

Superior Court of California, County of San Joaquin

LOCAL RULES – Eff. January 1, 2020



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Rosa Junqueiro, Court Executive Officer / Jury Commissioner

SUPERIOR COURT OF CALIFORNIA, for the COUNTY OF SAN JOAQUIN
180 E. Weber Avenue
Phone: (209) 992-5695
Stockton, CA 95202
Effective January 1, 2020

TABLE OF CONTENTS

		<u>Eff. Date</u>	<u>Page</u>
RULE 1. GENERAL			6
1-100.	EFFECT OF RULES, CITATION OF RULES AND CONSTRUCTION	01/01/20	6
1-101.	COURT CALENDARS	07/01/98	6
1-102.	SELECTION AND IMPANELMENT OF JURORS	07/01/17	6
1-103.	“RESERVED FOR FUTURE USE”		7
1-104.	INTERPRETERS	07/01/15	7
1-105.	TRANSFER OF ADMINISTRATIVE PROCEDURES	01/01/99	7
1-106.	FIREARMS.....	07/01/17	8
1-107.	MEDIA COVERAGE	01/01/18	8
1-108.	USE OF CAMERA PHONES, OTHER PHOTOGRAPHIC EQUIPMENT AND AUDIO RECORDING EQUIPMENT.....	07/01/05	12
1-109.	COMMISSIONERS JUVENILE COURT REFEREES APPOINTED JUDGE PRO TEMPORE	07/01/19	13
1-110.	DANGEROUS, LARGE OR BULKY EXHIBITS.....	07/01/05	13
1-111.	JUDICIAL VACATION DAY DEFINED	07/01/08	16
1-112.	SELECTION OF COURT COMMISSIONERS.....	07/01/10	16
RULE 2. CRIMINAL			17
2-100.	DISCOVERY IN CRIMINAL CASES.....	07/01/98	17
2-101.	PRE-TRIAL MOTIONS.....	07/01/98	17
2-101.1	MOTIONS TO STRIKE PRIOR CONVICTIONS.....	01/01/99	18
2-102.	MEMORANDUM OF POINTS AND AUTHORITIES.....	07/01/98	18
2-102.1	MOTIONS UNDER SECTION 1538.5 OF THE PENAL CODE.....	07/01/98	18
2-102.2	DEMURRERS, MOTIONS TO DISMISS, MOTIONS TO STRIKE	07/01/98	19
2-103.	MOTIONS AT TRIAL.....	01/01/08	19
2-104.	SANCTIONS	07/01/98	20
2-105.	PRE-TRIAL CONFERENCES.....	07/01/98	20
2-106.	JURY INSTRUCTIONS.....	07/01/14	21
2-107.	MATTERS IMPROPERLY SET FOR HOLIDAYS AND NON-JUDICIAL HOLIDAYS	07/01/98	21
2-108.	MOTION TO BE RELIEVED AS COUNSEL - RETAINED COUNSEL.....	01/01/99	21
2-109.	TAPE RECORDED PROCEEDINGS IN MISDEMEANOR CASES	07/01/15	21
2-110.	ATTORNEY FEES IN CRIMINAL AND JUVENILE MATTERS	07/01/99	22
2-111.	REQUESTS TO MODIFY JUDGMENT	01/01/03	22
2-112.	CRIMINAL APPLICATIONS FOR TEMPORARY ORDERS FOR RELEASE OF INMATE DUE TO MEDICAL, DENTAL, FUNERAL AND OTHER APPLICABLE APPOINTMENTS	07/01/17	22
2-113.	BAIL SCHEDULE RULE	01/01/10	22
2-114.	SUBMISSION OF DOCTOR REPORTS TO DETERMINE MENTAL HEALTH COMPETENCY PER PC 1368	01/01/20	22
RULE 3. CIVIL			23
3-100.	IMPLEMENTATION	07/01/17	23
3-101.	DIRECT CALENDARING OF CIVIL CASES	07/01/15	23
3-102.	ADMINISTRATION OF GENERAL CIVIL LITIGATION	01/01/20	23
3-103.	TELEPHONE APPEARANCES	01/01/14	27
3-104.	SETTLEMENT CONFERENCE PROCEDURES	07/01/17	28

Superior Court of California
for the County of San Joaquin

3-105.	PROPOSED FINDING, ORDER, JUDGMENT OR DECREE	01/01/14	30
3-106.	EX PARTE APPLICATIONS AND ORDERS.....	01/01/18	30
3-107.	PETITION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM.....	01/01/09	31
3-108.	PLEADINGS AND RECORDS IN EMINENT DOMAIN PROCEEDINGS.....	01/01/14	31
3-109.	DEATH OF A PARTY.....	07/01/98	31
3-110.	CLAIM OR ACTION ON BEHALF OF A MINOR OR DISABLED PERSON	01/01/09	31
3-111.	ATTORNEY FEES IN ACTIONS ON PROMISSORY NOTES, CONTRACTS PROVIDING FOR PAYMENT OF ATTORNEY FEES, AND FORECLOSURES.....	01/01/17	32
3-112.	ORDERS SHORTENING TIME	01/01/02	33
3-113.	CIVIL LAW AND MOTION	01/01/20	33
3-114.	CHAMBERS CONFERENCES AND EX PARTE MATTERS	01/01/18	34
3-115.	[Repealed 07/01/15].....	07/01/15	34
3-116.	JURY FEES AND EXPENSES	01/01/14	34
3-117.	COURTESY COPIES OF BRIEFS AND PAPERS	01/01/14	34
3-118.	"RESERVED FOR FUTURE USE"	07/01/05	35
3-119.	"RESERVED FOR FUTURE USE"	07/01/05	35
3-120.	SUBSTITUTE SERVICE	07/01/05	35
3-121.	ALTERNATIVE DISPUTE RESOLUTION	07/01/17	35
3-122.	JUDICIAL ARBITRATION [Local Rule 3-121 revised].....	01/01/14	36
3-123.	CIVIL MEDIATION PROGRAM	07/01/17	37
3-124.	BINDING ARBITRATION	01/01/14	40
3-125.	NEUTRAL EVALUATION	01/01/14	40
3-126.	TRIAL BY REFERENCE	01/01/14	40
3-127.	EXPEDITED JURY TRIAL EJT.....	07/01/17	41
3-128.	SISTER STATE MONEY JUDGMENTS	01/01/20	41
RULE 4. PROBATE			42
PART ONE - GENERAL PROCEDURAL GUIDE			42
4-101.	ALL PETITIONS.....	01/01/20	42
4-102.	UNCONTESTED MATTERS	01/01/20	43
4-103.	CONTESTED MATTERS.....	01/01/14	43
4-104.	WHEN PERSONAL APPEARANCE REQUIRED.....	01/01/20	43
4-105.	CONSOLIDATION WITH THE LOWEST NUMBER.....	01/01/11	43
4-106.	EX PARTE APPLICATIONS.....	01/01/20	43
4-107.	ADDITIONAL INFORMATION REQUIRED	01/01/20	44
4-108.	ORDERS – CONTENTS, ATTACHMENTS & SIGNATURE PAGE	01/01/14	45
4-109.	WHEN COPY OF PETITION MUST BE INCLUDED WITH NOTICE OF HEARING.....	01/01/20	45
4-110.	"RESERVED FOR FUTURE USE" [Repealed 01/01/20]	01/01/20	45
4-111.	REQUESTING A CONTINUANCE	01/01/20	45
4-112.	CAPTION ON PLEADINGS	01/01/20	46
4-113.	COURT CREATED TRUSTS.....	01/01/09	46
4-114.	PROBATE CODE 850 PETITIONS CONFIRMING PROPERTY.....	01/01/20	46
4-115.	COSTS GENERALLY NOT ALLOWED COUNSEL, ADMINISTRATOR OR TRUSTEE.....	01/01/20	46
4-116.	MEET AND CONFER REQUIREMENT.....	01/01/20	47
PART TWO - DECEDENTS' ESTATES			47
4-201.	NOTICE TO NAMED CONTINGENT LEGATEES AND BENEFICIARIES	01/01/08	47
4-202.	"RESERVED FOR FUTURE USE" [Repealed 01/01/20]	01/01/20	47
4-203.	NOTICE OF REFUSAL TO PROBATE REJECTED WILL OR CODICIL.....	01/01/20	47
4-204.	COURT CONFIRMATION OF SALE BY REPRESENTATIVE WITH FULL AUTHORITY UNDER I.A.E.A.	01/01/09	48
4-205.	CONTRACTS WITH BROKER OR AGENT	01/01/20	48
4-206.	APPLICATION FOR FAMILY ALLOWANCE.....	01/01/11	48

Superior Court of California
for the County of San Joaquin

4-207.	PETITION FOR PRELIMINARY DISTRIBUTION.....	01/01/11	48
4-208.	REQUEST FOR PARTIAL ALLOWANCE ON STATUTORY COMPENSATION.....	01/01/11	49
4-209.	STATUS REPORTS.....	01/01/20	49
4-210.	FORM OF ACCOUNT FOR INCOME AT FINAL DISTRIBUTION.....	01/01/08	49
4-211.	"RESERVED FOR FUTURE USE" [Repealed 01/01/14].....	01/01/14	49
4-212.	FEES AND COMMISSIONS MUST BE FIXED BEFORE PAYMENT.....	01/01/08	49
4-213.	EXTRAORDINARY ATTORNEY FEES.....	01/01/20	49
4-214.	FEES TO ATTORNEY AND PERSONAL REPRESENTATIVE WHO ARE ASSOCIATED.....	01/01/11	50
4-215.	REQUIRED ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION.....	01/01/14	50
4-216.	MISCELLANEOUS ADDITIONAL ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION.....	01/01/20	51
4-217.	REQUIRED MATTERS IN A DECREE OF FINAL DISTRIBUTION.....	01/01/11	52
4-218.	NOTICE OF MOTION TO WITHDRAW AS ATTORNEY OF RECORD.....	01/01/13	52
PART THREE - SPOUSAL PROPERTY PETITIONS.....			52
4-301.	PROCEDURE WHERE WILL CONTAINS MINIMUM SURVIVAL TIME.....	01/01/20	52
4-302.	WHERE PASSAGE OF TITLE TO COMMUNITY PROPERTY IS SOUGHT.....	01/01/09	52
PART FOUR - TRUSTS.....			53
4-401.	FEES.....	01/01/20	53
4-402.	REPORT OF TRUSTEE, INCLUDING SPECIAL NEEDS TRUSTEE.....	01/01/09	53
4-403.	"RESERVED FOR FUTURE USE" [Repealed 01/01/13].....	01/01/13	54
PART FIVE - CONSERVATORSHIP.....			54
4-501.	APPOINTMENT OF COURT INVESTIGATOR.....	01/01/20	54
4-502.	"RESERVED FOR FUTURE USE" [Repealed 01/01/20].....	01/01/20	54
4-503.	TEMPORARY CONSERVATORSHIP BEFORE NOTICED HEARING.....	01/01/20	54
4-504.	"RESERVED FOR FUTURE USE" [Repealed 01/01/20].....	01/01/20	54
4-505.	COMPENSATION AND FEES.....	01/01/20	55
4-506.	WAIVER OF ACCOUNTING—WHEN PERMITTED.....	01/01/09	56
4-507.	SALE OF REAL PROPERTY UNDER INDEPENDENT POWERS.....	01/01/09	56
4-508.	SUBSTITUTED JUDGMENT.....	01/01/11	57
4-509.	DOCUMENTS ACCOMPANYING AN ACCOUNT TO BE LODGED, NOT FILED.....	01/01/14	57
4-510.	START UP FEE.....	01/01/20	58
PART SIX - PARTICULAR TRANSACTIONS.....			58
4-601.	PROCEEDINGS SHALL CONFORM TO SUBSTITUTED JUDGMENT.....	01/01/09	58
PART SEVEN - GUARDIANSHIP.....			58
4-701.	GUARDIANSHIP RULES.....	01/01/08	58
4-702.	"RESERVED FOR FUTURE USE" [Repealed 01/01/20(Incorporated in to 4-703)].....	01/01/20	58
4-703.	APPOINTMENT OF TEMPORARY GUARDIAN OF THE PERSON.....	01/01/20	58
4-704.	GUARDIANSHIP OF PARTICULAR PROPERTY.....	01/01/09	59
PART EIGHT - MINORS COMPROMISE.....			59
4-801.	ATTORNEY FEES IN CASES INVOLVING MINORS OR DISABLED PERSONS.....	01/01/20	59
4-802.	SETTLEMENTS WITH AN ANNUITY.....	01/01/11	59
4-803.	SETTLEMENTS CREATING A TRUST.....	01/01/20	59
4-804.	"RESERVED FOR FUTURE USE" [Repealed 01/01/20].....	01/01/20	59
RULE 5. JUVENILE.....			60
5-100.	PRE-HEARING DISCOVERY IN DEPENDENCY ACTIONS.....	07/01/98	60
5-200.	EX PARTE APPLICATIONS.....	07/01/98	60
5-300.	PETITIONS TO MODIFY (§388 W&I).....	07/01/98	60
5-400.	GENERAL COMPETENCY REQUIREMENT.....	07/01/98	61

Superior Court of California
for the County of San Joaquin

5-401.	“RESERVED FOR FUTURE USE” [Repealed 01/01/14]	01/01/14	61
5-402.	SCREENING FOR COMPETENCY	07/01/98	61
5-403.	REPRESENTATION OF MINORS	07/01/98	61
5-404.	MINIMUM REQUIREMENTS NECESSARY TO CONTINUE TO RECEIVE COURT APPOINTMENTS IN JUVENILE DEPENDENCY COURT	07/01/98	62
5-405.	PENALTY FOR NONCOMPLIANCE WITH RULE 5-403 AND RULE 5-404	07/01/98	62
5-406.	TERMINATION OF PANEL MEMBERSHIP-ADDITIONAL GROUNDS	07/01/98	62
5-407.	APPLICATION OF THESE RULES	07/01/17	62
5-408.	ATTORNEY COMPLAINT PROCESS	07/01/98	62
5-409.	MINORS' INTERESTS IN OTHER PROCEEDINGS	07/01/98	62
5-410.	THE ADVOCATE PROGRAM	01/01/03	62
5-411.	CHILD ADVOCATES	01/01/03	63
5-500.	RELEASE OF INFORMATION TO ADVOCATE	01/01/03	64
5-501.	RIGHT TO TIMELY NOTICE	01/01/03	65
5-502.	CALENDAR PRIORITY	01/01/03	65
5-503.	VISITATION THROUGHOUT DEPENDENCY	01/01/03	65
5-504.	FAMILY LAW ADVOCACY	01/01/03	65
5-505.	RIGHT TO APPEAR	01/01/03	65
5-506.	ORDER OF JUVENILE COURT THAT DIRECT CALENDAR SYSTEM, “ONE CHILD ONE JUDGE” RULE SHALL APPLY TO ALL DELINQUENCY CASES	01/01/18	65
5-507.	RECIPROCAL DISCOVERY	07/01/06	66
RULE 6.	ELECTRONIC FILING - (DIRECT FACSIMILE (FAX) FILING - CIVIL MATTERS [Repealed 01/01/20])	01/01/20	67
6-100.	[Repealed 01/01/20]	01/01/20	69
6-101.	[Repealed 01/01/20]	01/01/20	69
RULE 7.	FAMILY LAW		70
7-100.	EMERGENCY ORDERS	07/01/18	70
7-101.	ORDER EXCLUDING A PARTY FROM THE HOME	07/01/98	70
7-102.	NOTIFICATION TO COURT OF OTHER PROCEEDINGS	01/01/14	70
7-102.5	DECLARATIONS SUPPORTING AND RESPONDING TO A REQUEST FOR ORDER	01/01/19	70
7-103.	MEET AND CONFER REQUIREMENT	01/01/14	71
7-104.	MEDIATION	01/01/14	71
7-105.	SUPPORT	01/01/14	72
7-106.	PERPETUATION OF TESTIMONY BY CUSTODY EVALUATORS	01/01/17	72
7-107.	DEFAULTS	07/01/98	73
7-108.	AT-ISSUE MEMORANDUMS	01/01/14	73
7-109.	RESULT OF FAILURE TO COMPLY WITH RULES	01/01/14	73
7-110.	SETTLEMENT CONFERENCES	01/01/15	73
7-110.5	PRETRIAL EXCHANGE OF DOCUMENTS AND INFORMATION	01/01/17	74
7-111.	FAMILY LAW TENTATIVE RULINGS	07/01/17	74
7-112.	DUTIES OF FAMILY LAW FACILITATOR	07/01/98	74
7-113.	JUDICIAL CAVEAT	07/01/98	75
7-114.	COURT COMMUNICATION RULES FOR DOMESTIC VIOLENCE AND CHILD CUSTODY AND/OR VISITATION ORDERS	01/01/14	75
RULE 8.	ADOPTION PROCEEDINGS		77
8-101.	KINSHIP AGREEMENTS	07/01/05	77
8-201.	TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS - CAPTION	07/01/98	77
8-202.	TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS NOTICE AND CONSENT	01/01/99	77
RULE 9.	“RESERVED FOR FUTURE USE” [Repealed 07/01/15]	07/01/15	79
RULE 10.	APPELLATE DIVISION		80

Superior Court of California
for the County of San Joaquin

10-100. JURISDICTION07/01/17 80
10-101. JUDICIAL ASSIGNMENT AND SESSIONS07/01/15 80
10-102. RECORD ON APPEAL07/01/15 80
10-103. REQUESTS FOR FREE CLERK OR REPORTER'S TRANSCRIPT07/01/15 80
10-104. USE OF OFFICIAL ELECTRONIC RECORDING07/01/15 81
10-105. BRIEFS07/01/15 81
10-106. APPOINTED COUNSEL07/01/15 81
10-107. [Repealed 01/01/18].....01/01/18 81

LOCAL FORMS LIST.....01/01/20 82

RULE 1 GENERAL

1-100. EFFECT OF RULES, CITATION OF RULES AND CONSTRUCTION

- A. These rules shall be known and cited as “Local Rules of the Superior Court of California, for the County of San Joaquin” and shall at all times be supplementary to and subject to any and all rules adopted by the Judicial Council of the State of California. These rules shall become effective January 1, 2020, and these new rules shall have no retroactive effect or application whatsoever. These rules shall, on the date when they become effective, supersede all rules previously adopted by this court and all previously adopted rules are repealed.
- B. Unless otherwise provided in these rules, all rules set forth herein are applicable in all judicial districts in this county. (Eff.01/01/20)

1-101. COURT CALENDARS

The court's business is distributed in accordance with its latest "General Calendar," which sets forth the time, place, and any special requirements adopted by the court for hearing the various types of court business. Before applying or noticing any matter for hearing or for trial, the moving party should ascertain the latest calendar requirements from the Clerk of the Superior Court. (Eff. 07/01/98)

1-102. SELECTION AND IMPANELMENT OF JURORS

- A. Source Lists: As authorized in Code of Civil Procedure section 197(b), the juror source list used by the Jury Commissioner shall be a list consisting of the combination of the list of registered voters in San Joaquin County and the Department of Motor Vehicles lists of licensed drivers and California identification cardholders who are 18 years old or older who reside in San Joaquin County.
 - 1. Prospective jurors shall be summoned for jury service for limited and unlimited jurisdiction cases heard in the Stockton Courthouse from the countywide master list. Prospective jurors summoned for trials transferred from Stockton to the Lodi, Manteca, or Tracy branches shall also be summoned from the countywide master list. Prospective jurors summoned for limited jurisdiction trials and misdemeanors trials transferred from Stockton to the Lodi, Manteca, or Tracy Branches shall be summoned from the master list for the area served by the court to which the case is transferred.
 - 2. Prospective jurors shall be summoned for jury service for limited jurisdiction cases heard in the Lodi branch from a master list consisting of residents who live in the area served by that court. The area served by that court is defined by the following zip codes: 95220, 95227, 95237, 95240, 95241, 95242, 95253, 95254, 95258, 95632 and 95686.
 - 3. Prospective jurors shall be summoned for jury service for limited jurisdiction cases heard in either the Manteca or Tracy branches from a master list consisting of residents who live in the area served by both of those courts. The areas served by those courts are defined by the following zip codes: 95231, 95320, 95330, 95336, 95337, 95361, 95366, 95367, 95304, 95376, 95377, 95378, 95385 and 95391.

- B. Deferral of Jurors Who Appear Pursuant to Summon: When a summoned juror appears for jury service and advises the trial court of a circumstance that amounts to a temporary or marginal hardship, the juror shall be deferred instead of excused. Except when necessary to avoid a temporary or marginal hardship deferrals should be granted for no longer than 90 days. Hardships that warrant deferral under this section include:
1. A temporary illness of the juror or temporary illness of a person for whom the juror renders care;
 2. A medical appointment that cannot be rescheduled or postponed;
 3. A scheduled vacation which involves prepaid commitments, involves the scheduled vacation of the juror's family, or a vacation that cannot otherwise be conveniently rescheduled.
 4. A work hardship or important business demand such as the temporary unavailability of someone to take the place of the juror, a training program the juror is scheduled to attend, or some other work demand of a nonrecurring nature which cannot be conveniently rescheduled;
 5. Seasonal employment;
 6. Jury service would jeopardize the academic standing of a prospective juror who is a student or set the prospective juror back in completing an academic program; and
 7. Any other legitimate temporary or marginal hardship not expressly defined that, in the opinion of the trial court, would justify a deferral. (Eff. 07/01/17)

1-103. "RESERVED FOR FUTURE USE"

1-104. INTERPRETERS

- A. Parties must provide the court with a minimum of five (5) business days' notice (for all languages, including American Sign) to ensure that an interpreter will be available. The court may waive this requirement in extenuating circumstances.
- B. Requests to the court for interpreter services shall be submitted on the Interpreter Request Form available on the court's public website.
- C. Where it is later determined that the interpreter is not needed, the party or counsel shall provide notice to the court at least two business days before the hearing. If such notice is not provided and the court incurs costs of the interpreter, the court may bill the requesting party for such costs. (Eff. 07/01/15)

1-105. TRANSFER OF ADMINISTRATIVE PROCEDURES

A majority of the judges may appoint an Executive Officer of the Superior Court pursuant to Government Code section 68114.6 to serve as the chief administrative officer of the court, who shall also act as Clerk of the Superior Court and perform the duties of Jury Commissioner of the County. His or her duties are those contained in his or her job description, in California Rules of Court, Rule 207, and as further assigned by the Presiding Judge. (Eff. 01/01/99).

1-106. FIREARMS

Except as specified below, no person shall bring any firearm into:

- A. The Stockton Courthouse at 180 E. Weber Avenue in Stockton, California;
- B. The court wing of Dept. L1 located at 230 W. Elm Street, Lodi, California;
- C. The building which houses Department L2 located at 315 W. Elm Street, Lodi, California;
- D. The main lobby entrance or courtrooms of Departments M1 and M2 located at 315 E. Center Street, Manteca, California;
- E. The main lobby entrance or courtrooms of Departments T1 and T2 located at 475 E. Tenth Street, Tracy, California;
- F. The court wing beginning at the door entry to the metal detectors of the building that houses Departments J1, J2, and J3 located at 535 W. Matthews Road in French Camp; or
- G. Any courtroom located anywhere in the county.

The following persons are exempt from the above rule:

- I. A duly appointed peace officer of this state, or of another state or the federal government who is carrying out official duties while in California, who is on official business and not a litigant in any matter for which they are present. No peace officer, or any other person, shall carry a firearm into a courtroom when they are a litigant in any matter for which they are present;
- J. A peace officer as described above, attorney in a matter, or investigator who is not a litigant and has a firearm that is evidence in the matter in that courtroom. Such individual must notify the bailiff of the presence of the firearm and provide the firearm to the bailiff for inspection prior to entry into the courtroom or immediately thereafter.

Failure to abide by this rule will be punishable as contempt of court. (Eff. 07/01/17)

1-107. MEDIA COVERAGE

- A. This rule is established under the authority recognized in subdivision (e)(4) of California Rules of Court, Rule 1.150 to supplement Rule 1.150. The words and phrases used in this rule have the same meanings as in Rule 1.150. Nothing in this rule changes or affects the procedures established in the California Rules of Court regarding the coverage of court proceedings by electronic media.
- B. Knowledge of the Rule

California Rules of Court, Rule 1.150, subdivision (e)(4) requires that each media agency is responsible for ensuring that all of its personnel who cover court proceedings know and follow Rule 1.150. Each media agency shall also be responsible for ensuring that its personnel know and follow this rule.

