court Reporters Board of California.

(2) The reporter is not a current full-time employee of the court and appointment as an official reporter pro tempore will not interfere with the reporter's obligations as a court employee.

(Effective 7/1/2018)

(3) The reporter will provide current contact information with the court.

(4) All fees for reporting services, including appearance, transcript and real-time fees, are the responsibility of the party or parties who arranged for the reporter services and may not be charged to the court.

(5) The reporter will comply with statutes and rules applicable to official reporters pro tempore, including the duty to timely prepare transcripts, including those for appeals, in the proper form.

(6) The reporter will demonstrate the highest standards of ethics and impartiality in the performance of his/her duties.

(7) The reporter will comply with the court's requirements regarding uploading electronic archiving of notes within 48 hours of the date of the proceedings except in extenuating circumstances and as approved in advance by the Director of Court Services, or make other arrangements if the only notes are in paper form

(8) The reporter will follow directions from the court and will be subject to the jurisdiction of the court to the same extent as an official reporter.

(9) The reporter will be available for read-back of notes taken during a jury trial within 30 minutes of the court's request.

(10) If providing real-time reporting or other litigation support services (e.g. Live Note), the reporter is responsible for providing and connecting the necessary equipment. Instructions will be provided by the Director of Court Services.

D. ADDITIONAL INFORMATION FOR PARTIES AND REPORTERS

(1) There can be only one official record of court proceedings, and only a reporter appointed by the court may report a court proceeding. (Code of Civil Procedure Section 273; Government Code Sections 70043 and 70044; Redwing v. Moncravie (1934) 138 Cal. App. 432, 434.) Only one reporter will be allowed to report a court proceeding at any given time. If the parties cannot agree on a reporter, the judicial officer will make the selection. The transcript may not be modified except on court order.

(2) The party arranging for an official reporter pro tempore is responsible for paying the reporter's fees, although the parties may arrange to share the fees at terms the parties negotiate. (California Rules of Court, rule 2.956(c).) All fees must be paid directly to the court reporter.

(3) The tardiness or failure of a privately retained court reporter to appear for a trial or hearing will not be grounds to continue or delay a trial or proceeding, unless the court in its discretion finds good cause for a delay.

(Effective 1/1/2021)

(4) TRANSCRIPTS

(a) The judicial officer may order any party who arranges for the transcription of proceedings by the official reporter pro tempore to lodge a copy of the transcript with the court. (Code of Civil Procedure Section 128(a).)

(b) Transcripts produced by an official reporter pro tempore will be treated, for court purposes, identically to transcripts prepared by official reporters. Reporting notes of an official reporter pro tempore are official records of the court. (Government Code Section 69955(a).) The notes of an official reporter pro tempore, when transcribed and certified, are prima facie evidence of the testimony and proceedings. (Code of Civil Procedure Section 273(a).)

(c) Certified transcripts are admissible as evidence to the extent otherwise permitted by law. Transcripts prepared by a privately retained certified shorthand reporter appointed by the court as an official reporter pro tempore are admissible as evidence to the extent otherwise permitted by law. (Code of Civil Procedure Section 273(a).)

(d) The Request for Appointment of Official Reporter Pro Tempore (CV-5100) is available as a form Attachment to the Local Rules at www.scscourt.org.

(Effective 1/1/2019)

RULE 8 COURT SECURITY VIDEO RECORDINGS

A. Unless otherwise provided for by statute, court security video recordings must not be disclosed to non-Court personnel or agents except after consideration of a request for access to court security camera video form (See, e.g. Form GS-056) which will be sent to the Office of the General Counsel.

B. Because court security video recordings may be exempt from disclosure under California Rules of Court, Rule 10.500(f)(6), any request for video must describe, as narrowly as possible, 1) the time, date, and location of the video sought, 2) the specific reasons disclosure is warranted, and 3) why there are no other alternatives to disclosure.

(1) If applicable, the request must give proposals for minimizing the potential impact on victims, witnesses, jurors, minors, judicial officers and court employees, the rationale for overriding the privacy interests of such persons, proposals for protection of such persons from harassment, embarrassment or intimidation, and proposals for protection of the attorney-client privilege.

C. Upon receiving the request for access to court security video form, the Court will provide the requestor with a copy of this Rule and Form GS-056 and notify the Office of the General Counsel of the request.

