

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. 07/05)

3-119. “RESERVED FOR FUTURE USE” (Eff. 07/05)

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 (new)

San Joaquin County 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. Expected 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 County 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 County 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.stocktoncourt.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. 01/01/2014)

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 arbitrators 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, 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.stocktoncourt.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 County 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 County 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.stocktoncourt.org and will be made available to attorneys at the Clerk's Office upon their publication. (Eff. 01/01/14)

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 County 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. 01/01/14)

RULE 4. PROBATE
PART ONE
GENERAL PROCEDURAL GUIDE

4-101. ALL PETITIONS

A. Calendaring

Petitions shall be set as follows: 1) all Decedent's Estate, Summary Probate, Trust and other Probate proceedings will be set on Monday, Wednesday or Friday; and 2) all Conservatorship and Guardianship of the Estate proceedings shall be set on Tuesday or Thursday consistent with the following filing requirements:

1. Petitions with all supporting papers, including the Notice of Hearing, but excepting the proof of service, must be on file four weeks before the hearing date. Questions regarding hearing dates, and requests to continue, can be addressed to the Probate Clerk at (209) 468-2843.
2. Every petition or motion must include the appropriate Judicial Council "Notice of Hearing" form. This document initiates the clerk's calendaring process. Without the Notice of Hearing the matter will not appear on calendar.
3. Matters involving the Public Defender, or the Public Conservator, must be set for hearing Tuesdays or Thursdays only. (Eff. 01/01/12)

4-102. UNCONTESTED MATTERS

A. Tentative Rulings

Tentative rulings and the probate examiner's notes appear on the court's web site.

B. 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. 01/01/11)

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 and on petitions for confirmation of sale of real property.
- B. The attorney for a conservatee, or ward, shall personally appear on petitions which concern the conservatee, or ward, respectively. (Eff. 01/01/14)

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

Where statute and the California Rules of Court make no express provision for notice of an ex parte petition, notice in the manner provided in California Rule of Court 3.1200 is required. (Eff. 01/01/09)

4-107. ADDITIONAL INFORMATION REGARDING BENEFICIARIES

Where any petition calls for the relationship of the heirs or devisees, a chart or list of lineal descent must be included. If any beneficiary named in the Will has predeceased the testator, the fact must be stated. (Eff. 01/01/14)

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

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:

Where the petition contains the accounting of a trustee, or

Where a fiduciary or attorney is requesting extraordinary fees or commissions. (Eff. 01/01/11)

4-110. PROHIBITION AGAINST ADVANCEMENT OF PROBATE MATTERS ONCE NOTICED

When a hearing on a probate matter has been noticed, or when it has been notices and continued to a definite date, the matter cannot be heard before the date set, neither by means of a new petition, an amended petition, a new notice, or otherwise. (Eff. 01/01/11)

4-111. REQUESTING A CONTINUANCE

The Court will allow an initial request to continue a hearing on any Noticed matter be made by telephone or other communication with probate staff. The Court will consider and rule on the request at the hearing. Any subsequent request for a continuance(s) will need to be made in person at the hearing. (Eff. 01/01/13)

4-112. CAPTION ON PLEADINGS

The caption of each pleading shall include the date and the department of the hearing. (Eff. 01/01/09).

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

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:

Each person claiming an interest in or having title to, or possession of, the property,

Each known intestate heir,

Each known devisee whose interest in the property would be affected. (Eff. 01/01/13)

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. ADVISEMENT FORM REQUIRED FOR APPOINTMENT OF PERSONAL REPRESENTATIVE

An official printed form, entitled "ADVICE TO HEIRS" is available at the Clerk's Office and on the Court's website. The Advice to Heirs shall be mailed prior to the hearing of the petition for appointment of a personal representative to the following:

In intestate estates, each person entitled to receive a copy of the Notice of Hearing;

In testate estates, each person or institution named in the Will to receive an asset of the estate.