C. Media Requests

1. The approved Judicial Council form must be submitted to the court's Public Information Office. This shall be done at least 5 court days before the hearing unless the request involves a new case, advanced hearing, or there is other good cause for submitting the form fewer than 5 court days before the hearing.
2. Media personnel, representatives of media agencies, and attorneys for media agencies shall not communicate with the assigned judge or presiding judge concerning a request to modify an order issued under California Rules of Court, Rule 1.150 or this local rule other than by the approved Judicial Council form, written application noticed to the litigants, or at a public hearing. Any media agency aggrieved by the provisions of this local rule or aggrieved by an order made pursuant to this local rule concerning areas outside a courtroom may apply to the presiding judge to modify the application of the rule or order or to be exempted from it. A written application to the presiding judge shall be submitted to the Public Information Office, but shall first be served upon the parties in any litigation that is the subject of the media request. An oral application may only be made at a hearing and only when any affected parties in the subject litigation have been given notice of the hearing. Media personnel, representatives of media agencies, and attorneys for media agencies shall not make ex-parte contact with the presiding judge when applying for a modification or exemption. The hearing shall be scheduled by contacting the Public Information Office.

D. Coverage Inside of the Courthouse

(1) Purpose

Metal detection and other security measures are installed at the entrance of the court's courthouses. Prospective and sworn jurors, witnesses, spectators, litigants, and their children often congregate in common areas of the Courthouse including hallways, lobbies, and entry areas. Often these common areas are quite congested. The Lodi, Manteca, Tracy, and Juvenile Justice Center have lobby areas where prospective and sworn jurors, witnesses, spectators, litigants, and children congregate. Photographing, videotaping, filming, broadcasting in these areas may interfere with those activities, including security operations.

Accordingly, this subdivision is established to:

- (a) Protect the privacy rights of prospective jurors, seated jurors, witnesses, victims, and court spectators as contemplated by subdivisions (e)(3)(E) and (e)(6)(D) of California Rules of Court, Rule 1.150.
- (b) Preserve the security of the court and the safety of people in the courthouse as contemplated by subdivision (e)(3)(O) of Rule 1.150.
- (c) Preserve the dignity of the court and prevent interference with the orderly conduct of proceedings in courtrooms as contemplated in subdivisions (e)(3)(O),(R), and (Q) of Rule 1.150 which could be affected by disruptions in the hallways outside of courtrooms.

(2) Jurors

Photographing, videotaping, filming, broadcasting, and electronic recording of jurors in the courtroom is prohibited by subdivision (e)(6)(D) of California Rules of Court, Rule 1.150. Except as provided below, the photographing, videotaping, filming, broadcasting, and electronic recording of anyone wearing a juror badge, whether intentional or inadvertent, in any courtroom or courthouse of the San Joaquin Superior Court is also prohibited. The photographing, videotaping, filming, broadcasting, and electronic recording of anyone standing in line going into the Jury Assembly Room at the Stockton Courthouse is prohibited. The faces of anyone wearing juror badges or anyone standing in line going into the Jury Assembly Room at the Stockton Courthouse inadvertently depicted in the background of any photograph or videotape must be blurred or digitized beyond recognition before being published or broadcasted. Photographing, videotaping, filming, broadcasting, and electronic recording of prospective jurors who have been discharged from service, seated jurors who have been discharged from service or alternates who have been discharged from service is permitted in the courthouse only when that person consents.

(3) Spectators

(a) Photographing, videotaping, filming, broadcasting, and electronic recording of courtroom spectators is prohibited by subdivision (e)(6)(D) of Rule 1.150. This prohibition shall apply to the photographing or videotaping of any person while seated in any San Joaquin Superior Court courtroom audience, regardless of whether that person participated in the case or is scheduled to participate in the case as a witness or any other capacity. The faces of spectators depicted in the background of any photograph or videotape must be blurred or digitized beyond recognition before being published or broadcasted. When courtroom photography or videotaping is permitted, the court will work with the media to situate photographers in positions where spectators are not likely to be depicted in the background.

(b) The prohibition against photographing, videotaping, filming, broadcasting, or electronic recording of spectators shall not apply to any person situated in the audience who becomes disruptive or who addresses the court if Rule 1.150 authorization has previously been granted for those proceedings. However, the judge who authorizes a Rule 1.150 request may prohibit in advance the photographing, videotaping, filming, broadcasting, or electronic recording of spectators who become disruptive or who address the court when granting the Rule 1.150 request.

(4) Stockton Courthouse

Unless approved by written order of the presiding judge of this court or a judicial officer designated by the presiding judge, photographing, videotaping, filming, broadcasting, and electronic recording of any kind, other than handheld recording devices used for personal note taking, is prohibited in the following parts of the Stockton Courthouse:

Superior Court of California
for the County of San Joaquin

- (a) In any hallway by a photographer who is situated within a 10-foot radius of the doors to any courtroom. Photographers must situate themselves outside the 10-foot radius so as to not inhibit or obstruct entry into or exit from the courtroom. Unless there is consent, photographers and media personnel shall not inhibit or obstruct any person's movements anywhere in the courthouse.
- (b) Through a door window or open courtroom door from the hallway outside of any courtroom into that courtroom unless authorized by order of the judge presiding in that courtroom.
- (c) In the Jury Assembly Room, from the hallway into the Jury Assembly Room, or in any jury deliberation room.

(5) Stockton Courthouse - Hallways and Lobby

- (a) Sheriff's court security staff has the authority to order members of the public, including members of the media, to move out of the way in hallways and other public areas in the courthouse.
- (b) Members of the public, including members of the media, shall not obstruct or compromise the security operations in the lobby or elsewhere in the courthouse. Sheriff's court security staff has the authority to determine when security operations are compromised or obstructed by persons in the lobby or elsewhere. Members of the media must comply whenever a sheriff's court security supervisor or supervisor of weapons screening determines that security operations are compromised or obstructed by the media presence and orders them to move out of the lobby or elsewhere.
- (c) Members of the media shall not obstruct the movements of any individual walking anywhere in the courthouse without that person's consent.

(6) Juvenile Justice Center

Unless approved by written order of the presiding juvenile judge or a judicial officer designated by the presiding juvenile judge, photographing, videotaping, filming, broadcasting, and electronic recording of any kind other than handheld recording devices used for personal note taking is prohibited anywhere in the Juvenile Justice Center branch. Cameras and recording devices shall be turned off while being transported in any area within this branch.

(7) Handheld Audio Recording Equipment

Other than in the courtrooms, the use of handheld audio recording equipment for note-taking purposes is not prohibited in the courthouse.

(8) Obstructions Outside of the Courthouse

Photographing, videotaping, filming, broadcasting, and electronic recording outside a courthouse, but on San Joaquin Superior Court property is not prohibited. However, such media coverage shall not obstruct pedestrian traffic or compromise security.

(9) Additional Orders

On occasion, the media interest in a given court proceeding may be so intensive that additional prohibitions are warranted to satisfy the concerns listed in this local rule. Accordingly, when such is the case or when other circumstances warrant, the presiding judge or judicial officer designated by the presiding judge shall make whatever orders are necessary governing photographing, videotaping, audio recording, and broadcasting in the hallways, stairwells, elevators and other areas within any of the courthouse branches.

(10) Media Coverage in Courtrooms

Photographing, videotaping, filming, broadcasting inside of courtrooms shall continue to be governed by California Rules of Court, Rule 1.150 and any other rules established by the California Judicial Council.

E. Rule Violations

Violations of this local rule or any orders of the court may be addressed in the ways listed in subdivision (f) of California Rules of Court, Rule 1.150. Additionally, any media agency that violates any provision in Rule 1.150 or this local rule may be prohibited from photography, videotaping, filming, broadcasting or electronic recording of future court proceedings inside courtrooms. (Eff. 01/01/18)

1-108. USE OF CAMERA PHONES, OTHER PHOTOGRAPHIC EQUIPMENT AND AUDIO RECORDING EQUIPMENT

- A. This local rule covers the use of any photographic, video and audio recording or transmission equipment by people not working in a media capacity. For purposes of this rule, photographic equipment includes, but is not limited to: cameras, camera phones, and video recording cameras.
- B. The use of photographic equipment and audio recording or transmission equipment in any courtroom, through a courtroom door window into any courtroom, or from an entryway into a courtroom is prohibited without the advance permission of the judge.
- C. The use of photographic equipment or audio recording or transmission equipment in any jury assembly room or juror deliberation room, through a window into such rooms, or into any such rooms from any vantage point outside of such rooms is prohibited without advance permission of the Presiding Judge, Jury Commissioner, or their designees.
- D. Photographing, videotaping, filming, and electronic recording of anyone wearing a juror badge anywhere inside a courthouse is prohibited. Photographing, videotaping, filming, and electronic recording of anyone standing in line awaiting entry into a jury assembly room is also prohibited.
- E. Photographing, videotaping, filming, and electronic recording of anyone involved in any case, including litigants, witnesses, and spectators, anywhere inside a courthouse is prohibited.
- F. Unless approved by written order of the presiding juvenile judge or a judicial officer designated by the presiding juvenile judge, photographing, videotaping, filming,

broadcasting, and electronic recording is prohibited anywhere in the Juvenile Justice Center.

- G. The prohibitions against photographing, videotaping, filming, and electronic recording outside of a courtroom any persons listed in this rule do not apply if such person consents. Nothing in this rule shall be read to prohibit photography associated with weddings as long as persons who are prohibited from being photographed in this rule are not depicted in such photos.
- H. Photography, video and electronic recording equipment used in violation of this rule is subject to confiscation. Any person who is a party, witness, or attorney of a party and who violates this rule is subject to punishment under Code of Civil Procedure section 177.5. Any other person who violates this rule is subject to punishment for contempt of court. (Eff. 07/01/05)

1-109. COMMISSIONERS JUVENILE COURT REFEREES APPOINTED JUDGE PRO TEMPORE

Commissioners and Juvenile Court Referees of the San Joaquin Superior Court are appointed Judge Pro Tempore in all matters calendared, or otherwise assigned, to them. They are granted full judicial power until a final determination of the matter. (Eff. 07/01/19)

1-110. DANGEROUS, LARGE OR BULKY EXHIBITS

- A. Permission from the judge assigned to the hearing or trial must be obtained before a party may bring dangerous, large or bulky exhibits into the courthouse. If possible, the party should substitute a photograph, technical report, or dummy object for proposed exhibits which are either:
 - 1. Inherently dangerous, such as:
 - a. Firearms;
 - b. Any type of explosive powder;
 - c. Explosive chemicals, toluene, ethane;
 - d. Explosive devices, such as gasoline, kerosene, lighter fluid, paint thinner, ethylether;
 - e. Flammable liquids such as gasoline, kerosene, lighter fluid, paint thinner, ethylether;
 - f. Canisters containing tear gas, mace;
 - g. Rags which have been soaked with flammable liquids;
 - h. Liquid drugs such as phencyclidine (PCP), methamphetamine, corrosive liquids, pyramiding, morphine, or piperdine;
 - i. Samples of any bodily fluids, liquid or dried; or
 - j. Controlled or toxic substances.

2. Large and cumbersome, such as a ladder, sewer pipe, or automobile chassis.

If a party believes the exhibit should be brought into the courtroom without substitution, an application for permission must be made in writing and describe the materials to be brought into the courtroom and the reason a substitution should not be made. The option of viewing the materials at another location may be considered by the court.

- B. Evidence received in any case shall be limited to those items required in the case and shall be retained by the court for the minimum time required by law, unless good cause is shown to retain the evidence longer.
- C. No exhibits shall be accepted by the clerk or exhibits custodian unless:
1. All containers of controlled or toxic substances are securely sealed to safeguard court personnel, so that the contents cannot be spilled and odors cannot be emitted;
 2. All containers of liquid substances, including bodily fluids, are securely sealed to safeguard court personnel, so personnel are not exposed to the contents and odors cannot be emitted;
 3. All objects containing bodily fluids or dangerous, controlled or toxic substances (e.g., bloody shirt, gasoline-soaked rag, etc.) are placed in securely sealed containers so that odors cannot be emitted and court personnel are safeguarded.
 4. All firearms are secured by a nylon tie or trigger guard, and have been examined by the bailiff to determine that they have been rendered inoperable;
 5. All sharp objects, such as hypodermic needles, knives, and glass are placed in securely sealed containers which will safeguard personnel;
 6. All containers with liquid substances are clearly marked and identified as to type and amount;
 7. All containers of controlled substances are clearly marked, identified, weighed and sealed;
 8. All cash is specifically identified, whether individually or packaged, as to the total amount and number of each denomination.
- D. All exhibits must be individually tagged with the proper exhibit tag, properly completed and securely attached to the exhibit. Any exhibit improperly tagged, marked, weighed, or identified will not be accepted by the court. Unless otherwise ordered, unidentified or improperly identified liquids, containers, controlled substances, or other suspect substances shall be returned to the party offering them.
- E. When a dangerous, large or bulky exhibit that has been marked and identified or received in evidence poses a security, storage or safety problem, on recommendation of the clerk of the court or any party or the court's own motion, the court may order that all or a portion of it be returned to the party that offered it. In the case of exhibits offered by the

prosecutor in a criminal case, the court may order that the exhibit be returned to the law enforcement agency involved. The order shall require that a full and complete photographic record of the exhibit or the portion returned be substituted for the exhibit. The party who offered the exhibit shall provide the photographic record. The party or agency to whom the exhibit is returned shall be responsible for maintaining and preserving the exhibit until there is a final disposition of the action or proceeding. All exhibit tags and other identifying markings or information concerning each exhibit shall remain in place and shall not be disturbed. Each exhibit shall be maintained intact and in the same condition as during trial. In the event further proceedings of any court having jurisdiction of the matter require the presence of the exhibit, the party or agency to whom it was returned shall promptly deliver the exhibit to the court, with notice to all parties.

EXHIBITS

- A. Exhibits submitted by plaintiff, petitioner or the People should be marked consecutively with numbers. Exhibits submitted by defendant or respondent should be marked consecutively with letters.
- B. All exhibits must be individually tagged with the proper exhibit tag. Each exhibit tag must be properly completed and security attached to the exhibit. Any exhibit improperly tagged will not be accepted by the court. Original photographs or 8 1/2 x 11-inch copies shall be substituted for any photographically enlarged or oversized exhibits.
- C. Prior to the final determination of an action or proceeding, only attorneys of record, self-represented parties and court employees may view the exhibits. All other interested persons must obtain an order of the court to view the exhibits. Viewings shall take place in the presence of an exhibit custodian. Exhibits may not be altered or taken apart, except by court order.
- D. Any party to the action may seek temporary release of exhibits for copying or laboratory testing. An order for temporary release may be obtained by stipulation of the parties or by noticed motion. The party seeking the release may be obtained by stipulation of the parties or by noticed motion. The party seeking the release must present the original signed order and one copy to the exhibit custodian. The order must include the case number, names of the parties, name and telephone number of the person to whom the exhibits are to be released, a description of the exhibits, and the date the exhibits are to be returned. The party seeking release may be required to provide a full and complete photographic record of the exhibit before it will be released.
- E. Exhibits received in a criminal matter may be used in a civil action, upon stipulation signed by the prosecutor and criminal defense counsel (including appellate counsel, if applicable) or on noticed motion, with notice being given to all parties in the civil and criminal cases. The stipulation or motion shall bear the criminal case caption and number, be filed in the criminal case, and reference the civil case by name and number.
- F. On order of the court, at the conclusion of the trial or hearing, any exhibit that has been marked for identification but not introduced or received in evidence at trial, may be returned to the party that offered it. Counsel must preserve and maintain all returned exhibits until the time for appeal has passed.
- G. Exhibits received in evidence at the trial or a hearing in a criminal case may be returned by the court to the party who offered them, in accordance with Penal Code §§ 1417.2, 1417.3 and 1417.5. Exhibits received in evidence at the trial or a hearing in a civil case may be returned by the court to the party who offered them, in accordance with Code of Civil Procedure §§ 1952(a) and 1952.2. (Eff. 07/01/05)

1-111. JUDICIAL VACATION DAY DEFINED

Time away from the court for more than one-half day for vacation purposes shall be deemed as a full day of vacation. (Eff. 07/01/08)

1-112 SELECTION OF COURT COMMISSIONERS

The following procedure for the hiring of court commissioners is adopted by the judges of San Joaquin County:

1. Initial applications for commissioner positions shall be screened by the Human Resources Department to ensure applicants meet the minimum qualifications required for the position.
2. The presiding judge, with the advice of the Executive Committee, shall establish two committees for the purpose of first reviewing and selecting the most qualified applications and then interviewing candidates for the commissioner position. For each committee, the presiding judge shall select among judges who volunteer for the committees and shall choose at least one representative from those judges with a current criminal assignment, one with a current civil assignment and one judge who was formerly a commissioner. In the event the opening is for a 1058 commissioner, then the committees shall include a judge with family law experience. The number of judges who serve on each committee shall be at the discretion of the presiding judge.
 - a. The first committee shall review the qualified applications and select the applicants that the committee deems most qualified.
 - b. The second committee shall interview the applicants chosen by the first committee. This committee shall determine which of these applicants shall make a presentation to the entire bench.
3. The bench shall choose the most qualified candidate following a presentation by each of the applicants chosen by the second committee. (Eff. 07/01/10)

RULE 2. CRIMINAL

2-100. DISCOVERY IN CRIMINAL CASES

- A. Discovery in criminal cases is governed by Penal Code Section 1054, et. seq. It is the order of this court that all parties comply with the obligations set forth in those provisions. This order shall be in effect in all criminal cases and there shall be no need to seek a further order of the court prior to seeking enforcement of this order as long as the party seeking enforcement has made the informal request described in Penal Code Section 1054.5(b).

- B. Any party asserting a work product or other privilege pursuant to Penal Code Section 1054.6 or a good cause exception must assert that privilege or exception by noticed motion which shall be heard prior to the date of the readiness conference. The factual showing establishing a claim of work product, privilege, or good cause need not be set forth in the motion or accompanying points and authorities. The factual showing may be made to the court in-camera upon the moving party's request. The request to make an in-camera showing shall be made in the motion. If the court hears the matter in-camera, the court shall follow the procedure for establishing and sealing the record of the in-camera hearing set forth in Penal Code section 1054.7.

- C. In the event of a failure to comply with the obligations set forth in Penal Code Section 1054, et. seq., the court may impose sanctions including, but not limited to:
 - (ii) contempt;
 - (iii) delaying or precluding the testimony or evidence;
 - (iv) continuance;
 - (v) jury instruction commenting on the party's failure to comply with their discovery obligations;
 - (vi) dismissal where required by the United States Constitution;
 - (vii) imposition of monetary sanctions on counsel. (Eff.07/01/98)

2-101. PRE-TRIAL MOTIONS

A. Felony Cases

Except for good cause, all pre-trial motions shall be filed and served within sufficient time to be heard and determined prior to the date of the first readiness conference.

B. Misdemeanor Cases

Except for good cause, all pre-trial motions shall be noticed by the parties or scheduled by the court for no later than a day in the week prior to the readiness conference. (Eff. 07/01/98)

2-101.1 MOTIONS TO STRIKE PRIOR CONVICTIONS

To the extent that a motion to strike prior convictions based upon the validity of those convictions is authorized by statutory or decisional law, such a motion must be made pretrial within the time prescribed in Rule 2-101(a). (Eff. 01/01/99)

2-102. MEMORANDUM OF POINTS AND AUTHORITIES

A. Facts and Issues

A memorandum of points and authorities must include a statement of the case and/or a statement of facts setting forth any procedural or factual matters relevant to the issues presented. The memorandum must clearly specify the precise factual and legal issues raised in the motion and the specific legal authority relied upon for the motion. If reference is made in the memorandum of points and authorities to the transcript of the preliminary hearing, the specific page and line number of the transcript shall be cited. If reference is made to the transcript of a hearing other than the preliminary hearing, a copy of the relevant excerpt of that hearing shall be attached to the memorandum of points and authorities.

B. Citations

Citations to California cases must be by reference to the official reports and should indicate the year of the decision, the volume number, the first page of the case, and the specific page or pages on which the pertinent matters appear. New California cases not yet published in the advance sheets may be cited by reference to the Daily Appellate Report. Copies of cases cited in the Daily Appellate Report must be attached to the memorandum of points and authorities.

If authorities other than California cases, United States Supreme Court cases, and Witkin are cited in the memorandum of points and authorities, a copy of such authorities must be attached thereto.

C. Previous Motions at the Preliminary Hearing

The moving party's memorandum of points and authorities shall state whether the motion was heard at the preliminary examination. If so, the moving party's memorandum of points and authorities shall specify the factual findings and legal conclusions made by the court.

D. Failure to File Memorandum of Points and Authorities/Failure to Address Issues

Absence of a memorandum of points and authorities shall be deemed by the court to be a concession that the motion lacks merit. No issues other than those set forth in the memorandum of points and authorities will be considered unless the new issues were not reasonably discoverable before the motion was filed or there is other good cause shown. (Eff. 07/01/98)

2-102.1 MOTIONS UNDER SECTION 1538.5 OF THE PENAL CODE

Failure to comply with any portion of this rule may constitute cause for denial of the motion.

In all cases, the motion must be written and must comply with rules 2-101, 2-102 and 1538.5 PC. The following requirements apply in addition to those specified in those rules:

1. List of Items to be Suppressed or Returned:

The moving party shall include a complete itemized list of the specific items of property or other matters sought to be suppressed or returned. A general request to suppress or return "all evidence seized," without greater specificity, is not sufficient and shall be deemed an abandonment of the motion. Only the items listed in the motion will be considered by the court for suppression or return unless it is established the newly identified item could not reasonably be identified before the motion was filed.

2. Specification of Factual and Legal Basis for Motion:

The moving party's memorandum of points and authorities shall identify the specific legal and factual basis and cite the specific authority which will be offered to support the claim the search or seizure was defective. Failure to identify the specific legal and factual basis for the claim will be deemed a concession the search and/or seizure was lawful and will result in summary denial of the motion.

3. Specification of Intended Witnesses:

Moving and responding parties shall specify on the first page of the notice of motion or response the name of the witnesses, if any, they intend to call at the hearing.

4. Copy of Search Warrant, Affidavit, and Inventory:

If relevant to the motion, legible copies of the search warrant, affidavit in support of the warrant, and return and inventory shall be appended to the moving papers.

5. Stipulation to Transcript of Preliminary Examination Superior Court:

When any party is unwilling to stipulate to the transcript of the preliminary examination or grand jury hearing being received into evidence (supplemented by other testimony and argument of counsel, as needed), that fact shall be stated on the first page of the notice of motion or response. Failure to so indicate shall be deemed a stipulation to the admission of the transcript into evidence. (Eff. 07/01/98)

2-102.2 DEMURRERS, MOTIONS TO DISMISS, MOTIONS TO STRIKE

In addition to the above requirements, defendants shall attach a copy of the current complaint, information, or indictment to the memorandum of points and authorities filed in support of any demurrer, motion to dismiss based upon the pleadings, or motion to strike. In addition, demurrers, motions to dismiss, and motions to strike shall specify in the notice whether the defendant seeks to dismiss or strike the entire complaint, information, or indictment. If the defendant does not seek to dismiss or strike the entire complaint, information, or indictment, the defendant shall set forth in the notice of motion the count, enhancements, allegations, special circumstances, or other aspects of the pleading defendant seeks to dismiss or strike. (Eff. 07/01/98)

2-103. MOTIONS AT TRIAL

A. Felony Cases

In felony cases, all motions in limine, any extraordinary or complex motions, and any motions requiring live testimony shall be made in writing with a supporting memorandum

of points and authorities. These motions must be served on opposing counsel and filed with the court no later than one week before the first trial assignment date.

B. Misdemeanor Cases

In misdemeanor cases, all motions in limine requiring live testimony shall be made in writing with a supporting memorandum of points and authorities. In limine motions requiring live testimony shall be served on opposing counsel and filed with the court no later than one week before the first trial assignment date. Any other in limine motions in misdemeanor cases may be made orally or in writing after assignment to the trial department. If other such motions are made in writing, the moving party must serve the opposing party no later than the first appearance in the trial department.

C. All evidentiary in limine motions necessitating testimony must be clearly labeled: LIVE TESTIMONY NECESSARY.

D. All in limine motions seeking to exclude or admit evidence or testimony shall include the following:

1. An itemized list of the evidence the party is seeking to exclude or admit.
2. A summary of the expected testimony the party is seeking to exclude or admit and a list of the witnesses the party expects will give that testimony.
3. Points and authorities as described in 2-102.