(Effective 1/1/2021)

RULE 9 REMOTE PROCEEDINGS

A. DEFINITIONS

(1) "Civil case" is as defined in California Rules of Court, rule 3.672(c)(1), and includes Juvenile Dependency and Juvenile Justice cases, unless otherwise specified.

(2) "Remote technology" means technology that provides for the transmission of video and audio signals or audio signals alone, including, but not limited to, a computer, tablet, telephone, cell phone, or other electronic communication device.

(3) "Remote appearance" means the appearance at a court hearing using remote technology by a party, attorney, witness, expert, social worker or other court participant.

(4) "Remote proceeding" means a proceeding conducted in whole or in part using remote technology.

B. REQUIREMENTS FOR REMOTE APPEARANCES

(1) A person appearing remotely must:

(a) Have sufficient internet speed and/or telephone connectivity to fully participate in all aspects of the hearing without disruption.

(b) Have the ability to clearly communicate with the court and all other participants at the hearing through a telephone, cell phone, microphone, headset or other similar device enabling a clear audio stream.

(c) If appearing by video, have a device capable of capturing and displaying a clear video stream.

(d) Have an indoor location with limited background noise that the person can use for the entire hearing.

(e) Ensure there are no interruptions or distractions for the duration of their appearance at the hearing. No other individual may appear with the participant or be heard during the hearing without prior court approval, other than when an attorney appears with their client from a common remote location.

(f) Observe the same degree of courtesy, decorum, and courtroom etiquette as required for an in-person appearance. Attorneys must appear in professional business attire. A remote court appearance is a court appearance and must be conducted consistent with the Court's Standing Order Regarding the Santa Clara County Bar Association Code of Professionalism.

(g) Comply with California Rules of Court, rule 1.150 and Local General Rule 2, by not recording, photographing, capturing an image of, or broadcasting any part of or any participant to a remote proceeding in any manner.

(h) Comply with any other instructions for remote appearances given by the judicial officer.

(2) The court may reschedule or continue a remote proceeding if the requirements listed in (B)(1) are not satisfied or if a distraction or disturbance interferes with the hearing.

(3) A party, witness, reporter, interpreter or other participant should make an effort to alert the judicial officer of technological or audibility issues during a hearing by sending a message through the "chat" function of the remote technology, by informing another participant in the hearing, or by sending an email to the hearing department.

(4) Unless approved by the court, participants must appear with their camera turned on if appearing by video. If a participant has security concerns about appearing on camera, this concern should be brought to the court's attention prior to the hearing.

(5) If a participant is only able to appear by telephone, the participant must identify themselves when requested by the court and thereafter when speaking during the hearing. Participants appearing by telephone may not place the court on hold or use a speakerphone. Participants may turn off "caller ID" when appearing by telephone.

C. COURT DISCRETION TO REQUIRE IN-PERSON APPEARANCE

Notwithstanding The Other Provisions Of This Rule And The Availability Of Remote Technology, The Court May, In Its Discretion, Consistent With Code Of Civil Procedure Section 367.75:

(1) Require a party, attorney, or other participant to appear at any hearing in person; or

(2) On its own motion, conclude a remote proceeding and require a party or attorney to appear in person at a subsequent or continued hearing.

D. NOTICE AND WAIVER FOR DURATION OF CASE

(1) Except as required by (C), a party may at any time during a civil case provide notice to the court and all other parties that the party intends to appear remotely for the duration of the case by filing Judicial Council of California form RA-010, Notice of Remote Appearance, at least 5 court days before the next scheduled hearing in the case.

(2) All parties to a civil case may agree to waive notice of any other participants' remote appearance through a written stipulation filed with the court or through an oral stipulation made at a hearing.

E. SELF-REPRESENTED PARTIES

A remote appearance by a self-represented party in a civil case will be construed as an agreement to appear remotely at the hearing pursuant to Code of Civil Procedure section 367.75, subdivision (g).

F. Evidentiary Hearings

(1) The following evidentiary hearings will presumptively be conducted remotely, in whole or in part, as directed by the assigned judicial officer, in the Family Division:

(a) Court trials

(b) Evidence Code 402 and 403 hearings

(c) Fee waiver hearings

(d) Hearings on Requests for Order

(e) Review hearings based on a Request for Order, including Post Mediation Hearings, Judicial Custody Conferences, and Custody Settlement Conferences
(f) Hearings on orders to show cause
(g) Hearings regarding requests for domestic violence and gun violence, civil harassment and elder abuse restraining orders
(h) Hearings regarding requests for civil harassment and elder abuse restraining orders, when heard in the Family Division
(i) Long-cause hearings

For such remote evidentiary hearings, the court may nevertheless grant leave for a party, attorney, witness, or other court participant to appear in person, and such leave may be granted at the hearing itself.