The fact of such mailing must be proved by a Proof of Services of Mailing on file prior to the hearing on the petition. (Eff. 01/01/11)

4-203. REPEALED [Eff. 01/01/11]

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. BROKER'S COMMISSION

Upon the confirmation of the sale of real property, justification is required for a commission in excess of six percent. (Eff. 01/01/08)

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 REQUIRED ALLEGATIONS

The status report required by Probate Code Section 12200 shall include, the following allegations:

1. The date of decedent's death;
2. The date of issuance of Letters;
3. The filing date of the Inventory (or Inventories), and the total value thereof;
4. A statement whether the value of the estate required the filing of the federal estate tax return, and if so, the date filed and the amount of tax paid;
5. A statement of the condition of the estate in regard to the payment of debt and claims, and the general nature and value of the assets on hand;
6. A statement of the reason or reasons the estate has not been distributed and closed;
7. A statement of the estimated time required to complete the administration; and
8. A statement of the reason, if any, why continued administration would be in the best interest of the estate and the persons interested in it. (Eff. 01/01/11)

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" (Local Rule 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. In addition to those items listed in California Rule of Court 7.703, the following types of legal services are considered to be outside the scope of services contemplated by the statutory fee provisions of the Probate Code, and additional compensation may be allowed on an individual basis upon a detailed statement of services rendered:

Spousal Set-Asides

Preliminary distribution to residuary beneficiaries and trustees

Petitions for Authority to Carry Out Decedent's Contracts

Representation of the fiduciary in the following tax matters

Leases

Petitions to Borrow Money

Heirship Proceedings

Petitions for family Allowance

- B. 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.

- C. 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 served with the notice. An appearance by the attorney will normally be required.

- D. Order

The order should list separately, and provide separate compensation for, each category of service. The amounts requested should be typed in the proposed order. (Eff. 01/01/14)

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. (Eff. 01/01/13)
- 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 set forth in the petition. The assignment must contain a notarial acknowledgment.

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

If decedent left a surviving spouse or if distribution is to be made to heirs of a predeceased spouse pursuant to Probate Code Section 6402.5, 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. 01/01/14)

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. (Eff. 01/01/09)

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 set for hearing until the survival period has expired. (Eff. 01/01/08)

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. 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, the normal fee allowed by the court for an annual accounting covering a twelve-month period is three-fourths of one percent of the market value of the trust assets on the date of the close of the account. However, the normal fee for a licensed Private Professional Fiduciary, bank, entity authorized to transact business as a trust company, any public officer or agency of the State of California, is one per cent of the market value of the trust assets on the date of the close of the account. 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. (Eff. 01/01/09)
- D. Attorney's fees: In the absence of a formula in the will for fees of the attorney for the trustee, the attorney fees for preparation, filing, and presenting the report and order (in absence of demonstration to the contrary) will generally be:
 - 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 trustee's normal fee, as computed in Section C, for a twelve-month period, or \$1,000.00, whichever is greater;
 - 2. For counsel to a trustee 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 trustee's normal fee, as computed in Section C, for a twelve-month period, or \$1,000.00, 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 twelve months will not automatically increase, proportionately or otherwise. (Eff. 01/01/14)

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

The Court Investigator of the Superior Court is hereby appointed to investigate all petitions for appointment of 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. (Eff. 01/01/11)

4-502. CONFIDENTIAL SCREENING FORM

The Confidential Conservator Screening Form shall contain both the California, or other state, driver's license number and the social security number of the proposed conservator. (Eff. 01/01/11)

4-503. TEMPORARY CONSERVATORSHIP BEFORE NOTICED HEARING

A petition for appointment of temporary conservator, made in advance of the regularly noticed hearing, must be delivered to the Court Investigator five calendar days in advance of the ex parte hearing. (Eff. 01/01/11)

4-504. SETTING PETITIONS TO BE INVESTIGATED FOR HEARING

The date for hearing a petition which requires a report from the Court investigator, except ex parte petitions, shall be no sooner than six (6) weeks after the filing of the petition. A copy of a petition which requires a report from the Court investigator shall be submitted to the Court Investigator at the time the original is filed marked in red in the upper left-hand corner "Investigator's Copy". (Eff. 01/01/09)

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. (Eff. 01/01/14)

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 \$750.00 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 \$750.00 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, which as of July 1, 2012 is \$60.00.
 - c. The Ex Parte Application will be set for hearing on the Court's 8:45 am 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. 01/01/13).

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. (Eff. 01/01/14)

B. If there are investments with a brokerage firm, the annual brokerage account statement shall be included with the required documents (Eff. 01/01/11)

- 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 \$3000.00 without specific itemization. (Eff. 01/01/09)

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. APPOINTMENT OF GUARDIAN

Note: 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.