E. All motions seeking the admission of evidence pursuant to Evidence Code §1101(b), or 1108 or 1109, shall include, in addition to the items set forth in paragraph D, relevant portions of the police reports, transcribed witness statements, and preliminary hearing and trial transcripts relating to the uncharged offense when such documents are available.(Eff. 01/01/08)

2-104. SANCTIONS

In the event of a failure to comply with 2-101, 2-102,2-102.1, 2-102.2, or 2-103, the court may impose sanctions including a monetary fine, a refusal to hear the motion, continuance, exclusion of evidence, issue preclusion, or any other relief or sanctions the court deems appropriate. (Eff. 07/01/98)

2-105. PRE-TRIAL CONFERENCES

A. Preparation of Attorneys

In felony and misdemeanor cases, the attorneys who attend the pre-trial conference should be thoroughly familiar with the case and authorized to make an offer for early resolution of the case. It is preferable that the attorneys assigned to the case attend the pre-trial conference. The assigned attorneys should review all existing investigative reports, preliminary hearing testimony, and rap sheets prior to the pre-trial conference.

B. Felony Cases - Pretrial Conference Questionnaire

In felony cases, the People shall be required to fill out a pre-trial conference questionnaire form. The form will be a standard form adopted for this court's use after consultation with the District Attorney's Office, Public Defender's Office and Lawyers Referral Service.

The People must serve and deliver the pretrial conference questionnaire to the courtroom where the conference is to be held no later than two court days prior to the scheduled pre-trial conference. Counsel for the defense are encouraged to submit a pre-trial conference questionnaire as well. These questionnaires shall remain confidential. (Eff. 07/01/98)

2-106. JURY INSTRUCTIONS

All requested instructions, including special instructions or modified CALCRIM instructions, shall be presented to the trial court and served on opposing counsel at a time deemed appropriate by the trial court. Unless otherwise ordered by the trial court, all requested instructions shall be presented in their entirety and not simply referred to by CALCRIM numbers. All special instructions shall be labeled People's Special Instruction or Defendant's Special Instruction and numbered sequentially. All proposed jury instructions shall comply with the California Rules of Court. (Eff. 07/01/14)

2-107. MATTERS IMPROPERLY SET FOR HOLIDAYS AND NON-JUDICIAL HOLIDAYS

A matter that is improperly set for a time other than as specified by these rules or as allowed by law will be automatically set for the next court day (unless that date would exceed the legal time limit) and then shall be continued by the court as is appropriate. (Eff. 07/01/98)

2-108. MOTION TO BE RELIEVED AS COUNSEL - RETAINED COUNSEL

- A. An attorney retained to represent a defendant in a criminal proceeding shall not withdraw from such representation except by order of the court upon a timely motion.
- B. Except when a defendant fails to appear and a bench warrant is issued, all motions to be relieved shall be in writing and served by counsel on defendant prior to the hearing and comply with Code of Civil Procedure sections 284 and 285 and California Rule of Court 376. Counsel for defendant shall also serve a copy of the motion on the People.
- C. Any motion to be relieved shall include a declaration stating the defendant's last known address along with facts indicating when that address was last confirmed as valid by counsel. If the whereabouts of the defendant are unknown, the declarations shall include facts constituting reasonable diligence in ascertaining the defendant's last known address. (Eff. 01/01/99)

2-109. TAPE RECORDED PROCEEDINGS IN MISDEMEANOR CASES

- A. Unless a Certified Shorthand Reporter is present, all contested matters will be tape recorded. All other matters will be tape recorded only upon the request of a party.
- B. Where tape recorders are employed instead of court reporters to record proceedings, tapes shall be preserved by the clerk as follows:
 - 1. In all contested matters (motions and trials), tapes will be preserved until 60 days following final judgment. In cases involving multiple defendants, tapes will be preserved until 60 days following final judgment of the last co-defendant. Tapes shall also be preserved until the appeals of all defendants are final.
 - 2. In all other cases, the tapes will be preserved for 30 days after the recording date, unless a party shall have delivered to the clerk a request, in writing, stating the particular case and date recorded, in which case the tapes will be preserved for 60 days.

3. Unless otherwise ordered by the court, tape recordings of proceedings are public records and may be examined under reasonable conditions, to be specified by the clerk.
4. Upon written request, specifying a particular case and tape number, the clerk may duplicate the tape for a fee. No fee shall be required of the court appointed counsel. (Eff. 07/01/15)

2-110. ATTORNEY FEES IN CRIMINAL AND JUVENILE MATTERS

Payment to court appointed counsel in criminal and juvenile matters will be made in such amount and manner set forth in the "Payment Policy and Fee Schedule" of the Lawyer Referral Service, available from that office. (Eff. 07/01/99)

2-111. REQUESTS TO MODIFY JUDGMENT

Requests to modify judgment must be by a noticed motion, specifying the order sought and the support for it, filed with the clerk of the court not less than five (5) days in advance of the hearing date. Notwithstanding the foregoing, a noticed motion is not required for non-substantive modifications, for example, jail report date, fine due date, manner of fine payment, authorization to complete a commitment in another county. (Eff. 01/01/03)

2-112. CRIMINAL APPLICATIONS FOR TEMPORARY ORDERS FOR RELEASE OF INMATE DUE TO MEDICAL, DENTAL, FUNERAL AND OTHER APPLICABLE APPOINTMENTS

No application for an order allowing release from jail for medical, dental, funeral or other appointments shall be made ex-parte. All requests for release shall be made to the presiding criminal judge or a judge assigned by the presiding criminal judge. The applicant must show by declaration that notice was given to the District Attorney's Office and the custodial institution.

A hearing date and time for the application and order must be made 24 hours in advance or within less time upon good cause by contacting the judge's courtroom clerk. (Eff. 07/01/17)

2-113. BAIL SCHEDULE RULE

Pursuant to Penal Code section 1269b, subdivision (d), the Court's Bail Committee is authorized to prepare, adopt and annually revise the Uniform County Bail Schedule as required by Penal Code section 1269b, subdivision (c). (Eff. 01/01/10)

2-114. SUBMISSION OF DOCTOR REPORTS TO DETERMINE MENTAL HEALTH COMPETENCY PER PC 1368

- A. Doctor reports regarding mental health competency under PC 1368 must be filed with the court by 5:00 p.m. no later than the last court day prior to the hearing either by:
 1. Filing the original signed document with the Clerk's Office in person, which includes the drop box, or by mail; or,
 2. Electronically filing the signed document pursuant to local rule number 6.

If the doctor is not able to file the report, the doctor shall submit for filing a written request for an extension. Such a request must be filed with the court by 5:00 p.m. no later than the last court day prior to the hearing and shall be submitted as described in subsections 1 or 2 above. (Eff. 01/01/20)

RULE 3. CIVIL

3-100. IMPLEMENTATION

The mandates set forth in these Local Rules are considered lawful orders of the court. Violation of any of these Local Rules may result in the imposition of sanctions pursuant to Code of Civil Procedure section 177.5 for violation of a lawful court order.

If the court finds that any party has not proceeded with due diligence or otherwise failed to comply with this rule, sanctions may be imposed pursuant to Government Code section 68608(b).

Unless otherwise required by law, the Clerk's office will conform a maximum of two (2) copies. (Eff. 07/01/17)

3-101. DIRECT CALENDARING OF CIVIL CASES

THESE RULES APPLY TO ALL CIVIL CASES (LIMITED AND UNLIMITED) UNLESS OTHERWISE NOTED.

- A. All cases described as personal injury, eminent domain, collection or other actions denominated as civil in nature shall be subject to assignment to a judicial officer for all purposes at the time of filing of the action. This section shall not apply to abandonment, adoption, mental health, petitions for approval of minors' compromises and family law cases. Nothing herein shall be construed to interfere with the Presiding Judge's authority to assign or reassign cases. This section also applies to writs.

- B. Cases which are subject to direct calendaring shall be assigned to a judicial officer for all purposes, who shall thereafter handle all proceedings involving the matter, including trial, except as otherwise provided or required by law. At the time of the initial filing of any case, the Clerk's office shall affix to the face of the complaint or petition, and also upon the face of the Notice of Case Management Conference, by stamp or other writing, the following notice:

**“THIS CASE HAS BEEN ASSIGNED TO JUDGE _____ IN DEPARTMENT
_____ FOR ALL PURPOSES, INCLUDING TRIAL”.**

Time limits for peremptory challenges of judges, commissioners and referees are governed by CCP Section 170.6. (Eff. 07/01/15)

3-102. ADMINISTRATION OF GENERAL CIVIL LITIGATION

NOT APPLICABLE TO LIMITED CIVIL CASES

A. Policy:

It is the policy of the San Joaquin Superior Court:

- 1. To manage all cases except civil petitions, probate, mental health, domestic and paternity actions from the time of filing the first document invoking court jurisdiction through final disposition.

- 2. The time frame for unlimited civil cases is 75% within 12 months, 85% within 18 months and 100% within 24 months.

Superior Court of California
for the County of San Joaquin

3. To use these rules as outside limits in the management of civil cases. Parties are encouraged to proceed at a more accelerated pace, especially in those cases involving promissory notes, simple breach of contract, money due and other cases susceptible to early disposition. In such cases, a party may file its own at-issue memorandum prior to case management conference to secure an early trial date.
4. Nothing in this section shall prevent the court from issuing an exception order based on a specific finding that the interest of justice requires a modification of the routine processes as prescribed.
5. Uninsured motorist (California Insurance Code Section 11580.2) and eminent domain cases shall be deemed exempt from this rule upon the filing by plaintiff of a Declaration of Exemption (Form Sup. Ct.56). The Case Management Conference for these matters will be scheduled 180 days out at case initiation. If the Declaration of Exemption is filed after case initiation, the CMC date will be vacated and rescheduled for 180 days out from the filing date of the declaration. (CRC 3.712.) Plaintiff is required to file a dismissal within ten (10) days after receipt of monies or 60 days after the arbitration hearing in all uninsured motorist cases.
6. All civil cases filed which are statutorily limited civil cases shall remain subject to the "Economic Litigation Rules" (CCP Section 90, et seq.) regardless of which department or commissioner handles such case.

B. Procedure

1. Any party seeking a change of hearing date set under this section must file a written application containing a showing of good cause together with a proposed order five (5) court days in advance of the hearing.
2. Order to show cause hearings for violations of these rules will be held by the assigned judge approximately 20 days from the mailing of the order to show cause.
3. Written response to orders to show cause must be filed at least five (5) calendar days before the hearing.
4. All stipulations for request to continue any proceeding shall be signed by all attorneys involved in the case.

C. Responsive Pleadings

1. If a Certificate of Inability to Respond is timely filed the court will conduct a hearing to determine a date on which a response must be filed.
2. If the responsive pleading is a demurrer and the demurrer is overruled, the court shall fix the time for filing a further response. If a demurrer is sustained with leave to amend, the court shall fix the time for filing an amended pleading and may fix the time for filing a response.

Pursuant to C.R.C 3.110(g), if a responsive pleading is not served within the applicable time limits, and no extension of time has been granted, the plaintiff is required, within 10 days after the time for services has elapsed, to file a request for entry of default.

D. Stays of Action/Alternative Dispute Resolution Requirements

1. To stay any action pending any type of alternative dispute resolution (ADR), stipulations and proposed orders must provide that the ADR shall be binding and that a dismissal of the entire action will be filed.
2. The stay provided by 11 U.S.C. Section 362 shall not affect this section.

E. Extensions by the Court

1. The court may extend any time standard set forth in these rules upon a showing of good cause on noticed motion or ex-parte appointment with the assigned judge.

"Good cause" includes the existence of those conditions stated in C.C.P. section 583.240. When applying to the court to extend time for service of process based on the conditions stated in C.C.P. section 583.240, plaintiff shall suggest to the court the earliest time within which the impediment to service may reasonably be eliminated so that the court is able to continue its supervision of the case on a date certain.

2. Further, in all civil actions, "good cause" for an extension of time to serve the defendant with process is established where plaintiff's declaration affirmatively shows that defendant's insurance carrier or other authorized representative has been advised that an action has been filed and that settlement negotiations are in progress which could resolve the case without further litigation. Upon such showing, it is the policy of the court to extend the time for service of the complaint to a date certain, within which time it appears reasonable that negotiations can be concluded.

F. Case Management Conference (CMC)

1. Upon filing a complaint, the plaintiff shall receive the following from the clerk:
 - (a) Summons and complaint,
 - (b) Notice and date of the first case management conference (the first conference will be set within 150 days of the filing date of the original complaint), and
 - (c) a blank Case Management Conference Statement (CMCS).

Any cross-complainant naming new parties will also receive a notice of case management conference and a blank CMCS.

If a case is transferred from another jurisdiction after a responsive pleading has been filed, the first status conference will be set within 45 days from the order of transfer. If no responsive pleading has been filed, the first case management conference will be set within 90 days from the Order of Transfer. In all other particulars, the plaintiff in a transfer case will receive the same information and items as described above.

2. At the time of serving the summons and complaint (and a cross-complaint upon a new party) the responding party shall be served with the notice of the case management conference and a blank CMCS by the plaintiff.

3. Each appearing party shall file and serve the completed Case Management Conference Statement at least fifteen (15) calendar days prior to the hearing.
4. The assigned judge shall conduct the case management conference, at which each trial attorney, or attorney familiar with the case, and each self-represented party must appear. At the CMC, the court may make all orders it deems appropriate, including but not limited to any one or more of the following:
 - (a) A preliminary determination regarding judicial arbitration or Alternative Dispute Resolution (ADR);
 - (b) Transfer to another court;
 - (c) Designating the case as "complex litigation";
 - (d) Order an early settlement conference;
 - (e) Order a trial setting conference; or
 - (f) Order the setting of a "short cause" court trial.
5. If none of the parties object to the court referring the matter to arbitration (and therefore without limit) and both sides have initiated discovery, no appearances will be required at the case management conference.
6. If a case is not ordered to judicial arbitration, the court will order a trial setting conference date.
7. Any attorney may appear at the case management conference telephonically and, when this occurs, local attorneys have the same option.
8. The court will consider those factors outlined in Judicial Council Rule 2106 in evaluating a management plan for each individual case

G. Complex Litigation

1. A complex case is one which involves complex issues, difficult legal questions or unusual proof problems.
2. The court, on its own motion, may at any time declare an action a complex case, or may do so pursuant to motion by a party.
3. Once a case is designated as complex by the court, it shall be assigned to a judge for all purposes, including trial.

H. Arbitration Determination

1. Cases are ordered to arbitration at the case management conference.
2. Parties shall be noticed with a trial setting conference date once a request for trial de novo has been filed. The trial setting conference will be held approximately 21 days from the request for trial de novo.

I. Trial Setting Conference

1. If a case is not ordered to arbitration at the case management conference, the assigned judge will set the case for a trial setting conference.
2. Each trial attorney or attorney familiar with the case and self-represented party must attend, at which time the assigned judge will set any final deadlines for completion of discovery. A trial date shall be assigned with a mandatory settlement conference being set 15 to 30 days prior to trial. Settlement conferences will be governed by Rule 3-104.
3. All trial attorneys or attorneys familiar with the case and self-represented parties shall attend trial setting conference, unless a Declaration in Lieu of Personal Appearance has been filed. Said declaration must be filed with the Court Clerk's Office at least ten (10) days prior to the trial setting conference.

J. Non-Availability of Official Court Reporting Services in Civil Departments

San Joaquin Superior Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases. As provided in Rule 2.956(e)(1), the term "civil cases" includes all matters other than criminal and juvenile matters. This non-availability extends to all civil cases hearings or proceedings of any kind or nature, including but not limited to law and motion hearings, ex parte applications, long-cause hearings and trials. Effective July 31, 2017, the departments which normally hear civil cases are Departments 10A, 10B, 10C, 10D, and 11B.

As provided in Rule 2.956(c), parties may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter. It is the party's responsibility to pay the reporter's fee for attendance at the proceedings, but the expense may be recoverable as part of the costs, as provided by law.

If a party arranges and pays for the attendance of the certified shorthand reporter, none of the parties will be charged the reporter's attendance fee provided for in Government Code section 68086, subdivisions (a)(1) or (b)(1).

The stenographic notes of the certified shorthand reporter are the official records of the court and shall be secured by the court in either paper and/or electronic format in accordance with Government Code section 69955(a), (b), (c) and (d).

In all cases, the plaintiff shall serve "Notice of "Non-Availability of Official Court Reporting Services in Civil Departments" ("Notice") with the complaint. Likewise, the cross-complainant must serve the Notice on any new parties to the action. The service information must be included on the Proof of Service of Summons. In addition, parties that file motions must serve the Notice on all parties in the case. The service information must be included on the Proof of Services by Mail. (Eff. 01/01/20)

3-103. TELEPHONE APPEARANCES

- A. Subject to the provisions of this rule, parties may appear at case management conferences, law and motion hearings, and fast track hearings by telephone. For ex- parte matters, only defendants or respondents may appear by telephone. The

moving party on an ex parte matter must personally appear unless such personal appearance is excused by the Judge assigned to hear the matter.

- B. All persons appearing telephonically must use the telephonic services designated by the court.
- C. Each party or counsel wishing to appear by telephone shall be available on the date of the hearing at the designated time and shall be responsible for contacting the teleconferencing service. Such party or counsel shall remain available until completion of the hearing of the matter. Failure to remain immediately available as required by these rules will be deemed a non-appearance at the hearing and may result in sanctions.
- D. For good cause shown, the court may deny a request for telephone appearance, or require that a party or counsel be personally present at any hearing. (Eff. 01/01/14)

3-104. SETTLEMENT CONFERENCE PROCEDURES

Section 1: Settlement Conference Statements

Each party must file with the court and serve all other parties with a Settlement Conference Statement at least ten (10) calendar days prior to the hearing. In addition to the items required by California Rules of Court, Rule 3.1380(c), the Settlement Conference Statement shall contain a concise summary of the case, a description of the matters agreed upon and the matters in dispute, and the factual and legal contentions as to the matters in dispute. In a personal injury action, the statements shall set forth the medical condition of the party(s), medical treatment received and by whom, a listing of the medical bills, the amount of the general damages claimed and supporting documentation, offers and counter offers of settlement and all other information which will assist the court in settling the case.

Section 2: Necessary Preparation

All discovery should be completed prior to the hearing. If there is a dispute which requires an accounting, the accounting should be completed. If there is a material dispute as to the value of property, appraisals must be completed. If there is a substantial dispute as to medical condition of a party, all medical examinations should be completed.

Section 3: Materials to be Brought to Conference

In a personal injury case, copies of medical reports, copies of medical bills, and if loss of earnings are claimed, documentation therefore is to be brought to the conference. If economists are to be used to support loss of earnings, a copy of the economists' reports and all other material necessary to substantiate general and specific damages will be required. In other cases, copies of accountings, appraisals and other documentation will be required.

Section 4: Duties of Attorneys and Parties Attending Settlement Conferences

- (a) Each party claiming damages shall furnish to all other parties at least ten (10) days before the settlement conference, the amount of general damages claimed, an itemized list of special damages and medical billings, and in a personal injury or wrongful death case, a settlement offering.
- (b) The trial attorneys shall attend the conference. If this is not possible, the attorney attending the conference shall have a thorough knowledge of the case and shall be prepared to have the authority to negotiate settlement. All parties, and when a party is insured, a representative of the insurance company who has authority to settle a case,

shall attend the conference. The court may excuse the attendance of a party or insurance company representative for good cause, such as excessive distance, if the person excused agrees to be immediately available by telephone at all times during the conference.

- (c) Each attorney shall have read, considered, and be ready to respond to the Settlement Conference Checklist, set forth in Rule 3-104, Section 5, immediately following.

Section 5: Settlement Conference Checklist

- (a) Upon notification of a settlement conference date, recheck:
1. California Rules of Court
Rule 3.1380 - Mandatory Settlement Conferences
Rule 3.1385 - Duty to Notify Court of Disposition
 2. San Joaquin Unified Court Local Rules, Rule 3-104.
- (b) Review and evaluate liability (what a jury is likely to do).
1. Consider and itemize strong liability points.
 2. Consider and itemize weak liability points.
 3. Consider facts which depend on conflicting testimony.
 4. Consider facts which depend on testimony of witnesses weak on credibility.
 5. Are there factual contentions on your side which will be difficult to prove?
 6. Are there factual contentions of your opponent which will be difficult to prove?
 7. Have you discussed your factual contentions with opposing counsel and considered his/hers?
 8. Consider law applicable to liability.
 - a. Is there a dispute as to law re liability?
 - b. Have you discussed your legal contentions with opposing counsel and considered his/hers?
 9. Take into consideration liability factors for the type of case.
 10. Rate liability on a scale of 0% liability to 100%.
- (c) Review and evaluate damages (what a jury is likely to do.)
1. Have current medical reports on all claims of injury and all medical reports prepared by any doctor.
 2. Itemize special damages and total. Attach copies of each bill or originals. If there are liens, counsel should include all available information pertinent thereto.

Superior Court of California
for the County of San Joaquin

3. Itemize possible future special damages and total. Attach report and other data showing basis of claim of future special damages as to dollar amount.
 4. Supply opposing counsel with copies of all medical reports and your itemization of special damages to date and future special damages at least ten (10) days before settlement conference.
 5. Itemization of claimed injuries and evaluation of extent of each injury:
 - a. Temporary or permanent
 - b. Disabling or non-disabling
 - c. Disfiguring or not
 6. Consideration of whether future medical care of time will improve physical condition.
 7. Your range of estimation of verdict range assuming liability.
 8. Your reduction of verdict range for:
 - a. Comparative negligence
 - b. Problems of proof of injuries claimed
 - c. Reduction for your liability rating
 9. Consider verdict range for the injuries in this case.
 10. Give opposing counsel, in writing, your settlement figure at least ten (10) days before settlement conference.
 11. Have you discussed your settlement figure with opposing counsel and considered his/hers?
 12. Have you discussed your settlement figure with your client within one (1) week of the settlement conference?
- (d) Counsel should be prepared to respond to questions by the court as to matters referred to in this Settlement Conference Check sheet. (Eff. 07/01/17)

3-105. PROPOSED FINDING, ORDER, JUDGMENT OR DECREE

Unless otherwise ordered by the court, the preparation of the order of finding, order, judgment or decree shall be in accordance with Rule 3.1312 of the California Rules of Court. (Eff. 01/01/14)

3-106. EX PARTE APPLICATIONS AND ORDERS

Except as provided in this rule and in Rule 3-1204 of the California Rules of Court, no application for an order shall be made ex parte unless the applicant shows by written declaration under oath either that a reasonable effort has been made to give notice to the adverse party or attorney, that notice would be inappropriate or impractical or would result in irreparable injury, or that the order would not result in a significant direct burden or inconvenience to the adverse party.

Ex parte matters must be approved and scheduled by the Law and Motion Judge by his or her clerk prior to filing documents in the clerk's office. The courtroom phone numbers are listed on the public website at www.sjcourts.org. The party shall file the moving papers and any applicable filing fee due no later than 24 hours prior to the requested hearing date and time. Proof of Service must be on file with the Superior Court Clerk's Office prior to the scheduled hearing.

Every application for an order made ex parte shall be accompanied by a written declaration under oath, made by a person with knowledge of the facts, stating the facts for determining the amount of a bond and any facts supporting any requested waiver of a bond. The declaration shall state the maximum loss, including any attorney fees, which is likely to occur from the granting of the order. (Eff. 01/01/18)

3-107. PETITION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM

In cases where a minor, or other person for whom a guardian ad litem will be necessary, is the plaintiff, the Petition to Appoint Guardian Ad Litem shall be filed simultaneously with the complaint and the summons to be issued. The summons shall not be issued until the Order Appointing Guardian Ad Litem has been signed. (Eff. 01/01/09)

3-108. PLEADINGS AND RECORDS IN EMINENT DOMAIN PROCEEDINGS

A. Proceeding involving more than one parcel of property.

1. Pleadings- In proceedings involving more than one parcel of property, the complaint shall set forth in addition to the matters required by Code of Civil Procedure, section 1250.310, numbers or symbols identifying each parcel of property. An answer, demurrer, disclaimer, written appearance, or other pleading shall set forth, in the space below the number of the case and in parentheses, the parcel numbers or symbols that identify the property claimed by that defendant.
2. Waiver of Requirements - The court may, for good cause shown, order any paper to be filed without a parcel number or symbol.