(2) The court may exercise its discretion to require an in-person hearing or in-person testimony for the foregoing evidentiary hearings, on a hearing-by-hearing basis, either upon its own motion or after a party has filed an opposition to a remote hearing or remote testimony. A party may request that the court disallow a remote appearance or remote testimony by filing Judicial Council of California form RA-015, Opposition to Remote Proceeding at Evidentiary Hearing or Trial, at least 5 court days before the remote proceeding.

G. Other Hearings Held In Person

(1) Except for the hearings listed in (F)(1), all other hearings will presumptively be held in person in civil cases unless the court orders the proceeding to be held remotely or grants leave for a participant to appear remotely.
(2) All parties to a civil case may agree to a remote proceeding through a written stipulation filed with the court or through an oral stipulation made at a hearing. The court may accept or reject the stipulation.
(3) A person may provide notice that the person intends to appear remotely at a hearing in the Civil Division, Family Division, Probate Division, or in Juvenile Justice by filing Judicial Council of California form RA-010, Notice of Remote Appearance, at least 5 court days before the hearing. This provision does not apply to dependency hearings in the Juvenile Division.
(4) Any person who is authorized to be present at a juvenile dependency hearing, other than a testifying witness, may request to appear remotely using any means, oral or written, that is reasonably calculated to ensure receipt by the court no later than the time the case is called for hearing. The court retains discretion under (C) above to require an in-person appearance.
(5) Any request for a remote appearance by a testifying witness in a juvenile dependency case must be made in writing by counsel for the party calling the witness or, if the party does not have counsel, by the party, by filing the request with the court and serving a copy of the request on counsel for all other parties or, if a party does not have counsel, on the party, by any means authorized by law reasonably calculated to ensure receipt no later than close of business three court days before the proceeding. The court retains discretion under (C) above to require an in-person appearance by the witness.
(6) A remote appearance by a person who has not provided advance notice will be construed as a request to appear remotely pursuant to California Rules of Court, rule 3.672(j)(2). The court may grant leave for the person to appear remotely at the hearing.

(Effective 4/1/2022)

APPELLATE RULES

RULE 1 APPLICABILITY OF RULES

These rules are intended to supplement the relevant statutes and California Rules of Court (Rules of Court or CRC), including but not limited to rules 8.800-8.936 applicable to the Appellate Division.

Where reference is made in these rules to the Presiding Judge of the Appellate Division, such reference also includes a designee of the Presiding Judge of the Appellate Division.

(Effective 4/22/2021)

RULE 2 RULES FOR THE APPELLATE DIVISION

A. Appellate Division Jurisdiction

i. The Appellate Division of the Superior Court has jurisdiction over all appeals arising from limited civil, misdemeanor, and infraction cases in Santa Clara County (except small claims appeals and parking citation appeals) and over all motions and petitions filed in the reviewing court for a stay of proceedings in the trial court in connection with these appeals. (Code Civ. Proc., § 77.)

ii. The Appellate Division has original jurisdiction over all petitions for writs of mandate, prohibition, supersedeas, and review (certiorari) in limited civil, misdemeanor, and infraction cases. (Code Civ. Proc., §§ 1068, subd. (b); 1085, subd. (b); & 1103, subd. (b).)

B. Notice of Appeal

i. Where to File

A notice of appeal to the Appellate Division must be filed in the Superior Court division (trial court) from which the appeal is being taken. Except as otherwise specified in these rules or in the Rules of Court, and except as to most filings pertaining to the appellate record that are properly filed in the trial court, all filings after the notice of appeal in that appellate case must be made in the Appellate Division of the Superior Court, which is located at 191 N. First St. in San Jose. A courtesy copy of the notice of appeal must be separately served on the trial court judge who issued the order or judgment.

ii. Late Filing of Notice of Appeal and Non-Appealable Orders

a. *Criminal or Infraction Cases*. If the notice of appeal is filed late, the clerk will stamp it "Received [date] but not filed" and notify the party that the notice was not filed because it was late. (CRC 8.853(d) & 8.902(d).) If a late notice of appeal is inadvertently filed, the Presiding Judge of the Appellate Division will issue an Order to Show Cause re dismissal or entertain a motion filed by the respondent to dismiss the appeal.

b. *Civil Cases*. If a notice of appeal is filed late, the Presiding Judge of the Appellate Division will issue an Order to Show Cause re dismissal or entertain a motion by the respondent to dismiss the appeal.

c. *Non-Appealable Orders*. In any appeal in the Appellate Division, if the appeal is initiated by a notice of appeal from a non-appealable order, the Presiding Judge of the Appellate Division may issue an Order to Show Cause re dismissal or entertain a motion by the respondent to dismiss the appeal. Alternatively, and as appropriate in rare cases, the Appellate Division may, in its discretion, treat a notice of appeal from a non-appealable order as a writ petition.