B. Application for final order of condemnation.

An application for final order of condemnation shall be made upon notice to all parties appearing in the action who have not been previously dismissed therefrom, or upon the stipulation of such parties, and it shall include, in addition to the requirements of Code of Civil Procedure section 1268.030, a copy of the final judgment and an acknowledgment of receipt by the affected defendant(s) of the amount specified in the final judgment, or other evidence satisfactory to the court that the judgment has been satisfied. (Eff. 01/01/14)

3-109. DEATH OF A PARTY

When a party to an action dies, the attorney for that party shall forthwith serve and file a notice of death and pendency of probate proceeding, if any. (Eff. 07/01/98)

3-110. CLAIM OR ACTION ON BEHALF OF A MINOR OR DISABLED PERSON

Where there is a judgment or settlement of claim, including a covenant not to sue, relating to a minor or a person with disability, as defined by Probate Code section 3603, the procedures set forth in these rules in Part Eight of the Probate Rules, commencing with 4-801, apply. (Eff. 01/01/09)

3-111. ATTORNEY FEES IN ACTIONS ON PROMISSORY NOTES, CONTRACTS PROVIDING FOR PAYMENT OF ATTORNEY FEES, AND FORECLOSURES

The following attorney fees shall, under normal circumstances, be awarded in actions on promissory notes, contracts providing for the payment of attorney's fees, and foreclosures:

A. Default Action on Note or Contract- Exclusive of costs:

- 25% of first \$1,000 with minimum fee of \$150
- 20% of next \$4,000
- 15% of next \$5,000
- 10% of next \$10,000
- 5% of next \$30,000
- 2% of the amount over \$50,000

In an action upon contract providing for an attorney fee, the Clerk shall include in the judgment an attorney fee in accordance with this schedule.

B. Contract Based Upon a Book Account

Reasonable attorney fees awarded pursuant to Civil Code section 1717.5 to the prevailing party bringing the action on the book account shall not exceed the lesser of: 1) NINE HUNDRED SIXTY DOLLARS (\$960) for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family or household purposes; and ONE THOUSAND TWO HUNDRED DOLLARS (\$1200) for all other book accounts to which Civil Code section 1717.5 applies, or 2) 25% of the principal obligation owing under the contract.

Whenever the obligation sued upon provides for the recovery of reasonable attorney fees, the fees may be set according to the schedules above in default judgment cases and may be looked to as a guide to reasonable attorney fees in contested matters. In any case where the attorney feels he or she is entitled to fees in excess of the schedule, he or she may apply to the court and the fees shall be fixed in accordance with the proof.

C. Contested Action on Note or Contract

The same amount as computed under subdivision A., increased by such reasonable compensation computed on an hourly or per-day basis for any additional research, general preparation, trial, or other services as may be allowed by the court.

D. Foreclosure of Mortgage or Trust Deed

The same amount is computed under subdivision A. or B. increased by 10 percent.

E. Foreclosure of Assessment or Bond Lien Relating to a Public Improvement

The same amount as computed under subdivision A. or B. except that the minimum fee shall be \$75.00 in an action involving one assessment or bond, and an additional \$40.00 for each additional assessment or bond being foreclosed in the same action.

- F. In actions for unlawful detainers for possession of residential property, except for property governed by Civil Code section 798, et seq., the attorney's fees awarded by the court will not, under normal circumstances, exceed THREE HUNDRED DOLLARS (\$300). (Eff. 01/01/17)

3-112. ORDERS SHORTENING TIME

The court will not shorten time for service of orders to show cause and notices of motion except upon a written declaration or affidavit clearly showing the necessity therefor through an ex parte hearing or by stipulation. (Eff. 01/01/02)

3-113. CIVIL LAW AND MOTION

- A. Except where there is an order setting the date, the moving party may schedule the Law and Motion hearing in the Superior Court Clerk's office when the moving papers are filed (subject to mandatory time provisions of statutes and Rules of Court). Motions are heard Tuesdays through Fridays at 9:00 a.m. When submitting the moving papers for filing, please have at least three (3) dates (within the proper time provisions) for the clerk to check for availability. Proof of service must be on file with the Superior Court Clerk's office prior to the scheduled hearing.

(STOCKTON COURTHOUSE ONLY)

- B. Matters not requiring more than fifteen (15) minutes may be set for the 9:00 a.m. calendar on Tuesdays through Fridays. Special settings may be made by the courtroom clerk with prior approval.
- C. Other than in contempt matters or where allowed by statute, evidence shall be presented by matters of which the court may or must take judicial notice, affidavits, and declarations, unless prior arrangements are made with the court for the taking of oral testimony.

(STOCKTON COURTHOUSE ONLY)

- D. Judges assigned to civil law and motion matters will prepare a tentative ruling for each matter on calendar and a ruling will be available to counsel and litigants on the first court day before the scheduled hearing. If the tentative ruling is satisfactory to counsel, he or she need not appear and the tentative ruling will become final. If counsel or self-represented litigants (SRL) wish to appear, he or she may do so only after appropriately notifying the court and other counsel or SRL of that intent.

The tentative ruling shall become the ruling of the court unless there is opposition by counsel or SRL. Counsel or self-represented litigants is responsible for reviewing the tentative ruling and notifying the superior court, by calling (209) 992-5714, and all other counsel and self-represented litigants no later than 4:00 p.m. on the day preceding the scheduled hearing of his or her intent to appear to argue.

The tentative rulings will be posted to the court's website: www.sjcourts.org. Counsel or self-represented litigants may access the court's website beginning at 1:30 p.m. on the court day immediately preceding the date for which a matter is calendared.

Matters may be continued by filing a stipulation up to five court days before the hearing date. To prevent the judges from unnecessarily preparing matters to be continued, court approval will be required before a continuance will be allowed when the request for continuance is made within five court days of the scheduled hearing.

(LODI BRANCH ONLY)

- E. The same will apply as listed in Rule 3-113 (D) for the Stockton Courthouse with the exception that the Lodi Branch Civil phone number for calling in by 4:00 p.m. on the day preceding the scheduled hearing of his or her intent to appear to argue is (209) 992-5522. *(Subd (E) amended January 1, 2018); previously amended (deleted) effective July 1, 2015. (Eff. 01/01/20)*

(Subd (F) amended (deleted) effective July 1, 2015.

3-114. CHAMBERS CONFERENCES AND EX PARTE MATTERS

- A. Chambers conferences and hearings regarding ex-parte matters should be scheduled only with the approval of the Law and Motion Judge or his or her clerk. The courtroom phone numbers are listed on the public website at www.sjcourts.org. (See Rule No. 3-106.)
- B. When ex-parte relief, other than that involving attachments, is sought, opposing counsel (or if unknown, opposing parties) should be given reasonable notice, orally or in writing, of the time and place that such application will be made, unless there is good cause for proceeding without notice, so that an informal hearing or conference may take place. Applicant's counsel should be prepared to explain to the court the efforts which have been made to give this informal notice, or the reasons supporting a claim that notice should not be required.
- C. Orders staying a Department of Motor Vehicles suspension or revocation will not be considered unless the petitioner's driving record is made available to the court.
- D. Declarations should be submitted setting forth facts bearing on the amount of probable damage, upon which the court may determine the amount of probable damage, and in turn, the amount of bond, in any case where a bond may be considered or required. (Eff. 01/01/18)

3-115. Title [Repealed]

(Rule 3-115 repealed 07/01/15); previously amended effective January 1, 2014.

3-116. JURY FEES AND EXPENSES

- A. Jury fee deposits are non-transferrable. See Code of Civil Procedure section 631 for the rules governing jury fee deposits.
- B. Reimbursement for voir dire jurors - The party who has demanded a jury in a civil case shall reimburse the county for the fees and mileage incurred for jurors. No fees or mileage reimbursement will be required for jurors on the first day of jury service, except for those who are sworn to hear the trial. Reimbursement will be made for all jurors serving more than one day. (Eff. 01/01/14)

3-117. "COURTESY COPIES" OF BRIEFS AND PAPERS

All briefs and papers filed in support of any motion or application, whether made on notice or ex parte, must be filed with the Clerk of the Court. It is the policy of the Superior Court to discourage the submission of "courtesy copies" of briefs and papers directly to the civil law departments.

Parties may, but are not required, provide courtesy copies of reply briefs, papers filed in specially set matters, or papers filed in other matters wherein the court requests a courtesy copy. Such courtesy copies should be stamped with "Courtesy Copy" and delivered directly to the courtroom clerk in the department that will hear the matter. Courtesy copies are not to be filed. (Eff. 01/01/14)

3-118. "RESERVED FOR FUTURE USE" (Eff. 07/01/05)

3-119. "RESERVED FOR FUTURE USE" (Eff. 07/01/05)

3-120. SUBSTITUTE SERVICE

If service is at a party's residence, one attempt of serve must be at a time other than usual business hours, i.e., other than between 9:00 a.m. and 5:00 p.m. The substituted service could then be executed on a new calendar day following the second attempted personal service (Eff. 07/01/05).

3-121. ALTERNATIVE DISPUTE RESOLUTION

San Joaquin Superior Court strongly supports the use of Alternative Dispute Resolution in civil cases. Many cases can be resolved to the satisfaction of all parties without the necessity of engaging in litigation, which can be costly, time consuming, and stressful. The court encourages litigants to utilize some form of ADR as an alternative to litigation in addition to the mandatory settlement conference set in each case.

A. ADR Options

Litigants may choose one or more methods of ADR, including but not limited to the following:

Mediation

- a. Court Mediation Program or Private (CCP §§1775-1175.15; CRC 3.890-3.898)
- b. Non-binding Judicial Arbitration (CCP §§1141.10-1141.31; CRC 3.810-3.830)
- c. Binding Arbitration (CCP §§1280-1294.2; CRC 3.1330)
- d. Neutral Evaluation
- e. Trial by Reference (CCP §§638-645.2)
- f. Expedited Jury Trial (CCP §§630.01-630.12); concerning EJT's, please see Rule 3-127, below, for additional information.

B. ADR Information

Attorneys shall provide their clients with a copy of San Joaquin Superior Court ADR Information packet at the earliest available opportunity and prior to the initial Case Management Conference. Self-represented litigants and all litigants need to review and consider the available ADR choices. Plaintiffs and cross-complainants shall serve a copy of San Joaquin Superior Court ADR Information packet on each defendant or cross-defendant at the time the complaint or cross-complaint is served as required by California Rule of Court 3.221.

C. ADR Participation

Participation in any ADR program offered by the Court or as agreed upon by the parties is strongly encouraged. Parties may request ADR by selecting an ADR option on the Case Management Conference Statement (Judicial Council Form CM-110) and/or completing a Stipulation and Order to Participate in Alternative Dispute Resolution (Sup. Ct. Form 441).

D. ADR Assessment at Case Management Conferences

Parties are to assess and consider an ADR option prior to and at Case Management Conferences. Case Management Conferences will assist the parties to select the most effective and appropriate ADR method to resolve the case. At the discretion of the court, an appropriate amount of time will be permitted for ADR to be completed prior to the date set for a Further Case Management or Trial Setting Conference.

E. ADR Neutral Panels

The Court maintains current lists of arbitrator and mediator panels to assist parties and their counsel in selecting a neutral provider to preside over ADR proceedings. Eligibility criteria for appointment to the court's arbitration or mediation panels are set forth in CRC 10.781, CRC 3.810, et seq., and such other criteria as may be established by the court. The Court's panel of available neutrals can be assessed through the court's website at www.sjcourts.org under civil mediation.

F. Notice of Settlement

If a case that has been set for judicial arbitration or court mediation settles, plaintiff must immediately serve a copy of written Notice of Settlement or other disposition on the ADR neutral provider appointed in the case and file the Notice of Settlement with the court. (Eff. 07/01/17)

3-122. JUDICIAL ARBITRATION (Local Rule 3-121, revised)

A. Judicial Arbitration

Any civil case shall be submitted to judicial arbitration pursuant to this rule upon order of the court, stipulation of counsel or plaintiff's election, where, in the opinion of the court, the amount in controversy does not exceed twenty-five thousand dollars (\$25,000) for each plaintiff in limited civil case or fifty thousand dollars (\$50,000) for each plaintiff in an unlimited civil case. The parties may stipulate or plaintiff may elect judicial arbitration where the amount in controversy exceeds fifty thousand dollars (\$50,000) for each plaintiff in an unlimited civil case. The Judicial Arbitration program is administered by the court under the provisions of Code of Civil Procedure §§1140.10 through 1141.31 and California Rules of Court 3.810-3.830.

The provisions of this rule shall not apply to cases exempt from arbitration pursuant to CRC 3.811(b) and based upon the discretion of the court.

A case may be ordered to arbitration at a Case Management Conference from information submitted on the Case Management Conference questionnaire. Long cause cases not ordered to judicial arbitration at Case Management Conferences shall be set for trial. If a referral to the Case Management Conference is desired prior to the first management conference, the party may so request in the Case Management Conference Statement and the case may be ordered to judicial arbitration from the information submitted thereon.

B. Continuance of Matters Ordered to Arbitration (Local Rule 3-122, revised)

The continuance of arbitration hearings once scheduled is disfavored. Keeping within the provisions of CRC 3.818(c), the parties may stipulate with the consent of the arbitrator or the arbitrator may grant a continuance based on good cause and not to exceed ninety (90) days from the date of assignment to the arbitrator. A further continuance, however, cannot be granted except by motion to the court, with good cause shown.

C. Setting Trial After Request for Trial de Novo (Local Rule 3-123, revised)

When a request for a trial de novo has been timely filed, the court will promptly schedule a Case Management Conference to set the case for trial.

D. Payment of Arbitrators (Local Rule 3-124, revised)

The arbitrator's award or a Notice of Settlement must be timely filed with the Arbitration Administrator before a fee may be paid. The arbitrator shall receive the sum of \$150 for each case as a fee for services. If the arbitration hearing extends beyond one day, the arbitrator is entitled to \$150 per day for each additional day or portion thereof. At the court's discretion, payment of fees for all arbitrators may be suspended and arbitrators may volunteer their time and effort. (Eff. 01/01/14)

3-123. CIVIL MEDIATION PROGRAM (Local Rule 3-125, renumbered)

A. Civil Mediation Program

The Civil Mediation Program is a court-connected program designed to deliver high-quality affordable mediation services to attorneys and litigants in general civil cases. Mediation gives litigants a voice in settlement decisions and thereby allows them to play a more direct role in managing the outcomes of their own cases. The Superior Court of California, for the County of San Joaquin, is pleased to offer this important and valuable option for resolution of litigation.

B. Eligibility

All types of general civil cases are eligible to participate in the Civil Mediation Program. Please see California Rules of Court, Rule 1.6(4) for the definition of "general civil cases".

C. Stipulation to Mediation

1. Parties at any time may stipulate to participate in mediation. All parties stipulating to mediation must complete a Stipulation and Order to Participate in ADR form and file it at the Clerk's Office. An original and a copy for the court's use shall be submitted to the Clerk's Office. The form can be downloaded at www.sjcourts.org under "Civil Mediation".

There is no filing fee for the filing of the Stipulation. An incomplete Stipulation will be returned to the parties by the Clerk's Office. All Stipulations must include the following:

- a. Original signatures for one attorney for each party or by the self-represented litigant;
- b. The Name of the mediator;
- c. Date of the mediation session; and

d. Service list (counsel need not serve the Stipulation on parties).

Parties are to mutually agree on a mediator and schedule the mediation session directly with the mediator.

2. Filing the Stipulation Prior to an Initial Case Management Conference

To stipulate to mediation prior to the initial Case Management Conference, parties must file a completed stipulation at least ten (10) days before the scheduled Case Management Conference. The clerk will send notice of a new Case Management Conference date approximately one hundred and twenty (120) days from the current date to allow time for the mediation process to be completed.

3. Filing the Stipulation Following a Case Management Conference

When parties come to an agreement at a Case Management Conference to utilize mediation, the parties have 21 days from the date of the Case Management Conference to file a Stipulation and Order to ADR with the court. If the Stipulation and Order to ADR is not filed with the court within the time allowed, the clerk will send out an Order to Show Cause to have the parties appear in court and explain why the Stipulation and Order to ADR has not been filed.

D. Selection of Mediator

Parties are to choose a mediator who is mutually agreeable based on the mediator's experience, market rate, and other information listed on the Mediator Panel List. Parties are not, however, limited to choosing a mediator from the court's panel and may select a mediator based on their own research.

E. Mediator Qualifications

Court panel mediators appointed to the Court Panel must meet specific requirements related to basic training and experience. The following are the requirements needed to qualify to become a Court Panel mediator:

- a. Track A: An attorney in good standing with the California Bar Association AND have completed Pepperdine University School of Law's Straus Institute for Dispute Resolution 42-hour training program organized through San Joaquin Superior Court.
- b. Track B: An attorney in good standing with the California Bar Association AND have completed at least five (5) days (40 hours) of continuous, participatory education or training, including role playing in mediation AND have participated as a mediator or co-mediator in at least five (5) mediations.
- c. Track C: An attorney in good standing with the California Bar Association AND have completed at least two (2) days (16 hours) of continuous participatory education or training, including role playing in mediation AND have participated as a mediator or co-mediator in at least fifteen (15) mediations.
- d. Track D: Provide other satisfactory evidence of mediation skills and experience.

2. All mediators must:

- a. Comply with California Rules of Court §§3.850-3.860 and 10.780-10.782;

- b. Agree to conform to the Court's Ethical Standards of Professional Conduct (California Code of Judicial Ethics); and
- c. Comply with the court's rules and procedures for the Civil Mediation Program.

F. Mediation Fees

The Civil Mediation Program is a party-pay fee for service system. Parties pay the market rate set by their selected mediator. Mediators serving on the court's panel have their rates published on the Panel List.

G. Confidentiality

Except as provided below, court-connected mediation shall be confidential and subject to the mediation privilege set forth in Evidence Code sections 703.5 and 1115-1128. Except as provided below, no communications made in connection with mediation, including the evaluation, may be disclosed to the assigned judge or to anyone else not involved in the mediation, unless otherwise agreed to by all parties.

This rule does not prohibit:

- 1. Disclosures as may be stipulated by all parties and the mediator;
- 2. a report to or inquiry by the ADR Administrator concerning a complaint against a mediator;
- 3. any participant or the mediator from responding to an appropriate request for information made by persons authorized by the ADR Committee to monitor or evaluate the court's ADR program; and
- 4. Disclosures as are otherwise required by law.

The mediator shall require the parties and all persons attending the mediation session to sign a confidentiality agreement on a form provided by the court.

H. Post-Mediation Evaluations and Forms

All Post-Mediation Evaluations will NOT be filed in the court's file. The information collected will be used to assess the impact of the program on the court to track quality to provide feedback to mediators and to inform the court's decisions regarding redesign of program procedures. This information will be aggregated for blind statistical reports to the Judicial Council, the court and the community. Additionally, information collected in the Evaluation will not be shared with the involved parties.

- 1. Mediators: All mediators shall complete and submit a Mediator Post-Mediation Evaluation AND Statement of Agreement or Non-agreement form (Judicial Council Form ADR 100) within ten (10) days of the mediation sessions regardless of the outcome of the case mediated. The Statement of Agreement or Non-agreement shall be filed in the court's file. This form must be used by mediators in court-connected ADR programs.
- 2. Attorneys: All attorneys shall complete and submit an Attorney Post-Mediation Evaluation within ten (10) days of the mediation session regardless of the outcome of the case mediated.
- 3. Parties: All parties shall complete and submit a Client Post-Mediation Evaluation within ten (10) days of the mediation session regardless of the outcome of the case mediated.

I. Modification to the Program

The court may publicize additional procedural requirements and guidelines for the San Joaquin Superior Court Civil Mediation Program, as it deems necessary for the successful implementation of the program. Such further rules and procedural requirements will be timely published by the court on the court's website: www.sjcourts.org and will be made available to attorneys at the Clerk's Office upon their publication. (Eff. 07/01/17)

3-124. BINDING ARBITRATION

Parties may voluntarily stipulate to binding arbitration or move to compel binding arbitration pursuant to an arbitration agreement. Binding arbitration proceedings are subject to the procedures set forth in Civil Procedure Code §§ 1280 to 1294.2 and Rule of Court 3.1330. (Eff. 01/01/14)

3-125. NEUTRAL EVALUATION

Parties may voluntarily agree to bring a legal action to a neutral provider for a case assessment and evaluation. Neutral evaluators with specific expertise in the subject matter of the case provide a non-binding opinion about the strength and weaknesses of each party's position, liability risk exposure, and a range of potential damages. The opinions of the neutral evaluator may be utilized by the parties to discuss settlement, participate in mediation, judicial arbitration, or binding arbitration, proceed to litigate the case and set the case for trial.

A. Neutral Evaluator Panel

The court's Mediator panel lists experienced attorneys in specific practice areas, who have the training to serve as a neutral evaluator. Parties may agree to utilize other attorneys, mediators, or retired judges who are not on the court's Mediator Panel to serve as a neutral evaluator.

B. Payment of Neutral Evaluator

The services of neutral evaluators are paid by the parties at the rate set by the neutral evaluator. Neutral providers who are on the court's Mediator Panel have their rates published on the Panel List. (Eff. 01/01/14)

3-126. TRIAL BY REFERENCE

Parties may voluntarily agree and consent to utilize a referee, who is appointed by the court, to conduct a trial on any or all of the issues in an action, including issues of law and fact, and to render a Statement of Decision. Where the parties consent to a general reference of the issues or entire action, the referee's Statement of Decision will stand as the court's decision. The procedure to conduct a trial by reference is set forth in Code of Civil Procedure §§ 638 to 645.2.

A. Trial Referee

The court's Mediator Panel lists experienced attorneys in specific practice areas, who may be willing to serve as a trial referee. Parties may agree to utilize other attorneys, mediators, or retired judges who are not on the court's Mediator Panel to serve as a trial referee.

B. Payment of Trial Referee

The services of trial referees are paid by the parties at the rate set by the trial referee. Neutral providers who are on the court's Mediator Panel have their rates published on the Panel List. (Eff. 01/01/14)

3-127. EXPEDITED JURY TRIAL (EJT)

It is the policy of the San Joaquin Superior Court to give preference to Expedited Jury Trial matters.

The parties may agree and consent to an expedited jury trial to be held by the court. To do so, the parties will execute a stipulated consent order to conduct an expedited jury trial. The procedures for an expedited one-day jury trial are set forth in Code of Civil Procedure §§ 630.01 to 630.12 and Rules of Court 3.1545 to 3.1552. (Repealed 1-1-2016, unless extended.) Upon stipulation by the parties, the court will consider modifications to the stated procedure for an expedited trial.

If the parties stipulate to EJT, they will not be required to complete other ADR prior to trial setting. (Eff. 07/01/17)

3-128. SISTER STATE MONEY JUDGMENTS

Upon the filing of an Application for Entry of Judgment on a Sister-State Judgment pursuant to CCP 1710.15, the filing party shall also submit to the Clerk of the Court a "Clerk's Judgment on Sister-State Judgment" form (San Joaquin Superior Court local form 87-adopted for optional use), or other Judgment consistent with CCP 1710.5. (Eff. 01/01/20)

RULE 4. PROBATE
PART ONE
GENERAL PROCEDURAL GUIDE

4-101. ALL PETITIONS

INTRODUCTION

- A. General. The Probate Rules for San Joaquin County Superior Court set forth local policies and procedures of the probate department. These rules do not attempt to restate or summarize statutory or case law or estate administration in general. Guidance on probate law and practice may be found in publications such as California Decedent Estate Practice, California Trust Administration, and California Conservatorship Practice, which are published by CEB Continuing Education of the Bar - California.

These rules, although binding on parties, may be departed from in the discretion of the Court.

- B. Contact Information. Website: For current contact information, tentative rulings, and the online probate calendars parties should refer to the court's website at: www.sjcourts.org. (Click on the "Divisions" tab, then "Probate" in the drop-down list, to Access the probate page). All local forms referred to in this rule are available at and can be downloaded from the court website. (Click on the "Forms and Filing" tab on the courts home page, then "Local Forms" in the drop-down menu.)

The following may be helpful in matters presented to the Probate Court:

Clerk of the Probate Court: The physical address of the Probate Clerk is 180 E. Weber Avenue, Fourth Floor, Stockton, CA 95202. The mailing address is Superior Court of California – San Joaquin, Probate Department, 180 E Weber Avenue, Suite 416, Stockton, CA 95202.

- C. Pleadings / Calendaring
1. Petitions with all supporting papers, excepting the Notice of Hearing and or proof of service, must be on file four weeks before the hearing date.
 2. Notice of Hearing and or Proofs of Service for the initial petition shall be filed with the Clerk at least ten (10) court days prior to the day of hearing. Any other Proofs of Service shall be filed with the Clerk contemporaneously with the papers to which they pertain.
 3. Proofs of Publication shall be filed with the Clerk at least five (5) court days prior to the day of hearing.
 4. Matters involving the Public Defender, or the Public Conservator, must be set for hearing Tuesdays or Thursdays only, unless a stipulation for another day, signed by the Public Defender and or the Public Conservator is filed at the same time as the initial petition. (Eff. 01/01/20)

4-102. UNCONTESTED MATTERS

Evidence

At a hearing on a verified petition oral testimony will not be permitted. All evidence should be stated in the petition, or accompanying declaration. (Eff. 01/01/20)

4-103. CONTESTED MATTERS

If a contested matter can be submitted on the pleadings with argument, it will be heard at the end of the probate appearance calendar. As time permits, brief offers of proof will be allowed.

Contested matters requiring two hours or less will be heard on a date certain in the Probate Department. Contested matters estimated to take more than two hours will be set in the Probate Department and heard as scheduling permits. Caveat: The court does not mail notices of continued hearings. (Eff. 01/01/14)

4-104. WHEN PERSONAL APPEARANCE REQUIRED

- A. The petitioner and the petitioner's attorney shall appear on all petitions for appointment of a guardian or conservator.
- B. The attorney for a conservatee, or ward, shall personally appear on petitions which concern the conservatee, or ward, respectively.
- C. The petitioner and or petitioner's counsel shall appear for confirmation of sale of real property.
- D. Any matter which by law requires the personal appearance of any person or any matter which the Court may in its discretion require an appearance. (Eff. 01/01/20)

4-105. CONSOLIDATION WITH THE LOWEST NUMBER

Whenever it appears that actions or petitions with different numbers have been filed with reference to the same decedent or the same ward or conservatee or the same trust, the court will on its own motion consolidate all of the matters and assign the appropriate case number as the lead number. (Eff. 01/01/11)

4-106. EX PARTE APPLICATIONS

The following ex parte applications are exempt from the notice requirements of this chapter:

- 1. Ex parte application for Withdrawal of Funds from Blocked Account;
- 2. Ex parte application for Appointment of Guardian Ad Litem;
- 3. Ex parte application to Increase Bond (Local Form);
- 4. Ex parte application to Petition for Final Discharge and Order;
- 5. Exceptions contained in CRC 3.1207.

- A. The Probate Court will not entertain any ex parte petition that does not comply with California Rules of Court 3.1200 through 3.1206, and is not accompanied by a declaration that makes "an affirmative factual showing... containing competent testimony based on personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte." California Rule of Court 3.1202(c).
- B. For any Law and Motion ex parte matter, it must be approved and scheduled by the Probate Judge through his or her clerk, prior to filing documents in the clerk's office. The courtroom phone numbers are listed on the public website at www.sjcourts.org.
- C. Any other ex parte matters not covered above, shall be submitted to the probate clerk for review by the probate examiners. The court will either issue an order or provide a hearing date within 72 court hours of the documents being submitted.
- D. If an ex parte petition for appointment of any conservator or a guardian is reviewed and given a date, the court will require five (5) days' notice has been given (Probate Code sections 2250(e) and 2250.2 through 2250.6), unless the petitioner has shown both irreparable harm or immediate danger, and "good cause" for waiving the notice requirements.
- E. Counsel requesting the waiver or shortening of any notice time periods prescribed by the Probate Code must submit a Declaration of Due Diligence to the Court citing the specific notice provision at issue, setting forth facts relating to the efforts to give such notice, or facts supporting the conclusion that it was impossible to give such notice; and explaining the "good cause" for waiving or shortening the time.
- F. A party seeking an ex parte order must submit the application and all supporting papers and fees to the Clerk for filing no later than 24 hours prior to the hearing. The Clerk may reject Petitions that do not comply with the subsections above.
- G. An ex parte order will not be granted unless accompanied by a verified petition (or a sworn declaration where applicable) containing facts and law to justify granting the requested relief.
- H. Ex parte petitions filed in decedent's estates for the sale of stock or personal property must allege whether the property is specifically bequeathed. If bequeathed, the consent of the specific legatee to the sale must accompany the petition. (Eff. 01/01/20)

4-107. ADDITIONAL INFORMATION REQUIRED

- A. Where any petition calls for the relationship of the heirs or devisees, including but not limited to a Petition for Probate, Probate 850 Petition, a chart or list of lineal descent must be included. If any beneficiary named in the Will, Trust or other document has predeceased the testator, the fact must be stated.
- B. Where any petition calls for family members, or heirs and his or her address to be listed, the individuals name shall be listed and where an address would be listed "Deceased" shall be listed. In addition, proof of death is required. Proof of death can be established by, but is not limited to, a death certificate, an obituary or declaration. (Eff. 01/01/20)

4-108. ORDERS – CONTENTS, ATTACHMENTS & SIGNATURE PAGE

- A. All orders and judgments in probate matters must be completed so that their general effect may be determined without reference to the petition on which they are based. All matters actually passed on by the court, including the relief granted, the names of persons and description of property (and if real property involved, the legal description and/or APN thereof), amounts of money affected, the terms of trusts, and the provisions of leases or other agreements, must be set forth with the same particularity which is required in judgments in civil matters.
- B. Riders and exhibits should not be attached to an order or decree; except that an exhibit setting forth legal descriptions, a statement of trust terms, and the like may be attached if specifically incorporated in the body of the order or decree.
- C. The Judge's signature shall appear at the end of the last attachment with an appropriate indication of that fact on the last page of the body of the order or decree. The Judge's signature should not appear on a page that doesn't contain any other text. (Eff. 01/01/14)

4-109. WHEN COPY OF PETITION MUST BE INCLUDED WITH NOTICE OF HEARING

- A. In the following cases a copy of the petition as well as a copy of the Notice of Hearing must be served on all interested parties:
 - 1. Where the petition contains the accounting of a trustee, personal representative, conservator or guardian, or
 - 2. Where a fiduciary or attorney is requesting extraordinary fees or commissions.
- B. A courtesy copy of the petition which includes an accounting shall be submitted to the Probate Clerk for the court examiner at the time the original is filed, marked in red in the upper left-hand corner "Examiner's Copy". (Eff. 01/01/20)

4-110. "RESERVED FOR FUTURE USE" [4-110 Repealed 01/01/20]

4-111. REQUESTING A CONTINUANCE

- A. Continuance of initial hearing.

The petitioner may request to continue the initial hearing, if no objection has been filed, on any matter by contacting the probate clerk. When the request to continue is made at least thirty (35) calendar days prior to the initial hearing, the clerk may approve the continuance request and will vacate the initial hearing date and reschedule the hearing to the new date

If the notice of hearing was previously served, an amended notice of hearing must be served. The amended notice must be served in the timeframe required for the underlying petition and or motion.

When the request to continue is made fewer than thirty-five (35) calendar days prior to the initial hearing, the request must be reviewed by the court. A tentative date for the continuation will be provided. The initial hearing will ordinarily remain on calendar, and any continuance will be ordered in open court.

B. Contested matters may be continued by Stipulation and Order.

Before the Stipulation and Order is submitted to the court, Counsel or a self-represented party must call the courtroom clerk to obtain a new date. The Stipulation must be signed by all parties who have appeared in the matter.

C. Continuances of subsequent hearings.

All other requests to continue hearings must be reviewed by the court. The next hearing will ordinarily remain on calendar, and any further continuance will be ordered in open court.

D. Matters Not Approved.

At the call of the calendar, if the matter is not ready for hearing, it will be continued for at least four (4) weeks, unless good cause is shown otherwise. Any matter continued two (2) times may be ordered off calendar or denied.

E. Nothing in this rule shall excuse any party from complying with the notice requirements of the Probate Code or the California Rules of Court. (Eff. 01/01/20)

4-112. CAPTION ON PLEADINGS

The caption of each pleading shall include the date, time and the department of the hearing. (Eff. 01/01/20).

4-113. COURT CREATED TRUSTS

Where a trust is created in a conservatorship, guardianship, or Probate Code section 3100 petition, or by a decree of distribution in a decedent's estate, all future proceedings relating to the trust must be filed as a new separate case. (Eff. 01/01/09)

4-114. PROBATE CODE 850 PETITIONS CONFIRMING PROPERTY

A. Whenever a Petition is filed under the authority of Property Code §850, et seq, which seeks to establish the owner of an interest in property, the Petition shall plead facts which establish, and list, the persons to be served pursuant to Probate Code §851, including, but not limited, to the following persons:

1. Each person claiming an interest in or having title to, or possession of, the property,
2. Each known intestate heir,
3. Each known devisee whose interest in the property would be affected.

B. The petition shall set forth the form of record title and character of ownership at all relevant times.

C. If the form of record title is based on a written document, a copy of the document shall be filed with the petition. (Eff. 01/01/20)

4-115. COSTS GENERALLY NOT ALLOWED COUNSEL, ADMINISTRATOR OR TRUSTEE

Ordinarily the court will not allow reimbursement for costs of duplication of documents, telephone calls, postage, FAX (except court charges), parking fees or ordinary mileage incurred by the

attorney, personal representative or trustee, as these are part of overhead, and should be absorbed in fees or commissions. (Eff. 01/01/20)

4-116. MEET AND CONFER REQUIREMENT

In the event of any contest or objection to any petition on the probate calendar, the parties or his or her respective attorneys shall make a reasonable and good faith attempt to informally resolve the controversy at a face-to-face conference, if possible, otherwise by telephone conference, before any hearing of the contested petition. (Eff. 01/01/20)

PART TWO

DECEDENTS' ESTATES

4-201. NOTICE TO NAMED CONTINGENT LEGATEES AND BENEFICIARIES

In addition to the Notice of Hearing required to be mailed by Probate Code Sections 8110-8113, notice shall also be mailed to all contingent devisees and beneficiaries named in the Will. (Eff. 01/01/08)

4-202. "RESERVED FOR FUTURE USE" [4-202 Repealed 01/01/20]

4-203. NOTICE OF REFUSAL TO PROBATE REJECTED WILL OR CODICIL

- A. A petitioner who files a petition for letters of administration, letters of administration with will annexed, probate of will and for letters testamentary, to determine succession to real property, or a spousal property petition must comply with this rule if either of the following is true:
- (1) The petition requests a finding that the decedent died intestate when a will and/or codicil has been lodged as an original with the court or a copy of a will and/or codicil has been otherwise filed with the court.
 - (2) The petition requests probate of or distribution under a will and/or codicil, and a different will and/or codicil has been lodged as an original with the court or a copy has otherwise been filed with the court.
- B. The petitioner shall serve a copy of the rejected will and/or codicil attached to Local Form *Notice of Refusal to Petition for Probate of Will or Codicil* on all heirs of the decedent or potential beneficiaries under the document at least 15 days prior to the hearing on the petition.
- C. This rule does not apply if any of the following is true:
- (1) The petition requests probate of or distribution under a will that purports to have been executed after the date of rejected will and/or codicil and that expressly revokes all prior wills.
 - (2) The petition is for letters of administration or distribution under intestate succession and the rejected will and/or codicil provides for distribution that is identical to intestate succession and does not appoint a party other than petitioner to serve as executor. (Eff. 01/01/20)

4-204. COURT CONFIRMATION OF SALE BY REPRESENTATIVE WITH FULL AUTHORITY UNDER I.A.E.A.

An executor or administrator who has been appointed with full powers under the I.A.E.A. but who voluntarily petitions for court confirmation of the sale of real property must meet the requirements for sale by a representative without full authority. (Eff. 01/01/09)

4-205. CONTRACTS WITH BROKER OR AGENT

- A. Any application for order approving an exclusive listing agreement with a real estate broker or agent shall include a completed copy of the proposed written listing as an attachment. Such application may be submitted ex parte as an "Order on Matter Not Requiring Hearing" as described in San Joaquin County Local Rule 4-106 E.
- B. Upon the confirmation of the sale of real property, justification is required for any commission in excess of six percent. (Eff. 01/01/20)

4-206. APPLICATION FOR FAMILY ALLOWANCE

The petition shall include:

- 1. The applicant's income from sources outside estate;
- 2. An itemized list of the applicant's assets, and a statement of the approximate value of each;
- 3. A general statement of the assets and of the liabilities of the estate;
- 4. The date of the application;
- 5. The date of the decedent's death; and
- 6. A general statement of other applications (if any) on file for allowances. (Eff. 01/01/11)

4-207. PETITION FOR PRELIMINARY DISTRIBUTION

- A. The petition shall not be granted unless the inventory and appraisal has been filed.
- B. The petition for preliminary distribution must state:

The approximate value of the property remaining in the estate after the proposed distribution, and an estimate of the total amount of unpaid taxes, unpaid claims and other liabilities.
- C. If waiver of bond for any distribution is sought, the petition shall include allegations that:
 - 1. Notice to any known and reasonably ascertainable creditors has been given;
 - 2. The estate is solvent; and

3. The good cause, if any, why bond should not be required, including that time for filing or presenting claims against the estate has expired and that all taxes and uncontested claims have been paid or are sufficiently secured. (Eff. 01/01/11)

4-208. REQUEST FOR PARTIAL ALLOWANCE ON STATUTORY COMPENSATION

- A. The petition must contain the following allegations:

That the requested sums can be paid without detriment to the estate or to any person interested in it or to any creditor thereof.

The percentage that the requested amount bears to the total statutory compensation to which the petitioner or the attorney will be entitled on final settlement of the estate, and that (1) the same percentage, or more, of the total ordinary work required in the estate has been completed, and (2) payment of the requested allowance would leave a reserve exceeding the ordinary work remaining to be done.

- B. If an allowance of statutory attorney fees is requested, the attorney shall sign a declaration at the end of the petition attesting to the truth of the allegations and serve notice of the request. (Eff. 01/01/11)

4-209. STATUS REPORTS

The status report required by Probate Code Section 12200 shall be made on local form "Report of Status of Administration."(Eff. 01/01/20)

4-210. FORM OF ACCOUNT FOR INCOME AT FINAL DISTRIBUTION

When all or any part of the estate is to be distributed to a trustee, and income accumulated during probate is to be paid by the trustee to the trust beneficiaries, the form of account shall properly allocate receipts and disbursements between principal and income.

When a specifically devised or bequeathed asset has earned income and/or incurred expenses during probate administration, the form of account shall segregate such income and/or expenses from the general income and expenses of the estate. This may be done by a schedule attached to the accounts and incorporated by reference.(Eff. 01/01/08)

4-211. "RESERVED FOR FUTURE USE" (4-211 Repealed 01/01/14)

4-212. FEES AND COMMISSIONS MUST BE FIXED BEFORE PAYMENT

A petition for partial allowance on statutory compensation, filed prior to the petition for final distribution must contain a recital of the work actually completed. Ordinarily the last 30 percent of the statutory compensation will not be allowed prior to the approval of the final accounting. (Eff. 01/01/08)

4-213. EXTRAORDINARY ATTORNEY FEES

- A. Petition and Prayer

Application for extraordinary compensation will not be considered unless both the caption and the prayer of the Petition and the Notice of Hearing contains a reference to such application.

B. Notice of Hearing

In every case, notice shall be sent to all persons entitled to a share in the estate, except those whose shares will not be charged with the compensation requested. Notice shall include a copy of the petition as set forth in Local Rule 4-109. An appearance by the attorney will normally be required.

C. Declaration Regarding Fees

The requirements of California Rule of Court 7.702 shall be set out in a declaration separate from the Petition. The Declaration shall outline all services rendered, including both ordinary and extraordinary services that were provided. Statutory time is reviewed and considered for the purposes of awarding extraordinary fees only, not to reduce or alter statutory fees. The Declaration must:

1. Set forth categories of services rendered, ordinary services can be lumped together in a category labeled "Statutory";
2. Set forth in each category the date and a description of the services rendered;
3. Set forth in each category the hourly rate of each person who performed the services and the hours spent by each of them; and
4. Comply with the requirements set forth in rule 7.703(e) of the California Rules of Court if paralegals are used. (Eff. 01/01/20)

4-214. FEES TO ATTORNEY AND PERSONAL REPRESENTATIVE WHO ARE ASSOCIATED

If both the representative and the attorney for the personal representative have a fee sharing arrangement with respect to the estate or law practice, only the statutory commissions as representative will be allowed unless: the Will expressly provides otherwise, or, an order allowing statutory attorney fees has been granted by the court prior to the filing of the petition for final distribution. Such order will not be granted except in cases involving compelling circumstances.

The petition must be set for hearing. The petition must be set for hearing and fifteen (15) days' notice thereof must be given to all persons. (Eff. 01/01/11)

4-215. REQUIRED ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION

In addition to other items required by law, a petition for final distribution shall contain the following:

- A. Facts specifically showing the entitlement of each heir to the portion of the estate to be distributed to that heir, including any information concerning predeceased children.
- B. If there is insufficient cash available to pay the statutory commissions, attorney fees, court costs, and any other items requested to be ordered by the Court to be paid, the Petition must include a statement setting forth the source of the funds for such payment.
- C. A schedule showing the pro-ration of fees and costs.
- D. The Federal Estate Tax has been paid, or, the Federal Estate Tax has not been paid because the estate is too small to require payment of tax, or, the Federal Estate Tax has been deferred by agreement with the taxing agencies. If deferred, whether a lien has been imposed, and pertinent information about the lien.

When proration is required by Probate Code Section 20111, the accompanying account should include a schedule indicating the method by which the proration has been computed.

- E. One of the following allegations concerning creditor's claims:
1. A notice to creditors was given, in the form prescribed by the Probate Code, to all known and reasonably ascertained creditors of the estate; or
 2. Notice to creditors was not required because of the provisions of Probate Code Section 9054; or
 3. No notice to creditors was given because there were no known or ascertainable creditors.
- F. A Proposed Distribution Schedule setting forth in detail the specific items being distributed to each distributee. (Eff. 01/01/14)

4-216. MISCELLANEOUS ADDITIONAL ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION

The following allegations, if applicable, should be included in a petition for final distribution:

A. Distribution to Minors

Where distribution is to be made to a minor a guardian of the estate is ordinarily required and a current certified copy of the letters of guardianship should be attached to the petition. Where distribution is proposed to be made under Probate Code sections 3400 through 3402 or under section 3410, the Petition for Distribution must meet the requirements of the statute.

B. Distribution to a Trust

If distribution is to be made to a trust, an acknowledged statement by the trustee accepting the property under the terms of the trust must be filed with the petition for distribution. Lacking this, a declination to act must be filed, in which case it should be accompanied by a petition by the personal representative for the appointment of a substitute trustee.

C. Distribution to an Assignee

If distribution is to be made pursuant to an assignment of interest, the assignment must be filed and the details of the consideration, if any, set forth in the petition. The assignment must be acknowledged before a notary public.

D. Distribution Pursuant to Agreement

If the distribution is sought other than as provided by the will or by the laws of intestate succession, that fact should be alleged, and a written agreement must be filed signed by all distributees and acknowledged before a notary public.

NOTE: If any such distributee is a minor, or conserved, the agreement must be signed by that party's appointed legal representative. Court approval of a fiduciary's agreement must be provided with the distribution petition or a petition for approval of the agreement may be noticed for hearing together with the petition for distribution.

E. A Statement of the Status of Assets

The petition must contain a statement of the community or separate status of all assets to be distributed.

F. Reimbursement for Costs Advanced

If counsel or the personal representative is seeking reimbursement for costs in excess of \$1,500.00, an itemization of those costs must be set forth. (Eff. 01/01/20)

4-217. REQUIRED MATTERS IN A DECREE OF FINAL DISTRIBUTION

A. Distribution to a Minor or Conserved Person

A decree ordering distribution to minor or conservatee shall provide that the property be distributed to the fiduciary or other person approved by the Court on behalf of the distributee and identify under what authority. The fiduciary or other person shall sign the distributee's receipt and identify under what authority the fiduciary or other person acts.

B. Distribution to Testamentary Trustee

The terms of the trust and the powers of the trustee must be set out in full in the decree of distribution, and not merely incorporated by reference. When appropriate, the language of the will should be paraphrased in the decree to eliminate references to "my" and to substitute "the decedent's". (Eff. 01/01/11)

4-218. NOTICE OF MOTION TO WITHDRAW AS ATTORNEY OF RECORD

When presenting a Motion to Withdraw as Attorney of Record, Notice shall be provided to all beneficiaries as required by Probate Code §1220 in a Decedent's Estate where the withdrawal is being requested due to the fiduciary's failure to cooperate. (Eff. 01/01/13)

PART THREE

SPOUSAL PROPERTY PETITIONS

4-301. PROCEDURE WHERE WILL CONTAINS MINIMUM SURVIVAL TIME

If a Will contains a period of survival as a condition precedent to the spouse's right to receive assets, the petition cannot be heard until the survival period has expired. (Eff. 01/01/20)

4-302. WHERE PASSAGE OF TITLE TO COMMUNITY PROPERTY IS SOUGHT

In a petition for order confirming the passage of property to the surviving spouse without administration (Probate Code Sections 13650, et seq.), unless specifically devised, the ultimate facts which establish the community character of the property must be stated, including:

The date the asset was acquired and the date of the marriage.

The manner in which the asset was acquired, e.g., purchase, exchange, gift, or inheritance, and, if acquired by purchase or exchange, how the source of the consideration was community property, or, if acquired by gift or inheritance, how the asset is now community property, e.g., gift or bequest to both spouses, transmutation agreement, etc. (Eff. 01/01/09)

PART FOUR

TRUSTS

4-401. FEES

- A. This rule applies to all trusts subject to the continuing jurisdiction of the court, to petitions for approval of trustee compensation, and to objections to petitions for trustee compensation.

If the court has jurisdiction of the trust, no trustee or attorney fees shall be paid until there has been an order of court fixing the same or unless the fees qualify as "Advance Payments" as outlined in these Rules.

- B. If the petition for fees is part of a petition seeking other relief, the title of the petition embodying such application for fees and the notice of hearing shall include a reference to the request for fees.

- C. Trustee's Fees: In the absence of a formula in the trust for fees, Trustee compensation shall be presumed reasonable if it does not exceed 1% (one percent) of the asset value of the estate on the date of the close of the account for a professional trustee or three-fourths of one percent for a non-professional. However, nothing in this rule limits the court's discretion to find as unreasonable a fee totaling less than or that exceeds the percentages listed.

If the account period contains more or fewer than twelve months, the normal fee will be proportionately increased or decreased. A trustee who seeks greater compensation must detail in the petition facts that would justify the request; if more than one category of unusual services was rendered, the services must be separately stated and a value assigned to each.

- D. A professional trustee shall include a licensed Private Professional Fiduciary, bank, entity authorized to transact business as a trust company or any public officer or agency of the State of California or any county within California.
- E. Attorney's fees: In the absence of a formula in the trust for fees of the attorney, compensation shall be presumed reasonable if one-third of the professional trustee's normal fee, as computed in Section C, for a twelve-month period, or \$1,000.00, whichever is greater. If there is a non-professional trustee, the attorney fee is presumed reasonable if equal to one-half of the trustee's normal fee, as computed in Section C, for a twelve-month period, or \$1,000.00, whichever is greater.
- F. An attorney or trustee who seeks greater compensation than the presumed reasonable fees listed in Section C and or E above shall provide a detailed declaration; separate from the petition outlining the requested fees. The petition shall provide the information required in California Rules of Court 7.776 and the date and description of services rendered and the hourly rate of each person who performed the services and the hours spent by each of them. (Eff. 01/01/20)

4-402. REPORT OF TRUSTEE, INCLUDING SPECIAL NEEDS TRUSTEE

A report shall contain:

- A. A concise reference to the purposes of the trust and how they have been satisfied by the trustee during the period of the account;

- B. The names and addresses of the beneficiaries (both present and future interests);
- C. A brief summary of distribution made to or for the benefit of the beneficiaries, and, in the case of a special needs trust, a brief summary establishing that the distributions do not disqualify the beneficiary from public benefits.
- D. The investment objectives and results with reference to the purposes of the trust, when appropriate;
- E. A statement of the percentage rate of return on all property invested. The purpose of the report is to provide a brief summary of the account measured in terms of the specific trust objectives and requirements. It should not merely recite what has been done, but should relate the activities reflected in the account to the purposes and persons for which the trust was created.
- F. In the case of a special needs trust, a statement establishing that at the current rate of return and the current rate of distribution the trust corpus will be preserved for the anticipated lifetime of the beneficiary. (Eff. 01/01/09)

4-403. "RESERVED FOR FUTURE USE" [Repealed 01/01/13]

PART FIVE

CONSERVATORSHIP

4-501. APPOINTMENT OF COURT INVESTIGATOR

- A. The San Joaquin Superior Court Investigator of the Superior Court for the County of San Joaquin is hereby appointed to investigate all petitions for appointment of temporary or general conservator, grant of extraordinary powers, sale of personal residence, exercise of substituted judgment, annual conservatorship accounts and petitions regarding proceedings for particular transactions. In these matters no petition for appointment is necessary. To avoid such automatic appointment, a petition to waive appointment must be filed concurrently with the underlying petition.
- B. A copy of a petition which requires a report from the probate investigator shall be submitted to the Probate Clerk for court investigator at the time the original is filed, marked in red in the upper left-hand corner "Investigator's Copy". (Eff. 01/01/20)

4-502. "RESERVED FOR FUTURE USE" [4-502 Repealed 01/01/20]

4-503. TEMPORARY CONSERVATORSHIP BEFORE NOTICED HEARING

A petition for appointment of temporary conservator, made ex parte in advance of the regularly noticed hearing, must be delivered to the Court Investigator at least five calendar days in advance of the ex parte hearing. (Eff. 01/01/20)

4-504. "RESERVED FOR FUTURE USE" [4-504 Repealed 01/01/20]

4-505. COMPENSATION AND FEES

A. Compensation of Conservator/Guardian

1. Conservator/Guardian of the estate or of the person and estate

A fee will be routinely allowed by the court at the time an annual accounting is filed for services during the preceding twelve-month period of three-fourths of 1% of the market value of the assets on the date of the current accounting.