C. Appointment of Counsel in Misdemeanor Appeals

There is no right to self-representation in a misdemeanor appeal. A defendant appealing a misdemeanor conviction must be represented by an attorney. A defendant appealing a misdemeanor conviction who had appointed counsel in the trial court or who meets the indigency standards for appointed counsel is entitled to appointed counsel on appeal upon written request. (CRC 8.851(a).) A defendant who wishes to be represented on appeal by appointed counsel may use the Request for Appointment of Counsel (Judicial Council Form CR-133) for this purpose. A defendant who is appealing a misdemeanor conviction and who did not have appointed counsel in the trial court but who wishes the court to appoint counsel on appeal must include with the written request a financial statement establishing indigency, and may use Defendant's Financial Statement on Eligibility For Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense (Judicial Council form CR-105) for this purpose. Both forms are fillable and available for download on the California Courts website. If appointed trial counsel is to represent the defendant on appeal, trial counsel must indicate this in writing on the request for appointment of counsel.

If a misdemeanor defendant who is represented in the trial court by appointed counsel files a pretrial appeal for which the defendant requests the appointment of counsel, the Appellate Division will appoint trial counsel to represent the defendant in the pretrial appeal, unless trial counsel declines the appointment in a writing filed in the Appellate Division with a proof of service showing service of the document on the defendant, the People, and the Independent Defense Counsel Office.

A misdemeanor defendant who is the respondent in an appeal by the People may also be eligible for appointment of counsel under the authority of *Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998 and *Gardner v. Appellate Division of Superior Court* (2019) 41 Cal.App.5th 1139. Any such respondent who had appointed counsel in the trial court will be appointed the same counsel on appeal, unless trial counsel declines the appointment in a writing filed in the Appellate Division with a proof of service showing service of the document on the defendant, the People, and the Independent Defense Counsel Office. A misdemeanor defendant who is a respondent on appeal and who was not represented in the trial court by appointed counsel must retain counsel on appeal or else request in writing the appointment of counsel on and include a sworn statement itemizing their income, necessary living expenses, assets and

liabilities. Judicial Council forms CR-133 (Request for Appointment of Counsel) and CR-105 (Defendant's Financial Statement on Eligibility for Appointment of Counsel and Reimbursement and record on Appeal at Public Expense) may be used for this purpose.
The Presiding Judge of the Appellate Division, in his or her discretion, may also, upon proper application with a showing of indigency, appoint counsel to any misdemeanor defendant responding to the People's appeal or writ petition made in that defendant's criminal case.

D. Applications and Motions

All applications must comply with CRC 8.806.
Applications for extensions of time to file records, briefs, or other documents must comply with 8.810 and also provide: (1) the due date for the document to be filed; (2) the length of the extension requested; (3) information about any earlier extensions for the same document that were granted and, if so, how long the extensions were; (4) the opposing party's position on the requested extension; and (5) a proof of service of the extension request on all parties, including, in civil cases, the client for whose benefit the extension is being sought as required by CRC 8.810(e). Applications to extend time must include a proposed order.
Applications for a waiver of fees and costs on appeal to the Appellate Division are governed by CRC 8.818.
Any application or a stay in an unlawful detainer case must meet the requirements of Civil Code section 1176 concerning the deposit of rent.
All motions must comply with CRC 8.808. In addition, motions to withdraw as counsel of record must comply with and CRC 3.1362 and 8.814(c) and Code of Civil Procedure sections 284 and 285. A substitution of attorneys must likewise comply with CRC 8.814(b).
For good cause shown by proper application or motion, the Presiding Judge of the Appellate Division may relieve a party from a default for any failure to comply with these rules, consistently with CRC 8.812.