- (a) If the account period contains more or fewer than twelve months, the normal fee will be proportionately increased or decreased.
- (b) A fiduciary who seeks greater compensation must detail in the petition facts that would justify the entire fee request. If unusual services were rendered in more than one category, the services must be separately stated and a value assigned to each.

2. Conservator/Guardian of the person only

A guardian or conservator of the person may at any time obtain an order compensating him or her on an hourly basis, by filing a noticed petition for periodic compensation. If no order has been sought prior to an annual accounting, the guardian or conservator of the estate may include at that time a petition for compensation of the guardian or conservator of the person for services during the preceding accounting period, on an hourly basis. The basis for the requested hourly rate must be set forth. The nature of the tasks and the actual or anticipated hours for the tasks must also be set out. Consideration will be given to the degree of difficulty, the training or experience required. The efficiency and the effectiveness shown or reasonably anticipated, the prevailing market rate for the same or similar tasks and the benefit to the conservatee or ward.

B. Fees of Attorney

The fee usually allowed to the attorney for the preparation, filing, and presentation of the report and order in connection with an annual accounting is:

- 1. For counsel to a licensed Private Professional Fiduciary, bank, or entity authorized to transact business as a trust company, an amount equal to one-third of the fiduciary's normal fee, as computed in Section B1, for a twelve-month period, or \$1,000.00, whichever is greater;
- 2. For counsel to a fiduciary who is not a licensed Private Professional Fiduciary, bank, or entity authorized to transact business as a trust company, an amount equal to one-half of the fiduciary's normal fee, as computed in Section B1, for a twelve-month period, or \$1,500.00, whichever is greater;
- 3. An attorney who seeks greater compensation must detail in the petition the time spent, the difficulty of the services, the results accomplished, and other facts to guide the court in assessing the merit of the request. If more than one category of services was rendered, the services must be separately stated and a value

assigned to each. The detail must include the hourly rate of each person who performed services and the time spent by each of them.

4. Attorney fees for accountings for periods longer than 12 months will not automatically increase, proportionately or otherwise.

C. Fees of Attorney for a Conservatee or a Minor

1. The Conservator(s) or attorney for the Conservator(s) and the attorney for the Conservatee shall communicate with each other regarding the issue of attorney fees for the attorney for the Conservatee. A request for fees for the attorney for the Conservatee shall be addressed in all accounts.
2. The Court will ordinarily allow a sum not to exceed \$1,000.00 as fees for the attorney for the Conservatee without specific itemization. The work covered by this fee includes the review of the Court Investigator's report, review of an account, if any, conferring with the Conservatee, and a report to the Court, either orally or in writing.
3. An attorney for the Conservatee who requests attorney fees not to exceed \$1,000.00 may make the request by way of Ex Parte Application as follows:
 - a. The Ex Parte Application must be accompanied by a Notice of Hearing with a Proof of Service of Mailing of the Application and Notice to all parties otherwise entitled to Notice of a Petition for Fees.
 - b. The Ex Parte Application must be submitted with the filing fee required by GC §70657(a)(2), as amended,
 - c. The Ex Parte Application will be set for hearing on the Court's Ex Parte calendar on ten (10) days' Notice. No appearance will be required at the Ex parte hearing. If there are any issues at the time of the Ex Parte hearing, the Court will continue the matter so that the attorney will have an opportunity to appear.
 - d. An Order shall be submitted with the Ex Parte Application. If there are no Objections to the Ex Parte Application, the Court will issue the Order for Fees at the hearing. (Eff. 01/01/20).

4-506. WAIVER OF ACCOUNTING—WHEN PERMITTED

Ordinarily, neither a minor nor a conserved person may waive an accounting. However, a minor who has attained majority will be permitted to waive a final accounting upon a showing of unusual circumstances, and upon personal appearance in court at the hearing on the petition for termination without an accounting. A conserved person may waive an account upon a showing of competence. (Eff. 01/01/09)

4-507. SALE OF REAL PROPERTY UNDER INDEPENDENT POWERS

A conservator or guardian who has been granted the independent power to sell real property, but who petitions the court for confirmation of sale, sale, must meet the requirements for sale as if the power had not been granted. (Eff. 01/01/09)

4-508. SUBSTITUTED JUDGMENT

A. Court Investigation

A proceeding brought under Article 10, commencing with Section 2580 of the Probate Code, for court order authorizing or requiring a proposed transaction requires investigation by the court investigator.

B. Documents Which May Have Testamentary Effect

The petition shall be supported by copies of any known documents which may have testamentary effect or which purport to gift any property of the Conservatee before death. Such documents may be submitted with a request and proposed order that they be kept under seal, not to be examined except upon order of the court. The court shall seal any such document for which a request is made by the party submitting the document.

C. “Community Resource Allowance” and “Minimum Monthly Maintenance Needs Allowance”

The court will not hear petitions, nor issue orders, regarding “Community Resource Allowance” or “Minimum Monthly Maintenance Needs Allowance” unless such petition is accompanied by points and authorities specifying the jurisdiction and authority of the Probate Court to hear and decide such matters.

D. The Effect upon the Conservatee

The petition shall set forth the circumstances of the Conservatee should the petition be granted, including, but not limited to, assets remaining, the projected needs of the Conservatee and the manner in which those needs will be met.

E. Where a petition seeks transfer of all, or a major portion, of a spouse’s assets for the purpose of eligibility for public benefits the estate plan of the receiving spouse for those assets must be set forth for the court. Estate plan documents may be submitted under seal and after the hearing, the documents shall not be subject to inspection except upon order of the court.

F. When a trust is created under PC Section 2580 or 3100 the Order shall provide, as a condition of approval that the Trustee shall commence a separate trust proceeding with a probate case number in this county by filing an Acceptance of Trust by Trustee, with a certified copy of the Order for Substituted Judgment and the Trust attached. This shall be done within 30 days of the Order being filed. A Receipt of Assets by the Trustee shall be filed in the new case file along with the Acceptance of Trust, as well as the Bond, if there is a bond to be posted under the terms of the trust. (Eff. 01/01/11)

4-509. DOCUMENTS ACCOMPANYING AN ACCOUNT TO BE LODGED, NOT FILED

A. The documents required by Probate Code section 2620(c) shall be lodged, not filed, at the time the accounting is filed. The documents shall be attached to a cover sheet containing the case heading and a caption identifying the petition they accompany and the date time and department of the hearing. Upon settlement of the account, the documents shall be returned to the party who lodged them to be held until such time as the appeal period has run, unless the Court orders otherwise. If the documents are not otherwise retrieved within thirty (30) days, they may be destroyed by the clerk.

- B. If there are investments with a brokerage firm, the annual brokerage account statement shall be included with the required documents
- C. If original documents cannot be obtained and copies are lodged in lieu of the originals, a Declaration setting forth the reason why the originals are not available shall be lodged with the copies. (Eff. 01/01/14)

4-510. START-UP FEE

Where a petition seeks a fee for an attorney pursuant to Probate Code section 2640 for the bringing of the successful initial petition to conserve and the start-up of the conservatorship, the court will ordinarily allow \$1,500.00 for a conservatorship of the person only, without specific itemization. For a conservatorship of the person and estate or estate only, the court will ordinarily allow an advance of \$3,000.00 for attorney fees, time for which shall be itemized in the first account. At the time of the first account additional fees may be requested, or a portion of the advance shall be paid back depending on the time expended by the attorney for the conservatorship petition and accounting. Nothing in this rule limits the court's authority to award higher or lower attorney fees than those listed above. (Eff. 01/01/20)

PART SIX

PARTICULAR TRANSACTIONS

4-601. PROCEEDINGS SHALL CONFORM TO SUBSTITUTED JUDGMENT

Insofar as possible, the requirements of the Probate Code in Article 10, commencing at Section 2580, and the California Rules of Court and the Court's local rules, shall be applied to Proceedings for Particular Transactions under Chapter Three of Part Six of the Probate Code, commencing with Section 3100. The requirements of the Rules for Substituted Judgment in Conservatorship shall apply to Proceedings for Particular Transactions. (Eff. 01/01/09)

PART SEVEN

GUARDIANSHIP

4-701. GUARDIANSHIP RULES

The rules for conservatorship apply to guardianship insofar as possible. (Eff. 01/01/08)

4-702. "RESERVED FOR FUTURE USE" [4-702 Repealed 01/01/20 (Incorporated in to 4-703)]

4-703. APPOINTMENT OF TEMPORARY GUARDIAN OF THE PERSON

- A. A petition seeking the temporary appointment of a guardian before the regularly noticed hearing using Judicial Council form GC-110, rather than GC-110(P), shall be accompanied by a declaration explaining the emergency that requires a guardian be appointed before the regularly noticed hearing
- B. An application for ex parte appointment of temporary guardian shall comply with California Rule of Court 3.1203 and 3.1204 for those persons, other than the minor(s), entitled to notice of the petition. The form set forth in these rules for ex parte notice in Family Law matters may be used, Rule 7-100. A declaration establishing compliance with Probate Code Section 2250 is also required.

- C. The court will routinely deny ex-parte applications which will result in a change of custody. Child Protective Services of the San Joaquin County Human Services Agency and peace officers have the authority to remove children in an emergency.
(Eff. 01/01/20)

4-704. GUARDIANSHIP OF PARTICULAR PROPERTY

Proposed orders and letters must specifically identify the property to which the guardianship is limited.(Eff. 01/01/09)

PART EIGHT

MINORS COMPROMISE

4-801. ATTORNEY FEES IN CASES INVOLVING MINORS OR DISABLED PERSONS

It is the duty of the attorney to assure that funds are deposited in accordance with the order approving compromise. Attorney's fees shall not be paid until a receipt, declaration and or other documentation required by the court confirming adherence to the order approving compromise is filed with the court. (Eff. 01/01/20)

4-802. SETTLEMENTS WITH AN ANNUITY

Where the settlement includes the purchase of a single premium deferred annuity, an exemplar of the proposed annuity contract and schedule of payments to be made must be attached to the petition. The annuity shall provide that the contingent beneficiary is the minor's or the disabled person's estate. The rating of the company issuing the annuity shall be disclosed in the petition.
(Eff. 01/01/11)

4-803. SETTLEMENTS CREATING A TRUST

Where the settlement includes establishment of a special needs trust, or other trust:

1. In all cases where a petition to approve the compromise of a claim of a minor or person with disability filed under Probate Code section 3600 et seq. proposes to have the settlement funds distributable to the minor or person with disability administered under a special needs trust, as provided in Probate Code section 3602, 3604 or 3611, the petition to establish the special needs trust must be filed under a separate case number, for approval concurrently or before the Minors Compromise. No payment or transmittal of the proceeds of the settlement agreement or judgment distributable to the minor or person with disability shall be made to the trustee until the special needs trust has been approved for establishment.,
2. The order approving the settlement shall provide, as a condition of final approval of the settlement, that the trustee shall file an Acceptance of Trust and receipt of funds within 30 days of the order being filed. (Eff. 01/01/20)

4-804. "RESERVED FOR FUTURE USE" [4-804 Repealed 01/01/20]

RULE 5. JUVENILE

5-100. PRE-HEARING DISCOVERY IN DEPENDENCY ACTIONS

- A. All discovery shall be by State Rules of Court (Rule 1420), there shall be no discovery by Code of Civil Procedure. Title III of Part IV §1985 et seq., except as provided in this rule.
- B. Without further order, parties have leave to use §2020(d), the deposition subpoena, for copying of business records. This use is limited to health care providers, excluding mental health providers, without further order of the court. Notice under § 1985.3, where the consumer is the minor subject of the dependency action, shall be given to Department of Child Protective Services of the Human Service Agency of San Joaquin County in addition to the person or persons specified in §1985(b)(1).
- C. Order for further use of provisions of Title III, shall be sought by motion for pre-hearing discovery, as set forth in State Rules of Court (Rule of Court 1420 § (f)).
- D. Motions for pre-hearing discovery, under the State Rules of Court, shall be made upon five (5) judicial day notice to all parties and shall be heard on a Monday, Tuesday, Thursday or Friday, at 8:30 a.m., in the dependency department or other department where the otherwise next hearing is scheduled. Motions for discovery shall be in writing and shall be accompanied by a declaration affirmatively alleging, where appropriate, (i) a timely and specific request, (ii) a specific refusal or circumstances reasonably implying a refusal to produce, and (iii) that the moving party has met the other party and conferred in good faith. (Eff. 07/01/98)

5-200. EX PARTE APPLICATIONS

- A. Except as provided in this rule, no application for an order shall be made ex-parte unless the applicant shows by written declaration, or statement under oath, that a reasonable effort has been made to give notice to all other parties, who have appeared in the matter, or that notice would be inappropriate or impractical or would result in irreparable injury, or that the order would not result in a significant direct burden or inconvenience to any other party.
- B. This rule shall not apply to applications for protective custody warrants for dependent minors. (Eff. 07/01/98)

5-300. PETITIONS TO MODIFY (§388 W&I)

- A. Notice of the application for modification, pursuant to rule 8-200, shall be made to all counsel of record and to any parent appearing in pro per.
- B. Application shall be made to the Court in a timely manner following discovery of the circumstances alleged to support the petition to modify, and in no event, at a later time which prejudices any party. Applications requesting return of a minor to a parent shall be made not less than 20 judicial days before any previously set hearing pursuant to §366.26 W&I. Where hearing for any petition is requested within 20 judicial days, good cause must be shown in a supporting declaration.

- C. Where hearing is granted:
1. Evidence for the case-in-chief of the requesting party shall be, and for any responding party may be, by declaration, or, in the case of the petitioner being the requesting party, by report of the probation officer/social service worker.
 2. The hearsay statements of the declarations, or report, shall not be sufficient to support the petition unless admissible over objection in a civil action or unless the hearsay declarant is made available for cross examination. The requesting party shall produce the hearsay declarant at the hearing upon written notice by any other party, personally served 10 days prior to hearing or within two judicial days of receipt of the declarations, whichever is later. The responding parties shall produce their hearsay declarant at the hearing upon written notice by any party, personally served five judicial days prior to the hearing or within two judicial days of receipt of declarations whichever is later.
 3. The requesting party shall serve the petition, order for hearing and supporting declarations, or report, on all parties ten judicial days before the hearing, if by personal service or fifteen judicial days, if by mail. Responsive declarations, or report, shall be served five judicial days before the hearing, if personally served, or ten judicial days, if by mail. (Eff. 07/01/98)

5-400. GENERAL COMPETENCY REQUIREMENT

Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel. Because juvenile justice is a specialized area, court-appointed attorneys must meet minimum training and continuing legal education standards as a condition of their appointment in juvenile court matters. Attorneys who seek to represent or to continue to represent individuals in juvenile dependency proceedings shall obtain and comply with the competency rules promulgated by the San Joaquin County Bar Association and as set forth in Rule of Court 1438. (Eff. 07/01/98)

5-401. "RESERVED FOR FUTURE USE" [5-401 Repealed 01/01/14]

5-402. SCREENING FOR COMPETENCY

Effective July 1, 1996, all attorneys who represent parties in dependency court proceedings shall meet minimum standards of training and experience as set forth in Rule of Court 1438(b). (Eff. 07/01/98)

5-403. REPRESENTATION OF MINORS

- A. Non-public agency attorneys who wish to be appointed to represent minors must comply with additional minimum requirements as promulgated by the San Joaquin County Bar Association and approved by the Juvenile Dependency Court Judge.
- B. Non-public agency attorneys who wish to be appointed to represent minors must so inform the San Joaquin County Bar Association and the Juvenile Dependency Court Judge.
- C. Non-public attorneys who do not wish to be appointed to represent minors need not comply with these additional requirements. (Eff. 07/01/98)

5-404. MINIMUM REQUIREMENTS NECESSARY TO CONTINUE TO RECEIVE COURT APPOINTMENTS IN JUVENILE DEPENDENCY COURT

Each attorney must complete a minimum of continuing education hours each year as set forth in Rule of Court 1438(b). (Eff. 07/01/98)

5-405. PENALTY FOR NONCOMPLIANCE WITH RULE 5-403 AND RULE 5-404

- a) If an attorney fails to comply with Rule 5-403, the Juvenile Dependency Court Judge shall no longer appoint said attorney to represent minors in Juvenile Dependency Court until the requirements set forth in Rule 5-403 have been satisfied by that attorney.
- b) If an attorney fails to comply with Rule 8-404, the Juvenile Dependency Court Judge shall no longer appoint said attorney to represent parties in Juvenile Dependency Court until the requirements set forth in Rule 8-404 have been satisfied by that attorney. (Eff. 07/01/98)

5-406. TERMINATION OF PANEL MEMBERSHIP-ADDITIONAL GROUNDS

- A. Lawyer Referral Service Panel attorneys must also comply with the rules and regulations of the San Joaquin County Lawyer Referral Service in order to qualify for and to maintain their current standing with said organization.
- B. Lawyer Referral Service Panel attorneys receive appointments and service on the Panel at the pleasure of the Superior Court. (Eff. 07/01/98)

5-407. APPLICATION OF THESE RULES

Rules 5-400 through 5-409 apply to whatever organization, law firm or entity, whether a group or individual, which holds the contract with the San Joaquin Superior Court to represent clients in Juvenile Dependency Court. (Eff. 07/01/17)

5-408. ATTORNEY COMPLAINT PROCESS

Parties shall be informed of the process to voice a complaint about attorney performance within 30 days of their first court appearance in the Juvenile Dependency Court and when a complaint is lodged with the court, the court shall take appropriate action. (Eff. 07/01/98)

5-409. MINORS' INTERESTS IN OTHER PROCEEDINGS

When a minor who is the subject of a Juvenile Court Dependency case has an interest in any other proceedings which may need to be protected, such interest shall be immediately brought to the attention of the Juvenile Court so that appropriate action may be taken pursuant to Rule of Court 1438(d). (Eff. 07/01/98)

5-410. THE ADVOCATE PROGRAM

The Juvenile Court may appoint child advocates to represent the interests of dependent children. In order to qualify for appointment the child advocate must be trained by and function under the auspices of a Court Appointed Special Advocate program, formed and operating under the guidelines established by the California Judicial Council (W & I 1356.6).

The advocate program shall report regularly to the Judge of the Juvenile Dependency Court with evidence that it is operating under the guidelines established by the National Court Appointed Special Advocate Association and the California State Guidelines for child advocates. (Eff. 01/01/03)

5-411. CHILD ADVOCATES

A. Advocates' Functions

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

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

B. Sworn Officer of the Court

An advocate is an officer of the Court and is bound by these rules. Each advocate shall be sworn in by a Superior Court Judge/Referee/Commissioner before beginning his/her duties and shall subscribe to the written oath set forth in Exhibit A attached hereto.

C. Specific Duties

The Court shall, in its initial order of appointment, and thereafter subsequent order as appropriate, specifically delineate the advocate's duties in each case, which may include independent investigation of the circumstances of the case, interviewing and observing the child and other appropriate individuals, reviewing appropriate records and reports, consideration of visitation 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 shall discharge his/her obligation to the child and the Court in accordance with the general duties set forth in these rules.

Procedures in Dependency Cases (W & I §300)

1. 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 shall be forwarded to the child advocate office for screening and assignment.
2. When an appropriate child advocate has been identified, that person's name shall be submitted to the Court for appointment.
3. Any party to the case may petition the court for a hearing to reconsider the appointment.
4. 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.
5. Any child advocate with a grievance concerning termination may petition the Court for a hearing. Such petition shall 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 shall be a hearing on such a petition. (Eff. 01/01/03)

5-500. RELEASE OF INFORMATION TO ADVOCATE

A. To Accomplish Appointment

To accomplish the appointment of an advocate, the Judge/Referee/Commissioner making the appointment shall sign an order granting the advocate the authority to review specific relevant documents and interview parties involved in the case, as well as other persons having significant information relating to the child, to the same extent as any other officer appointed to investigate proceedings on behalf of the Court.

B. Access to Records

An advocate shall have the same legal right to records relating to the child he/she is appointed to represent as any case manager (social worker or probation officer) with regard to records pertaining to the child held by any agency, school, organization, division or department of the state, physician, surgeon, nurse, other health care provider, psychologist, psychiatrist, mental health provider or law enforcement agency. The advocate shall present his 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 child.

C. Report of Child Abuse

An advocate is a mandated child abuse reporter per Section 11166 of the Penal Code.

D. Communication

There shall be ongoing, regular communication concerning the child's best interests, current status, and significant case developments maintained among the advocate, case manager, child's attorney, attorneys for parents, relatives, foster parents and any therapist for the child. (Eff. 01/01/03)

5-501. RIGHT TO TIMELY NOTICE

In any action concerning the child for whom the advocate has been appointed, the moving party shall provide the advocate timely notice. (Eff. 01/01/03)

5-502. CALENDAR PRIORITY

In light of the fact that advocates are rendering a volunteer service to children and the Court, matters on which they appear should be granted priority on the Court's calendar, whenever possible. (Eff. 01/01/03)

5-503. VISITATION THROUGHOUT DEPENDENCY

An advocate shall visit the child regularly until the child is secure in a permanent placement. Thereafter, the advocate shall monitor the case as appropriate until dependency is dismissed. (Eff. 01/01/03)

5-504. FAMILY LAW ADVOCACY

Should the Juvenile Court dismiss dependency and create family law orders pursuant to W & I Code Section 362.4, the advocate's appointment may be continued in the family law proceeding, in which case the Juvenile Court order shall set forth the nature, extent and duration of the advocate's duties in the family law proceeding. (Eff. 01/01/03)

5-505. RIGHT TO APPEAR

An advocate shall have the right to be present and be heard at all Court hearings and shall not be subject to exclusion by virtue of the fact that he/she may be called to testify at some point in the proceedings. An advocate shall not be deemed to be a "party", as described in Title 3 of Part II of the Code of Civil Procedure. However, the Court, in its discretion, shall have the authority to grant the advocate amicus curiae status, which includes the right to appear with counsel. (Eff. 01/01/03)

5-506. DIRECT CALENDARING OF JUVENILE DELINQUENCY CASES

A. All matters falling within the provisions of Welfare & Institutions Codes section 602 shall be subject to direct calendaring assignment to a judicial officer for all purposes at the time of the filing of a Petition. Upon their filing, cases will be assigned randomly to one of the designated juvenile delinquency departments. Except as otherwise provided by law, the judicial officer assigned to that department will thereafter handle all proceedings involving the matter through termination of jurisdiction, unless otherwise ordered. Nothing herein shall be construed to interfere with the authority of the Presiding Judge, and/or the Presiding Judge of the Juvenile Court to assign or reassign cases as may be necessary for the prompt and efficient disposition of matters coming before the juvenile court. In cases involving alleged co-participants, the courtroom of first appearance will handle the

matter through disposition of all alleged co-participants arraigned concurrently on the matter.

- B. At the time of the initial filing of the Petition, the Clerk's office shall affix to the face of the Petition by stamp or other writing, the following notice:

"This case has been assigned to Judge _____ in department ____ for all purposes, including trial".

(Eff. 01/01/18)

5-507. RECIPROCAL DISCOVERY

The reciprocal discovery rules set forth in Penal Code sections 1054, et. seq., shall apply to all juvenile delinquency cases in San Joaquin County. California Rule of Court 1420 shall continue to apply to juvenile delinquency cases as well. (Eff. 07/01/06)

RULE 6. ELECTRONIC FILING (DIRECT FACSIMILE (FAX) FILING - CIVIL MATTERS
[*Repealed 01/01/20*])

All parties filing documents electronically are referred to and shall also comply with all requirements and conditions for electronic filing (e-filing) and service as set forth in Code of Civil Procedure section 1010.6 and California Rules of Court, rules 2.250-2.261 and 3.110(f)(4), unless this court's local rules provide otherwise. The filing of electronic documents must be affected using the court's electronic service provider.

1. Case Types Subject to Electronic Filing:

- A. Effective January 1, 2020, San Joaquin County Superior Court allows the electronic filing of documents for specific case types as listed on the court's website at www.sjcourts.org. Case types excluded from e-filing can also be located on the court's website.
- B. Additional case types may be phased in over time. Please refer to the court's website for current listings.

2. Documents Subject to and Excluded from Electronic Filing:

- A. Please refer to the court's website for the current list of documents permitted to be filed electronically and excluded from electronic filing. If a document is not listed as accepted or excluded, contact the Clerk of the Court in the applicable division for clarification.
- B. Documents and other materials that are not feasibly converted to electronic form by scanning or imaging shall not be electronically filed.
- C. Additional documents may be phased in over time. Please refer to the court's website for updates.

3. Format of E-filed Documents:

- A. All electronic filed documents must be in electronic text searchable PDF format. There is not a limit on the number of pages a document can contain, unless prohibited by another rule.
- B. Documents containing exhibits must be bookmarked. An electronic bookmark must be created for each exhibit, and between each exhibit a slip sheet must be inserted containing identification of the following exhibit. For example, a page where the words printed are "Exhibit A" or Exhibit B" or other appropriate identification.

4. Acceptance or Rejection of Filing:

- A. Documents electronically submitted to the court for filing may be reviewed by the clerk for certain data elements and/or completeness. Documents are not considered "filed" until they have been accepted by the reviewing clerk.

- B. If after review by the clerk, a document electronically submitted to the court is subsequently determined to be unacceptable for filing; a Notice of Rejection specifying the reason(s) will be generated and provided to the filer. After addressing the issues, it is the sole responsibility of the filer to resubmit the document(s) with payment electronically if they choose to, if the basis for rejection was not due to the document being on the exclusion list.

5. Confirmation of Submission:

- A. The confirmation of submission, subsequent resubmission of rejected documents with corrections and/or fees, as well as the filing of documents with the court electronically is the sole responsibility of the filer. In the absence of confirmation of receipt and filing, there is no presumption that the court received and filed the document.

6. Sealed Documents:

- A. A motion to file documents under seal may be filed electronically. However, documents lodged with the Court Conditionally Under Seal, as provided in CRC 2.551(d), shall be served and submitted to the Clerk of the Court in paper form, pending hearing on the motion to seal.
- B. Documents ordered filed under seal cannot be electronically filed and must be submitted directly to the Clerk of the Court in paper form, compliant with CRC 2.551(d), if not previously lodged under seal.

7. Confidential Documents:

- A. Except as provided in CRC 2.250-2.259 and 2.500-2.506, an electronically filed document is a public document at the time it is filed unless it is ordered sealed under CRC 2.551(b) or filed as a confidential document pursuant to law. (CRC 2.254(c))
- B. The filer is responsible for redacting any personal identifiers, privileged or confidential information when applicable. The clerk will not review the documents for compliance.

8. Fees and Fee Waivers:

- A. Electronic Service Providers may charge a reasonable fee in addition to any filing fees required by the Court. There is no service fee charged if the document does not require a filing fee. The Court will not add an administrative fee for e-filing. Refer to the information under Payment on the court's website for additional information.
- B. A party who has an active fee waiver on file in a case or is granted a fee waiver from the Court is exempt from the fees and costs associated with electronic filing.

- C. If a request for fee waiver is not granted, the filer will be notified and given the opportunity to submit payment. The filer will have 10 days to comply with the Order on Fee Waiver or the filing will be voided. (GC 68634(g)). (Eff. 01/01/20)

6-100. [6-100 Repealed 01/01/20]

6-101. [6-101 Repealed 01/01/20]

RULE 7. FAMILY LAW

7-100. EMERGENCY ORDERS

All parties must comply with California Rules of Court, Rule 5.151 through Rule 5.170 when submitting emergency requests. The requests shall be limited to those specified in subsection (b) of Rule 5.151 and must be in writing. The requesting party must also comply with the notice requirements set forth in California Rules of Court, Rule 5.165 and must include the *Temporary Emergency (Ex Parte) Orders* (form FL-305) with their pleadings. (Exhibit A is revoked effective July 1, 2018.) (Rule 7-100 amended effective July 1, 2018; adopted as Rule 7-100 effective July 1, 1998; amended effective January 1, 2014.) (Eff. 07/01/18)

7-101. ORDER EXCLUDING A PARTY FROM THE HOME

A temporary restraining order enjoining a party from the use of the family home will not be granted unless the request is supported by a declaration setting forth a factual basis showing immediate and serious harm. Said declarations shall state, in detail and in competent evidentiary form, the time and place of the act or acts and the exact injuries suffered by the moving party. The moving party has the burden of convincing the court an ex-parte order is an appropriate alternative to an order shortening time. (Eff. 07/01/98)

7-102. NOTIFICATION TO COURT OF OTHER PROCEEDINGS

- A. Any motion, petition or request for order, or response thereto involving an issue of child custody, visitation, child support or domestic violence shall contain a statement notifying the Court and parties of any action which involves the children or the parties concerned in the motion, petition or request for order which is pending in any other jurisdiction or in the juvenile court. Such information shall include the name and location of the court, the file number therein, the statutory basis for said action and a copy of the most recent order made in the action.
- B. At the hearing on the motion, petition, or request for order, the parties shall call to the attention of the Court any action pending or jurisdiction taken by the Juvenile Court subsequent to the filing of the motion, petition, request for order.
- C. In addition, hereto, every moving party or counsel must disclose to the Court the existence of any prior applications for relief similar to that requested in the current moving paper of which said moving party or counsel have knowledge. (Eff. 01/01/14)

7-102.5 DECLARATIONS SUPPORTING AND RESPONDING TO A REQUEST FOR ORDER

All declarations supporting and responding to a request for order must comply with California Rules of Court, Rule 5.111. Any evidentiary documents attached to declarations shall not exceed 10 pages in length. However, a party may apply to the court ex parte with notice of the application to the other parties for permission to submit additional pages. The requested additional pages shall not be attached to the separate ex parte application. The ex parte application shall list and describe the requested additional attachments separately, state the exact reasons why each additional attachment is relevant and necessary, and must comply with California Rules of Court, Rule 5.151. Without this prior approval, the court will not consider any attachments exceeding 10 pages. Parties should not attach copies of pleadings already contained in the Court file to any new pleading.

This rule shall not apply to discovery motions. (Eff. 01/01/19)

7-103. MEET AND CONFER REQUIREMENT

- A. All parties and all attorneys are required to meet and confer prior to a case being heard on the family law calendar.
- B. Before the parties are eligible for mediation, it is required that they meet and confer. The sole purpose in requiring them to meet and confer is to allow them an opportunity to work out a plan for the sharing of time and responsibility for the raising of their child or children, i.e. formulate their own parenting plan.
- C. It is expected that any attorney who represents either the mother or father will meet with the other side in order to determine what issues can be resolved by agreement and what issues are really contested.

Attorneys must meet with the opposing side even if the other side is not represented by an attorney. A bona fide attempt must be made to settle all issues prior to mediation.

- D. Parties not having attorneys must still meet and confer. If either side is not represented by an attorney, they are still required to meet with the other side in order to try to resolve the parenting plan. A party who is not represented must remember that meeting and discussing the case with the other side does not mean that they must make an agreement, they must simply make an honest attempt to settle all the issues they can and determine the issues that are contested.
- E. Complete meet and confer required. In order to expedite the process, it is required that even if a complete settlement is not possible, all issues should be discussed even if only conditional agreements are made. For example, if the parties cannot agree, they should determine how holidays will be shared and what shared time they would have if they were not granted the primary custody of the child or children.
- F. Parties must exchange three days prior to the hearing on documentary evidence that is to be relied upon for proof of any material fact at the hearing. This requirement does not apply to documents used primarily for rebuttal or impeachment purposes (Eff. 01/01/14)

7-104. MEDIATION

- A. In any mediation pursuant to Family Code §3183, the mediator may make an oral or written recommendation as requested by the court, and at the request of a party or attorney, the mediator shall be subject to cross-examination.
- B. No peremptory challenge of a mediator is permitted.
- C. A party may challenge a mediator for good cause by the filing of a formal motion to disqualify a mediator. The court shall continue the date of any mediation to allow the filing of a motion to disqualify. The court shall shorten time for a hearing on a motion to disqualify a mediator upon the request of either party.
- D. A mediator may decline to mediate a case in the event the mediator determines he or she cannot be unbiased or has a conflict that would prevent a meaningful mediation.
- E. Ex-parte communication with Court mediators by any party or attorney to the action is prohibited, except for limited contact necessary to schedule or continue hearings, mediation sessions and/or testimony of mediators at trial or hearing.

- F. The purpose of mediation is to facilitate an agreement between the parents. If counsel attends a mediation session, they shall do so in a support capacity and not to advocate for a position. The mediator may exclude either or both counsel from a mediation session if in the discretion of the mediator such exclusion will facilitate the mediation process.
- G. When any request for order is filed placing custody and/or visitation at issue, the parties are required to attend an orientation session provided by Family Court Services prior to the court date on the request. Non-compliance may result in the case being continued until such time that the parties have attended the required orientation. (Eff. 01/01/14)

7-105. SUPPORT

These guidelines have been adopted to comply with the California Family Code operative January 1, 1994.

The Court will determine the appropriate amount of child support and discretionary spousal support according to the Santa Clara County guidelines and the Code.

- (a) These guidelines are not intended to limit the Court's discretion concerning spousal support except as otherwise provided by the Code or other applicable case and statutory law.
- (b) The Court will take all circumstances into consideration (e.g., reduced expenses because of income of a new spouse or co-habitors) to the extent permitted by the Code.
- (c) Concurrently with filing, and responding to, a request for order to establish or modify child and/or spousal support, each party shall provide the other, in addition to the information and documents required by the Family Code and Rules of Court, each party's complete most recently filed tax return. (Eff. 01/01/14)

7-106. PERPETUATION OF TESTIMONY BY CUSTODY EVALUATORS

A Custody Evaluator, appointed by this Court pursuant to Evidence Code §730, shall be permitted to testify remotely in accordance with the following terms and conditions:

- a) The Custody Evaluator shall have prepared a written report.
- b) The proponent of the testimony shall arrange for a videoconference that shall allow the Custody Evaluator to be seen, hear the Court and Counsel, and speak to the Court and Counsel.
- c) The proponent of the testimony shall pay the expense of the videoconference, and shall have a videographer present during the testimony to ensure that the videography equipment functions properly. Any and all equipment necessary to perpetuate the testimony shall be provided by the proponent.
- d) Notice of intent to introduce testimony by videography must be given in writing by the proponent at least 15 days prior to the date set for hearing perpetuation of such testimony would prejudice the objecting party.
- e) Any objection to videography testimony must be filed and served 10 days prior the date set for hearing. Any reply thereto shall be filed and served 5 days before the date set for hearing. Service of objections and reply shall be by fax or email. In ruling on the objections, the Court

shall consider the issue of whether allowing such testimony is prejudicial to the opposing party.

- f) Should the quality of the transmission be poor, the Court in its discretion may strike the testimony entirely or, may, but need not, continue the matter in its discretion.
- g) In order to perpetuate testimony pursuant to this local rule, the Custody Evaluator must maintain his or her office 75 miles or more from the courthouse. (Eff. 01/01/17)

7-107. DEFAULTS

The Clerk of the Court shall not enter a default in a dissolution or legal separation unless a Declaration of Disclosure has been served at least 30 days prior to the entry of the default or unless the parties have filed a Marital Settlement Agreement. (Eff. 07/01/98)

7-108. AT-ISSUE MEMORANDUMS

Prior to the filing of an at-issue memorandum, the party requesting the trial date must have submitted a good faith settlement proposal of all issues to the opposing side and must have served a current Income and Expense Declaration and a completed Declaration of Disclosure including attachments. The at-issue memorandum must include a declaration or proof of service evidencing compliance with this section. (Eff. 01/01/14)

7-109. RESULT OF FAILURE TO COMPLY WITH RULES

Failure of a party(ies) to comply with these rules may result in one or more of the following on the request by the other party or on the Court's own motion:

- (a) Dropping the matter from calendar.
- (b) Continuance of the matter.
- (c) The award of attorney's fees and costs against the non-complying party and/or the party's attorney, without the necessity of filing an Income and Expense Declaration, or any request for order, included by not limited to a motion under California Code of Civil Procedure Section §128.5 or Family Code §§270 through 275.
- (d) The rendering of an order based solely upon the pleadings properly before the Court.
- (e) Other orders as the Court deems appropriate under the circumstances. (Eff. 01/01/14)

7-110. SETTLEMENT CONFERENCES

The parties shall participate in a mandatory conference on all cases involving property or spousal support issues. Each party shall file and serve ten days prior to the mandatory settlement conference a meaningful and complete statement which shall include:

- (a) Identity of community property and obligations;
- (b) Identity of separate property;
- (c) Proposed distribution of community property and obligations;
- (d) Statement of issues and contentions;
- (e) Statement of request for child and spousal support; and,
- (f) Statement of request for attorney's fees pursuant to Rules of Court, Rule 5.427.
(Eff. 01/01/15)

7-110.5 PRE-TRIAL EXCHANGE OF DOCUMENTS AND INFORMATION

For all trials, including long cause hearings, the parties shall file and exchange trial briefs on all issues five days prior to trial. The trial brief shall include:

- (a) The information and documents required by Rules of Court, Rule 5.394;
- (b) A list of all documents (excluding those intended to be used primarily for rebuttal or impeachment purposes) that are to be relied upon for proof of any material fact at trial. Documents are not to be attached or appended to the trial brief; and
- (c) A list of witnesses and a brief summary of their testimony.
(Eff. 01/01/17)

7-111. FAMILY LAW TENTATIVE RULINGS

Parties are responsible for reviewing the tentative ruling and notifying the Superior Court Clerk's Office by calling (209) 992-5690 and all attorneys or parties if there are no attorneys, not later than 4:00 p.m. the day preceding the scheduled hearing of his or her intent to appear and argue. The family law tentative ruling is available on the court's website at www.sjcourts.org. Failure to call by 4:00 p.m. will preclude the court from hearing arguments the next day. It shall also result in the tentative ruling becoming the order of the court.

The issues subject to a tentative ruling are as follows:

- (a) Motion to compel discovery;
- (b) Motion to set aside default/judgment;
- (c) Motion to withdraw as attorney of record;
- (d) Motion to Quash;
- (e) Motion for joinder or parties, not involving custody or visitation; and
- (f) Motion for change of venue. (Eff. 07/01/17)

7-112. DUTIES OF FAMILY LAW FACILITATOR

In addition to the duties set forth in Family Code section 10002 et seq., the Family Law Facilitator may perform the following:

- A. Meet with pro per litigants to mediate issues of child support, spousal support, and maintenance of health insurance.
- B. Draft stipulations for pro pers to include all issues agreed to by the parties, which may include issues other than those specifically set forth in Family Code section 10003.
- C. Prepare formal orders after hearing consistent with the court's ruling when both parties are unrepresented.
- D. Serve as a special master in contested dissolutions for the purpose of hearing pretrial settlement conferences in hopes of reducing the contested dissolution calendars.
- E. Develop programs for bar and community outreach through day and evening programs, videotapes and other means that will assist unrepresented and financially disadvantaged litigants in gaining access to family court.
- F. Assist the court with research and such other responsibilities as may be assigned by the court, enabling the court to be as time efficient as possible in helping litigant and reducing the family court's caseload.

- G. Sit as judge pro tempore subject to the stipulation of the parties, when the Family Law Commissioner is unavailable. (Eff. 07/01/98)

7-113. JUDICIAL CAVEAT

While it is intended that the Court will follow the policies set forth, the rules do not prevent the exercise of judicial discretion when appropriate. (Eff. 07/01/98)

7-114. COURT COMMUNICATION RULES FOR DOMESTIC VIOLENCE AND CHILD CUSTODY AND/OR VISITATION ORDERS

This rule is intended to comply with the provisions of California Rules of Court, Rule 5.445 regarding communication between courts about the existence of criminal protective orders and children custody and/or visitation orders to avoid the issuance of conflicting orders.

A. Court Communication

Until the court has an operational case management system capable of automatically coordinating domestic violence orders, the court's criminal family, and juvenile law departments shall to the best of their abilities communicate with one another to identify families with existing orders.

B. Avoiding Conflicting Orders

No department or the family or juvenile court shall issue a protective order or custody order in conflict with an order of the criminal court. In the event such an order is issued inadvertently, the orders of the criminal law proceeding shall control.

C. Modification of Criminal Protective Order

Upon notice of an existing criminal protective order, the family or juvenile court shall refer the parties requesting custody and visitation to the Clerk's Office in the Criminal Department. At the Clerk's Office, the person restrained by a criminal protective order or protected by a criminal protective order may request a hearing to modify the criminal protective order to expand or restrict contact between the person restrained by the order and his or her children.

The family court may prepare a custody and visitation order; however, it is explained to the parties that the order cannot be enforced by law enforcement if the criminal protective order is not modified accordingly.

D. Co-Existing Criminal and Family or Juvenile Orders

A family or juvenile court order may coexist with a criminal protective order, subject to the following:

1. Any order that permits contact between the restrained person and his or her children shall provide for the safe exchange of the children and shall not contain language either printed or handwritten that violates a "no contact order" issued by a criminal court.
2. After having knowledge of existing child custody and visitation order, the criminal court issuing a protective order shall indicate on the order that

Superior Court of California
for the County of San Joaquin

contact and visitation between the restrained person and his or her children is pursuant to court orders previously ordered by the family or juvenile court.

3. Safety of all parties shall be the court's paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child as provided in Section 3100 of the Family Code. (Eff. 01/01/14)

RULE 8. ADOPTION PROCEEDINGS

8-101. KINSHIP AGREEMENTS

A. Petitions to Adopt

A Petition for Adoption with Contact After Adoption shall not be filed unless the agreement contains the signature of court-appointed counsel for the minor acknowledging agreement with the terms.

B. Petitions to Enforce, Modify and Terminate

1. Notice, and the application, and any response thereto, shall be served upon all parties, including the Human Service Agency or other adoptive placement agency with which the minor had first been placed, and to appointed counsel for the minor.
2. All evidence to be submitted at the hearing of the application, whether in support or opposition, shall be presented by written offers of proof, declaration, or otherwise admissible documentation. The moving party shall serve their evidence with the application. Any responding evidence must be served with the response.
3. On order of the court, a witness or declarant shall appear for cross examination. Upon failure of the declarant to appear and submit to examination, the offer of proof or declaration of that witness shall be stricken.
4. No application shall be filed unless accompanied by a declaration setting forth the good faith attempt to resolve the dispute. (Eff. 07/01/05)

8-201. TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS - CAPTION

Whenever termination of parental rights is sought in an adoption proceeding, each petition shall include in the caption the code section under which the petition is brought. This includes petitions and motions which are ancillary to the adoption or termination of rights. (Eff. 07/01/98)

8-202. TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS NOTICE AND CONSENT

A. Necessity of Consent by Mother or Presumed Father in an Adoption

If it is claimed that the consent of the mother or a presumed father of a child who is to be adopted is not required pursuant to section 8604(b) or 8606(c) of the Family Code, the petitioner may set a hearing to determine the request in advance of the hearing on the adoption. This "necessity of consent" hearing shall be heard on the regular adoption calendar.

The court will not consider the request unless the required adoption report is submitted and, in the case of request pursuant to section 8604(b), proof of service of the required citation is on file.

The citation pursuant to section 8604(b) shall require the parent served show cause why the court shall not find the minor to have been abandoned and the consent for adoption by the named parent not required.

B. Notice to Alleged Father in an Adoption

1. Where a petition to terminate an alleged father's rights has been filed and there is a petition, motion or other request that notice of the adoption proceeding to the alleged natural father be dispensed under section 7666(b) of the Family Code, or that rights be terminated without notice of the adoption proceeding under section 7665, the petitioner may set a hearing to determine the request in advance of the hearing on the adoption. The hearing is to be set on the regular adoption calendar. Alternatively, the petitioner may submit the request on the pleadings and the court will hear it without appearance.

Whether set for a calendar hearing or otherwise, the court will not consider the request unless the report required under section 7663 is submitted.

Where there is a petition, motion or other request that no further notice of the adoption proceeding to the alleged natural father is required under section 7662(b) or 7664(a) of the Family Code, the petitioner may set a hearing to determine the request in advance of the hearing on the adoption. The hearing is to be set on the regular adoption calendar. Alternatively, the petitioner may submit the request on the pleadings and the court will hear it without appearance.

2. Whether set for a calendar hearing or otherwise, the court will not grant the request unless there is evidence of a record search in the county set forth in the notice as required by subsection (c) below.

If it is further requested that the alleged father's rights be terminated in advance of an order of adoption, the court shall grant the termination contingent on an order of adoption.

3. Notice to be given pursuant to section 7662(b) or 7664(a) of the Family Code shall set forth the title, action number and location of the court of any then pending adoption proceeding and any petition to terminate the alleged father's rights regarding the child allegedly fathered. If there is not then pending an adoption proceeding, or petition to terminate the alleged father's parental rights, the notice shall set forth the location of the court of the County wherein the person having custody of the child resides. (Eff. 01/01/99)

RULE 9.

RULE 9. "RESERVED FOR FUTURE USE" [SMALL CLAIMS E-FILING repealed (deleted) 07/01/15.]

RULE 10. APPELLATE DIVISION

10-100. JURISDICTION

The Appellate Division of the San Joaquin Superior Court has jurisdiction over all appeals for writs, infractions, misdemeanors and limited civil cases arising out of the courts in San Joaquin County. General rules applicable to the Appellate Division proceedings are set forth in California Rules of Court, Rule 8.800, and et seq. (Eff. 07/01/17)

10-101. JUDICIAL ASSIGNMENT AND SESSIONS

- A. The Presiding Judge of the Appellate Division shall supervise the business of the department. All motions, including ex parte applications for orders, shall be presented to the Presiding Appellate Judge. The Presiding Appellate Judge may act on routine matters, or may schedule a motion or other matters for hearing before the panel at his or her discretion.
- B. The panel is composed of three judges, including the Presiding Appellate Judge. A fourth judge is assigned as an alternate appellate panel member.
- C. Regular sessions of the Appellate Division of the Superior Court shall be set for hearing on the third Thursday of each calendar month at 4:00 p.m. in the department of the Presiding Judge of the Appellate Division. Pursuant to Code of Civil Procedure Section 77, the Appellate Division cases will be heard by the Presiding Appellate Judge.
- D. The appellate division sessions shall not be reported by a court reporter. (Eff. 07/01/15)

10-102. RECORD ON APPEAL

- A. Under California Rules of Court, rules 8.833 in an appeal from a civil limited case, an appellant may elect to use the original trial court file as the record on appeal.
- B. An appellant in an appeal in a civil limited case, electing to use the original trial court file as set out in subsection A, must file and serve the notice of election within the same time limits for designation of record set out in California Rules of Court, Rule 8.831.
- C. Under California Rules of Court, Rule 8.863 in misdemeanor appeals, the court elects to use the original trial court file in lieu of a clerk's transcript.
- E. Under California Rules of Court, Rule 8.914 in infraction appeals, the court elects to use the original trial court file in lieu of a clerk's transcript. (Eff. 07/01/15)

10-103. REQUESTS FOR FREE CLERK OR REPORTER'S TRANSCRIPT

- A. All requests for a free clerk or reporter's transcript on appeal shall be accompanied by a current financial declaration.
- B. A request for a free reporter's transcript will be granted only on a showing of a colorable need for the transcript. (Eff. 07/01/15)

10-104. USE OF OFFICAL ELECTRONIC RECORDING

- A. Civil limited cases shall be recorded, if not they are not reported. Under California Rules of Court, Rule 8.835(c), in a civil limited appeal, the parties, by a filed written stipulation or on order of the trial court under California Rule of Court, rule 8.837(d), may designate the original of an official electronic record of the trial court proceedings, or a copy of the electronic recording made by the court, as the record of the oral proceedings, without being transcribed, and in lieu of a reporter's transcript or settled statement.
- B. Misdemeanor cases shall be recorded, if they are not reported. Under California Rules of Court, Rule 8.868(c), in a misdemeanor appeal, the parties, by a filed written stipulation or on order of the trial court under California Rule of Court, Rule 8.869(5), may designate the original of an official electronic recording of the trial court proceedings, or a copy of the electronic recording made by the court, as the record of the oral proceedings, without being transcribed, and in lieu of a Reporter's transcript or settled statement.
- C. Infraction cases are not reported. Under California Rules of Court, Rule 8.915(a)(2), in an infraction appeal, the parties by a filed written stipulation or an order of the trial court under California Rules of Court, Rule 8.916(b), may designate the original of an official electronic recording of the trial court proceedings, or a copy of the electronic recording made by the court, as the record of the oral proceedings, without being transcribed and in lieu of a reporter's transcript or settled statement.
- D. If an appellant elects to use an official electronic recording, the stipulation must be attached to the original designation. (Eff. 07/01/15)