E. The Record on Appeal

i. Civil Appeals

The record on appeal includes those items specified as part of the "normal record" by CRC 8.830. The record on appeal consists of the clerk's transcript, appendices, or agreed statement (CRC 8.830(a)(1)) and may include the reporter's transcript, an agreed statement, or a settled statement on appeal (CRC 8.830(a)(2)). The record must be designated by timely notice filed in the trial court. The parties must comply with the CRC governing the method and time limits for designating the record on appeal and are responsible for assuring that the record is paid for, prepared, and transmitted to the Appellate Division. (CRC 8.831, 8.832(b) & (c), 8.834, 8.835, 8.836, 8.837.)

Any party who wants the Appellate Division to review exhibits admitted, refused, or lodged in the trial court must comply with and cause the exhibits to be transmitted to the Appellate Division in accordance with CRC 8.843.

ii. Misdemeanor and Infraction Appeals

The record on appeal includes those items specified by CRC 8.860 (misdemeanors) and 8.910 (infractions) as part of the "normal record" on appeal. The clerk's transcript, consisting of the items specified by CRC 8.861 or 8.867 for misdemeanors and 8.912 or 8.920 for infractions, is prepared by the appeals unit of the Superior Court after the notice of appeal is filed and without request or payment by the appellant. (CRC 8.862(a) & 8.913.)

If an appellant wishes to include in the record on appeal a record of the oral proceedings, the appellant must timely file in the trial court a notice of election to proceed on appeal with either the reporter's transcript, official electronic recording, or a statement on appeal. (CRC 8.864, 8.869 & 8.915.) Appellant must thereafter comply with the CRC to ensure the timely preparation and transmittal of the record of the oral proceedings to the Appellate Division.

Any party who wants the Appellate Division to review exhibits admitted, refused, or lodged in the trial court must comply with CRC 8.870 in misdemeanor cases or 8.921 in infraction cases.

iii. Limited Record of Oral Proceedings

In an appeal by a defendant or the People in a misdemeanor case from a post-conviction order, including but not limited to an order revoking, reinstating, or modifying probation, the normal record of oral proceedings will be limited to the sentencing proceeding at which the defendant was first granted probation and the hearing on the revocation, reinstatement, or modification appealed from. (CRC 8.865(b).)

iv. Electronic Recordings/Trial Court's Election in Lieu of Statement on Appeal

Under CRC 8.835, 8.868, and 8.915, when the trial court proceedings were officially recorded under Government Code section 69957, subdivision (a), the court may permit the original of an electronic recording of the trial court proceedings, or a copy made by the court, to be transmitted as the record of the oral proceedings without being transcribed. (CRC 8.830(a)(2)(B), 8.835, 8.864, 8.868, 8.917.)

If the trial court proceedings were reported by a court reporter or officially electronically reported under Government Code section 69957 and the trial court judge determines that it would save court time and resources, instead of correcting a proposed statement on appeal under CRC 8.837, 8.869, or 8.916, the trial court judge may:

(1) order that the original of an official electronic recording of the trial court proceedings, or a copy made by the court, be transmitted as the record of the oral proceedings without being transcribed. The court will pay for any copy of the official electronic recording ordered under this subdivision; or

(2) order that the transcript be prepared as the record of the oral proceedings. The court will pay for any transcript ordered under this rule.

v. Proposed Statements on Appeal—Service on Trial Judge

A party filing a proposed statement on appeal under CRC 8.837, 8.869, or 8.916, or any response thereto, must separately serve the trial judge who presided over the relevant proceedings with a courtesy copy of the proposed statement on appeal or response.

vi. Augmenting or Correcting the Appellate Record

Any party may move to augment or correct the record on appeal. (CRC 8.841, 8.873, 8.923.)

A motion to augment the record must include a copy of the matters sought to be included in the record, if available. If those matters include oral proceedings as to which no transcript has yet been prepared, the motion must include information as to the date, time, and location of the hearing, and, if applicable, the name and contact information of the court reporter.

Omissions from the normal appellate record must proceed by notice of omission filed in the trial court under CRC 8.841(c), 8.873(b), and 8.923(b). Courtesy copies of notices of omission must also be emailed to appealsclerks@scscourt.org with a subject line that reads "COURTESY COPY re [trial court case name & number & title of document]" with this information provided for reference.

F. Briefs

After the record on appeal has been filed, the clerk of the Appellate Division will issue a notice setting the briefing schedule in accordance with CRC 8.881 and 8.926. That schedule may be altered by order of the Presiding Judge of the Appellate Division.

The format and content of briefs filed in an unlimited civil or misdemeanor appeal must comply with CRC 8.883, and in an infraction appeal with CRC 8.928. All briefs must be served on the opposing party and on the trial court and must contain a proof of service. Even if electronically filing appellate briefs, the party must also provide four hard copies of the brief to the Appellate Division clerk within five days after the electronic filing.

In misdemeanor appeals, all briefs filed under *People v. Wende* (1979) 25 Cal.3d 436 must be prominently labeled "Filed Under *People v. Wende*" on the cover. *Wende* briefs must also include a declaration of counsel under penalty of perjury averring that his or her client has been advised of counsel's view that there are no arguable issues to be raised on appeal and of the client's right to submit his or her own supplemental briefing within 30 days after the service and filing of the *Wende* brief.

To the extent reasonably and practically possible, and as applicable, the Appellate Division voluntarily complies with CRC 8.90, which applies in the Courts of Appeal, concerning privacy and the use of names in written opinions or decisions (See e.g., CRC 8.90(b)(4) [victims in criminal proceedings] & (b)(10) [persons in other circumstances in which personal privacy interests support not using the person's name].) Parties must likewise respect privacy concerns in the manner in which third parties are named in briefs publicly filed in the Appellate Division.

G. New Authorities

Parties wishing to bring new authorities to the attention of the Appellate Division after briefing or oral argument has concluded must comply with CRC 8.254, as applicable in the Courts of Appeal.

H. Electronic Filing

Even where electronic filing is not made mandatory by Rule 6 of the General Court and Administration Rules, parties are strongly encouraged to file documents electronically in the Appellate Division. Electronic filing is especially recommended for notices of omission from the record on appeal, motions to augment the record on appeal, or any filing or request by which the filer wishes to expedite submission of an appeal or seeks any action by the Appellate Division before decision on the merits. When electronically filing an affidavit, declaration, or any document requiring a signature, filers must comply with CRC 2.257. Electronically filed documents should be in .pdf format converted electronically from the native word processing format, rather than by optical scan of a print version. If the electronic filer has no alternative to an optical scan, optical character recognition or other text recognition is recommended.

I. Writs

A writ petition filed in the Appellate Division must comply with all applicable statutes and the CRC. (See, Code Civ. Proc., §§ 1067-1108; CRC 8.824, 8.930-8.936.) Writ petitions must be filed within any specifically applicable statutory period or generally within the statutory period for the filing of a notice of appeal. The writ petition must be served on all parties and the trial court. Any request for a stay must appear prominently on the cover of the writ petition and must identify the date of any impending action or proceeding that will occur absent a stay and the trial judge before whom the case is pending. A petition for writ of supersedeas filed in connection with an appeal must comply with CRC 8.824.

(Effective 4/22/2021)

RULE 3 RULES IN THE SUPERIOR COURT FOR APPEALS TO THE DISTRICT COURT OF APPEAL

A. Transcript in Lieu of Settled Statement on Appeal

If a party is proceeding on appeal by use of a settled statement and the oral proceedings were reported by a court reporter, the trial judge may order that a transcript be prepared as the record of the oral proceedings instead of correcting or certifying a proposed statement on appeal if the trial judge determines that doing so would save court time and resources. The court will pay for any transcript so ordered. (CRC 8.137(f)(2).

B. Proposed Settled Statement on Appeal—Service on Trial Judge

A party filing an application or motion, as applicable, to use a proposed settled statement on appeal under CRC 8.137, 8.346, or 8.407, or a proposed settled statement or any response thereto, must separately serve the trial judge who presided over the relevant proceedings with a courtesy copy of the application or motion, and the proposed settled statement, or response thereto.

C. Notice of Omission from Normal Record

In addition to being filed, a notice of omission from the appellate record submitted under CRC 8.155(b), 8.340(b), or 8.410(a) must be brought to the attention of the Superior Court appeals unit by emailing a courtesy copy of the notice to appealsclerks@scscourt.org with a subject line that reads "COURTESY COPY re [trial court case name & number & title of document]" with this information provided for reference.

D. Record of Administrative Proceedings

CRC 8.123 applies to appeals where the record of an administrative proceeding was admitted into evidence, refused, or lodged in the superior court. For ease of transmission to the Court of Appeal as part of the appellate record, parties who wish to place an administrative record before the trial court are encouraged to electronically file such record in the Odyssey case file (rather than submitting a paper copy to the superior court) in addition to providing the individual trial judge with an electronic copy and/or any requested excerpts.
(Effective 4/22/2021)

SUMMARY