10-105. BRIEFS

- A. Each party shall deliver one (1) original and five (5) copies at the time of filing. Briefs not exceeding fifteen (15) pages in length shall be prepared, served and filed as provided by Rules 8.706 and 8.204 of the California Rules of Court, except that briefs of five pages or less may omit the topical index and table of authorities required by Rule 8.205. Each party shall deliver one original and five copies at the time of filing.
- B. If an appellant's opening brief pursuant to *People v. Wende* in adult criminal appeals is filed, the clerk will not send a notice of late filing. (Eff. 07/01/15)

10-106. APPOINTED COUNSEL

Under California Rules of Court 8.851, in a misdemeanor appeal, if a defendant was represented by appointed counsel in the trial court and meets the standards of appointed, they are entitled to counsel once the judgment has been rendered. (Eff. 07/01/15)

10-107. [10-107 Repealed 01/01/18]

Superior Court of California
for the County of San Joaquin

San Joaquin Superior Court – Local Form List by Form Number

Type	Form #	Form Name	Mandatory /Optional	Date
All Dept	Not a local form	Government Claim – Judicial Branch	Mandatory	No date
All Dept	Information only	Resources & Referrals	Information Only	No date
Civil	SupCt-441	Stipulation and Order to Participate in Alternative Dispute Resolution (ADR)	Mandatory	6/2009
Civil	SupCt-260	Declaration re: Notice of Ex Parte Application	Mandatory	1/2014
Civil/FamLaw	SupCt - 71	Request to Set Default or Uncontested Matter for Hearing	Civil Optional/FL Mand.	7/2017
Civil/UD	SJ-100	Amendment to Complaint	Mandatory	6/1999
Civil/UD	SupCt-2	Civil Bench Warrant	Mandatory	Revised 10/2019
Civil	SupCt-56	Declaration of Exemption	Mandatory	Revised 8/2019
Civil/FamLaw	SupCt-64	List of San Joaquin County Newspapers w/General Circulation	Information Only	10/2013
Civil	SupCt-3	Notice of Appeal – Parking	Mandatory	Revised 10/2019
Civil	SupCt-87	Clerk’s Judgment on Sister-State Judgment	Optional	8/2019
Civil/UD	SupCt-1	Order on Request for Temporary Stay	Mandatory	Revised 8/2019
Criminal	Same as name	Motion to Terminate Probation	Optional	2/2016
Criminal	Same as name	Proof of Service	Optional	4/2017
Criminal	Not a local form	Packet for Certificate for Rehabilitation or Pardon (pages 1,2, and 3)	Optional	1/1998
Criminal	Same as name	Prop 47 – Order	Optional	11/2014
Criminal	Same as name	Prop 47 – Response	Optional	11/2014
Criminal	Same as name	Prop 47 – Petition	Optional	11/2014
Criminal	Same as name	Prop 47 – Stipulation and Order per PC 1170.18(f)	Optional	5/2016
Criminal	Same as name	Prop 64 – Petition	Optional	1/2017
Criminal	Same as name	Prop 64 – Response	Optional	1/2017
Criminal	Same as name	Prop 64 – Stipulation and Order per PC 11361.8(f)	Optional	1/2017
Criminal	CR-180/ 181	Petition for Dismissal per 1203.4 or 1203.4a (Packet) (pages 1,2,3,4)	Optional	5/2017
FamLaw	SupCt-43	At-Issue Memorandum	Mandatory	5/2019
FamLaw	SupCt-115	Declaration for Issuance of Writ of Execution and Order	Optional	9/1990

Superior Court of California
for the County of San Joaquin

FamLaw	SupCt-125	Declaration of Mailing or of Inability to Ascertain Address	Optional	9/1990
FamLaw/ Probate	SupCt-284	Petition for Grandparent Visitation (FC3102 et seq)	Optional	7/2017
FamLaw	FL101	Marital Settlement Agreement (No Children)	Optional	7/2016
FamLaw	FL100	Marital Settlement Agreement (Children)	Optional	7/2016
FamLaw	FL105	Settlement Conference Statement	Optional	12/2016
FamLaw	FL107	Trial Brief	Optional	12/2016
FamLaw	FL80	Request for Discovery Conference	Optional	4/2018
Juvenile	Same as name	Prop 64 – Juvenile Petition	Mandatory	1/2017
Probate	SJPR-108	Petition for Visitation	Optional	7/2005
Probate	SJPR-109	Order for Visitation	Optional	7/2005
Probate	SJPR-105	Guardianship Questionnaire	Optional	No date
Probate	SJPR-101	Objection to Petition for Appointment of Guardian	Optional	1/2020
Probate	SJPR-102	Declaration of Due Diligence (Probate Guardianship & Conservatorships)	Mandatory	1/2020
Probate	SJPR-103	Petition to Increase Bond, Decrease Bond &/or Place Funds in Blocked Account(s)	Mandatory	1/2020
Probate	SJPR-104	Status Report of Administration	Optional	1/2020
Probate	SJPR-201	Notice of Refusal to Petition for Probate of Will or Codicil	Mandatory	1/2020
Probate	SJPR-106	Conservatee Status Report – Person Only	Optional	1/2011
Probate	SJPR-107	Conservatee Status Report – Person & Estate	Optional	1/2011
Probate	SJPR-010	Newspapers for Publication	Information Only	No date
Records Management	SupCt-109	Request for Records Search and Copies	Optional	No date
Small Claims	SupCt-378	Request for Certified Mail (Small Claims)	Mandatory	9/2015
Small Claims	SupCt-458	Petition of Minor Plaintiff/Defendant for Appointment of Guardian Ad Litem; Acceptance and Order of Court	Mandatory	Revised 10/2019

Superior Court of California
for the County of San Joaquin

San Joaquin Superior Court – Local Form List by Form Name

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All Dept	Government Claim – Judicial Branch	Not a local form	Mandatory	No date
All Dept	Resources & Referrals	Information only	Information Only	No date
Civil	Stipulation and Order to Participate in Alternative Dispute Resolution (ADR)	SupCt-441	Mandatory	6/2009
Civil	Declaration re: Notice of Ex Parte Application	SupCt-260	Mandatory	1/2014
Civil/FamLaw	Request to Set Default or Uncontested Matter for Hearing	SupCt - 71	Civil Optional/FL Mand.	7/2017
Civil/UD	Amendment to Complaint	SJ-100	Mandatory	6/1999
Civil/UD	Civil Bench Warrant	SupCt-2	Mandatory	Revised 10/2019
Civil	Declaration of Exemption	SupCt-56	Mandatory	Revised 8/2019
Civil/FamLaw	List of San Joaquin County Newspapers w/General Circulation	SupCt-64	Information Only	10/2013
Civil	Notice of Appeal – Parking	SupCt-3	Mandatory	Revised 10/2019
Civil	Clerk’s Judgment on Sister-State Judgment	SupCt-87	Optional	8/2019
Civil/UD	Order on Request for Temporary Stay	SupCt-1	Mandatory	Revised 8/2019
Criminal	Motion to Terminate Probation	Same as name	Optional	2/2016
Criminal	Proof of Service	Same as name	Optional	4/2017
Criminal	Packet for Certificate for Rehabilitation or Pardon (pages 1,2, and 3)	Not a local form	Optional	1/1998
Criminal	Prop 47 – Order	Same as name	Optional	11/2014
Criminal	Prop 47 – Response	Same as name	Optional	11/2014
Criminal	Prop 47 – Petition	Same as name	Optional	11/2014
Criminal	Prop 47 – Stipulation and Order per PC 1170.18(f)	Same as name	Optional	5/2016
Criminal	Prop 64 – Petition	Same as name	Optional	1/2017
Criminal	Prop 64 – Response	Same as name	Optional	1/2017
Criminal	Prop 64 – Stipulation and Order per PC 11361.8(f)	Same as name	Optional	1/2017
Criminal	Petition for Dismissal per 1203.4 or 1203.4a (Packet) (pages 1,2,3,4)	CR-180/ 181	Optional	5/2017
FamLaw	At-Issue Memorandum	SupCt-43	Mandatory	5/2019
FamLaw	Declaration for Issuance of Writ of Execution and Order	SupCt-115	Optional	9/1990

Superior Court of California
for the County of San Joaquin

FamLaw	Declaration of Mailing or of Inability to Ascertain Address	SupCt-125	Optional	9/1990
FamLaw/ Probate	Petition for Grandparent Visitation (FC3102 et seq)	SupCt-284	Optional	7/2017
FamLaw	Marital Settlement Agreement (No Children)	FL101	Optional	7/2016
FamLaw	Marital Settlement Agreement (Children)	FL100	Optional	7/2016
FamLaw	Settlement Conference Statement	FL105	Optional	12/2016
FamLaw	Trial Brief	FL107	Optional	12/2016
FamLaw	Request for Discovery Conference	FL80	Optional	4/2018
Juvenile	Prop 64 – Juvenile Petition	Same as name	Mandatory	1/2017
Probate	Petition for Visitation	SJPR-108	Optional	7/2005
Probate	Order for Visitation	SJPR-109	Optional	7/2005
Probate	Guardianship Questionnaire	SJPR-105	Optional	No date
Probate	Objection to Petition for Appointment of Guardian	SJPR-101	Optional	1/2020
Probate	Declaration of Due Diligence (Probate Guardianships & Conservatorships)	SJPR-102	Mandatory	1/2020
Probate	Petition to Increase Bond, Decrease Bond &/or Place Funds in Blocked Account(s)	SJPR-103	Mandatory	1/2020
Probate	Status Report of Administration	SJPR-104	Optional	1/2020
Probate	Notice of Refusal to Petition for Probate of Will or Codicil	SJPR-201	Mandatory	1/2020
Probate	Conservatee Status Report – Person Only	SJPR-106	Optional	1/2011
Probate	Conservatee Status Report – Person & Estate	SJPR-107	Optional	1/2011
Probate	Newspapers for Publication	SJPR-010	Information Only	No date
Records Management	Request for Records Search and Copies	SupCt-109	Optional	No date
Small Claims	Request for Certified Mail (Small Claims)	SupCt-378	Mandatory	9/2015
Small Claims	Petition of Minor Plaintiff/Defendant for Appointment of Guardian Ad Litem; Acceptance and Order of Court	SupCt-458	Mandatory	10/2019

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
180 E. Weber Avenue
Phone: (209) 992-5695
Stockton, CA 95202
Effective January 1, 2020

INDEX

<u>RULE</u>	<u>PAGE</u>
<u>ADOPTION PROCEEDINGS</u>	
KINSHIP AGREEMENTS	
..... 8-101	77
TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS - CAPTION	
..... 8-201	77
TERMINATION OF PARENTAL RIGHTS IN ADOPTION PROCEEDINGS NOTICE AND CONSENT	
..... 8-202	77
<u>CIVIL</u>	
ADMINISTRATION OF GENERAL CIVIL LITIGATION	
..... 3-102	23
ALTERNATIVE DISPUTE RESOLUTION	
..... 3-121	35
ATTORNEY FEES IN ACTIONS ON PROMISSORY NOTES, CONTRACTS PROVIDING FOR PAYMENT OF ATTORNEY FEES, AND FORECLOSURES	
..... 3-111	32
CHAMBERS CONFERENCES AND EX PARTE MATTERS	
..... 3-114	34
CIVIL LAW AND MOTION	
..... 3-113	33
NEUTRAL EVALUATION	
..... 3-125	40
CLAIM OR ACTION ON BEHALF OF A MINOR OR DISABLED PERSON	
..... 3-110	31
JUDICIAL ARBITRATION	
..... 3-122	36
DEATH OF A PARTY	
..... 3-109	31
DIRECT CALENDARING OF CIVIL CASES	
..... 3-101	23
EX PARTE APPLICATIONS AND ORDERS	
..... 3-106	30
EXPEDITED JURY TRIAL	
..... 3-127	41
IMPLEMENTATION	
..... 3-100	23
JURY FEES AND EXPENSES	
..... 3-116	34
ORDERS SHORTENING TIME	
..... 3-112	33

[Repealed 07/01/15]	3-115	34
BINDING ARBITRATION	3-124	40
PETITION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM	3-107	31
COURTESY COPIES OF BRIEFS AND PAPERS	3-117	34
RESERVED FOR FUTURE USE	3-118	35
RESERVED FOR FUTURE USE	3-119	35
PLEADINGS AND RECORDS IN EMINENT DOMAIN PROCEEDINGS	3-108	31
PROPOSED FINDING, ORDER, JUDGMENT OR DECREE	3-105	30
CIVIL MEDIATION PROGRAM	3-123	37
SETTLEMENT CONFERENCE PROCEDURES	3-104	28
SUBSTITUTE SERVICE	3-120	35
TELEPHONE APPEARANCES	3-103	27
TRIAL BY REFERENCE	3-126	40
SISTER STATE MONEY JUDGMENTS	3-128	41
<u>CRIMINAL</u>		
ATTORNEY FEES IN CRIMINAL AND JUVENILE MATTERS	2-110	22
BAIL SCHEDULE RULE	2-113	22
CRIMINAL APPLICATIONS FOR TEMPORARY ORDERS FOR RELEASE OF INMATE DUE TO MEDICAL, DENTAL, FUNERAL AND OTHER APPLICABLE APPOINTMENTS	2-112	22
DEMURRERS, MOTIONS TO DISMISS, MOTIONS TO STRIKE	2-102.2	19
DISCOVERY IN CRIMINAL CASES	2-100	17
JURY INSTRUCTIONS	2-106	21
MATTERS IMPROPERLY SET FOR HOLIDAYS AND NON-JUDICIAL HOLIDAYS	2-107	21
MEMORANDUM OF POINTS AND AUTHORITIES	2-102	18
MOTION TO BE RELIEVED AS COUNSEL - RETAINED COUNSEL	2-108	21
MOTIONS AT TRIAL	2-103	19
MOTIONS TO STRIKE PRIOR CONVICTIONS	2-101.1	18

MOTIONS UNDER SECTION 1538.5 OF THE PENAL CODE	2-102.1	18
PRE-TRIAL CONFERENCES	2-105	20
PRE-TRIAL MOTIONS	2-101	17
REQUESTS TO MODIFY JUDGMENT	2-111	22
SANCTIONS	2-104	20
SUBMISSION OF DOCTOR REPORTS TO DETERMINE MENTAL HEALTH COMPETENCY PER PC 1368	2-114	22
TAPE RECORDED PROCEEDINGS IN MISDEMEANOR CASES	2-109	21
<u>RULE 6. ELECTRONIC FILING</u>	6	67
[Repealed 01/01/20]	6-100	69
[Repealed 01/01/20]	6-101	69
<u>FAMILY LAW</u>		
AT-ISSUE MEMORANDUMS	7-108	73
COURT COMMUNICATION RULES FOR DOMESTIC VIOLENCE AND CHILD CUSTODY AND/OR VISITATION ORDERS	7-114	75
DEFAULTS	7-107	73
DUTIES OF FAMILY LAW FACILITATOR	7-112	74
EMERGENCY ORDERS	7-100	70
PERPETUATION OF TESTIMONY BY CUSTODY EVALUATORS	7-106	72
FAMILY LAW TENTATIVE RULINGS	7-111	74
JUDICIAL CAVEAT	7-113	75
MEDIATION	7-104	71
MEET AND CONFER REQUIREMENT	7-103	71
NOTIFICATION TO COURT OF OTHER PROCEEDINGS	7-102	70
DECLARATION SUPPORTING AND RESPONDING TO A REQUEST FOR ORDER	7-102.5	70
ORDER EXCLUDING A PARTY FROM THE HOME	7-101	70
PRE-TRIAL EXCHANGE OF DOCUMENTS AND INFORMATION	7-110.5	74
SETTLEMENT CONFERENCES	7-110	73

RESULT OF FAILURE TO COMPLY WITH RULES	7-109	73
SUPPORT	7-105	72
<u>GENERAL</u>		
JUDICIAL VACATION DAY DEFINED	1-111	16
SELECTION OF COURT COMMISSIONERS	1-112	16
COMMISSIONERS JUVENILE COURT REFEREES APPOINTED JUDGE PRO TEMPORE	1-109	13
COURT CALENDARS	1-101	6
DANGEROUS, LARGE OR BULKY EXHIBITS	1-110	13
EFFECT OF RULES, CITATION OF RULES AND CONSTRUCTION	1-100	6
FIREARMS	1-106	8
INTERPRETERS	1-104	7
MEDIA COVERAGE	1-107	8
RESERVED FOR FUTURE USE	1-103	7
SELECTION AND IMPANELMENT OF JURORS	1-102	6
TRANSFER OF ADMINISTRATIVE PROCEDURES	1-105	7
USE OF CAMERA PHONES, OTHER PHOTOGRAPHIC EQUIPMENT AND AUDIO RECORDING EQUIPMENT	1-108	12
<u>JUVENILE</u>		
APPLICATION OF THESE RULES	5-407	62
ATTORNEY COMPLAINT PROCESS	5-408	62
CALENDAR PRIORITY	5-502	65
CHILD ADVOCATES	5-411	63
EX PARTE APPLICATIONS	5-200	60
FAMILY LAW ADVOCACY	5-504	65
GENERAL COMPETENCY REQUIREMENT	5-400	61
MINIMUM REQUIREMENTS NECESSARY TO CONTINUE TO RECEIVE COURT APPOINTMENTS IN JUVENILE DEPENDENCY COURT	5-404	62
MINORS' INTERESTS IN OTHER PROCEEDINGS	5-409	62
DIRECT CALENDARING OF JUVENILE DELIQUENCY CASES	5-506	65

PENALTY FOR NONCOMPLIANCE WITH RULE 5-403 AND RULE 5-404	5-405	62
PETITIONS TO MODIFY (§388 W&I)	5-300	60
RESERVED FOR FUTURE USE [Repealed 01/01/14]	5-401	61
PRE-HEARING DISCOVERY IN DEPENDENCY ACTIONS	5-100	60
RECIPROCAL DISCOVERY	5-507	66
RELEASE OF INFORMATION TO ADVOCATE	5-500	64
REPRESENTATION OF MINORS	5-403	61
RIGHT TO APPEAR	5-505	65
RIGHT TO TIMELY NOTICE	5-501	65
SCREENING FOR COMPETENCY	5-402	61
TERMINATION OF PANEL MEMBERSHIP-ADDITIONAL GROUNDS	5-406	62
THE ADVOCATE PROGRAM	5-410	62
VISITATION THROUGHOUT DEPENDENCY	5-503	65
<u>PROBATE - PART EIGHT - MINORS COMPROMISE</u>		
ATTORNEY FEES IN CASES INVOLVING MINORS OR DISABLED PERSONS	4-801	59
RESERVED FOR FUTURE USE [Repealed 01/01/20]	4-804	59
SETTLEMENTS CREATING A TRUST	4-803	59
SETTLEMENTS WITH AN ANNUITY	4-802	59
<u>PROBATE - PART FIVE - CONSERVATORSHIP</u>		
APPOINTMENT OF COURT INVESTIGATOR	4-501	54
COMPENSATION AND FEES	4-505	55
RESERVED FOR FUTURE USE [Repealed 01/01/20]	4-502	54
DOCUMENTS ACCOMPANYING AN ACCOUNT TO BE LODGED, NOT FILED	4-509	57
SALE OF REAL PROPERTY UNDER INDEPENDENT POWERS	4-507	56
RESERVED FOR FUTURE USE [Repealed 01/01/20]	4-504	54
START UP FEE	4-510	58

SUBSTITUTED JUDGMENT	4-508	57
.....		
TEMPORARY CONSERVATORSHIP BEFORE NOTICED HEARING	4-503	54
.....		
WAIVER OF ACCOUNTING—WHEN PERMITTED	4-506	56
.....		
<u>PROBATE - PART FOUR - TRUSTS</u>		
FEES	4-401	53
.....		
RESERVED FOR FUTURE USE [Repealed 01/01/13]	4-403	54
.....		
REPORT OF TRUSTEE, INCLUDING SPECIAL NEEDS TRUSTEE	4-402	53
.....		
<u>PROBATE - PART ONE - GENERAL PROCEDURAL GUIDE</u>		
ADDITIONAL INFORMATION REQUIRED	4-107	44
.....		
REQUESTING A CONTINUANCE	4-111	45
.....		
CONSOLIDATION WITH THE LOWEST NUMBER	4-105	43
.....		
CONTESTED MATTERS	4-103	43
.....		
CAPTION ON PLEADINGS	4-112	46
.....		
EX PARTE APPLICATIONS	4-106	43
.....		
COURT CREATED TRUSTS	4-113	46
.....		
PROBATE CODE 850 PETITIONS CONFIRMING PROPERTY	4-114	46
.....		
ALL PETITIONS	4-101	42
.....		
RESERVED FOR FUTURE USE [Repealed 01/01/20]	4-110	45
.....		
UNCONTESTED MATTERS	4-102	43
.....		
WHEN COPY OF PETITION MUST BE INCLUDED WITH NOTICE OF HEARING	4-109	45
.....		
WHEN PERSONAL APPEARANCE REQUIRED	4-104	43
.....		
ORDERS-CONTENTS, ATTACHMENTS & SIGNATURE PAGE	4-108	45
.....		
COSTS GENERALLY NOT ALLOWED COUNSEL, ADMINISTRATOR OR TRUSTEE	4-115	46
.....		
MEET AND CONFER REQUIREMENT	4-116	47
.....		
<u>PROBATE - PART SEVEN - GUARDIANSHIP</u>		
RESERVED FOR FUTURE USE [Repealed 01/01/20 (Incorporated in to 4-703)]	4-702	58
.....		
APPOINTMENT OF TEMPORARY GUARDIAN OF THE PERSON	4-703	58
.....		

GUARDIANSHIP OF PARTICULAR PROPERTY	4-704	59
.....		
GUARDIANSHIP RULES	4-701	58
.....		
<u>PROBATE - PART SIX - PARTICULAR TRANSACTIONS</u>		
PROCEEDINGS SHALL CONFORM TO SUBSTITUTED JUDGMENT	4-601	58
.....		
<u>PROBATE - PART THREE - SPOUSAL PROPERTY PETITIONS</u>		
PROCEDURE WHERE WILL CONTAINS MINIMUM SURVIVAL TIME	4-301	52
.....		
WHERE PASSAGE OF TITLE TO COMMUNITY PROPERTY IS SOUGHT	4-302	52
.....		
<u>PROBATE - PART TWO - DECEDENTS' ESTATES</u>		
RESERVED FOR FUTURE USE [Repealed 01/01/20]	4-202	47
.....		
APPLICATION FOR FAMILY ALLOWANCE	4-206	48
.....		
CONTRACTS WITH BROKER OR AGENT	4-205	48
.....		
RESERVED FOR FUTURE USE [Repealed 01/01/14]	4-211	49
.....		
COURT CONFIRMATION OF SALE BY REPRESENTATIVE WITH FULL AUTHORITY UNDER I.A.E.A.	4-204	48
.....		
EXTRAORDINARY ATTORNEY FEES	4-213	49
.....		
FEES AND COMMISSIONS MUST BE FIXED BEFORE PAYMENT	4-212	49
.....		
FEES TO ATTORNEY AND PERSONAL REPRESENTATIVE WHO ARE ASSOCIATED	4-214	50
.....		
FORM OF ACCOUNT FOR INCOME AT FINAL DISTRIBUTION	4-210	49
.....		
MISCELLANEOUS ADDITIONAL ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION	4-216	51
.....		
NOTICE TO NAMED CONTINGENT LEGATEES AND BENEFICIARIES	4-201	47
.....		
NOTICE OF MOTION TO WITHDRAW AS ATTORNEY OF RECORD	4-218	52
.....		
PETITION FOR PRELIMINARY DISTRIBUTION	4-207	48
.....		
NOTICE OF REFUSAL TO PROBATE REJECTED WILL OR CODICIL	4-203	47
.....		
REQUEST FOR PARTIAL ALLOWANCE ON STATUTORY COMPENSATION	4-208	49
.....		
REQUIRED ALLEGATIONS IN A PETITION FOR FINAL DISTRIBUTION	4-215	50
.....		

REQUIRED MATTERS IN A DECREE OF FINAL DISTRIBUTION	4-217	52
.....		
STATUS REPORTS	4-209	49
.....		
<u>RULE 9. RESERVED FOR FUTURE USE [Repealed 07/01/15]</u>	9	79
.....		
<u>APPELLATE DIVISION</u>		
<u>JURISDICTION</u>	10-100	80
.....		
JUDICIAL ASSIGNMENT AND SESSIONS	10-101	80
.....		
RECORD ON APPEAL	10-102	80
.....		
REQUESTS FOR FREE CLERK OR REPORTER'S TRANSCRIPT	10-103	80
.....		
USE OF OFFICIAL ELECTRONIC RECORDING	10-104	81
.....		
BRIEFS	10-105	81
.....		
APPOINTED COUNSEL	10-106	81
.....		
[Repealed 01/01/18]	10-107	81
.....		