- A. Completed proposed orders and letters shall be submitted with the petition. (Eff. 01/01/14)

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. Completed proposed orders and letters shall be submitted with the petition. (Eff. 01/01/14)

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

A. Fees - In cases compromised under Code of Civil Procedure, section 372 or Probate Code, section 3500, the attorney fees awarded by the court shall, under normal circumstances, not exceed the following amounts:

1. 25% of the amount recovered when the case is settled before trial.
2. 33-1/3% of the amount recovered when the case is settled during trial after a substantial part of plaintiff's case has been introduced or after judgment.
3. Not more than the fees prescribed in subdivision A.2 when the case is settled between the times specified in subdivisions A.1 and A.2.
4. 40% of the amount recovered when the case is settled after the filing of respondent's brief on appeal.
5. An amount less than A.1, which shall reflect actual work done, when the recovery is under an uninsured motorist clause in an insurance policy.

Where a greater amount of attorney's fees are requested, a declaration from the attorney explaining the basis of the fees must be attached to the petition. The declaration shall be in the form required by the California Rules of Court 7.702.

B. Computation of Fees - In computing fees, parents claiming reimbursement for medical expenses and other special damages shall, except in unusual cases of hardship, pay their proportionate share of the attorney fees. Expenses of litigation to be reimbursed shall not be included in the "amount recovered" for the purpose of fixing fees. Such expenses of litigation shall be separately itemized.

If the settlement includes the purchase of a single premium deferred annuity, attorney fees shall be based on the premium, not the payout.

C. Court Approval of Employment Contract - Except for good cause shown, no contract of employment providing for attorney fees shall be approved by the court in advance. Under no circumstances shall the contract be considered for approval in advance without the client's appearance on the application for court approval. (Eff. 01/01/09)

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. Both the petition, and the proposed order, shall set forth the trust in its entirety,
2. A copy of the petition must be submitted to the probate clerk four weeks before the hearing to approve the settlement and be marked "attention: Probate Examiner", and
3. The order approving the settlement shall provide, as a condition of final approval of the settlement, 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 within 30 days of the order being filed. A certified copy of the court order establishing the trust, together with the trustee bond, and a copy of the Trust shall be filed with the court by presenting the documents with a caption page, identifying the trust, for the assignment of a probate case number. (Eff. 01/01/11)

4-804. SETTLEMENTS CREATING A BLOCKED ACCOUNT

At the hearing which orders deposit to a blocked account, the court shall calendar a compliance date.

The party representing the minor, or disabled person, and the attorney for the representative, shall appear at the compliance hearing. The compliance hearing will be dropped and no appearance will be necessary where the proof of deposit and acknowledgment of blocking order are on file.

It is the duty of the attorney to assure that funds are deposited in accordance with the order. Attorney's fees shall not be paid until the money is deposited in the blocked account and the receipt is filed with the court. (Eff. 01/01/11)

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 days 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 County Superior Court to represent clients in Juvenile Dependency Court. (Eff. 07/01/98)

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 (See Referral Form Exhibit B).
2. When an appropriate child advocate has been identified, that person's name shall be submitted to the Court for appointment. (See Order of Appointment of CASA in Exhibit C).
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 ORDER OF JUVENILE COURT THAT DIRECT CALENDAR SYSTEM, "ONE CHILD ONE JUDGE" RULE SHALL APPLY TO ALL DELINQUENCY CASES

- A. All cases described as Juvenile Delinquency cases within the provisions of Welfare & Institutions Codes section 602 shall be subject to assignment to a judicial officer for all purposes at the time of filing of the Petition. This has been the practice of the Juvenile Delinquency Court for the past three years, as authorized by the Presiding Judge of the Juvenile Court, although the practice has not previously been set forth in these Local Rules. Nothing herein shall be construed to interfere with the Presiding Judge's authority to assign or reassign cases.
- B. Cases which are subject to direct calendaring shall be numerically, by last digit of the court case number, 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. An exception will be that in co-participant cases, those matters will remain in the courtroom of first appearance if co-participants are arraigned at the same time. 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".

Time limits for peremptory challenges of magistrates under California Code of Civil Procedure section 170.6 will be within ten (10) calendar days after the first appearance. (Eff. 01/01/14).

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.
DIRECT FACSIMILE (FAX) FILING - CIVIL MATTERS

6-100. IMPLEMENTATION

Pursuant to California Rules of Court Rule 2001 et seq., a party may file by FAX directly with the Superior Court using facsimile transmission under the following provisions:

1. The first sheet transmitted shall be the Judicial Council Transmission Cover Page (Form #C1211JC) followed immediately by the document to be filed.
2. The document to be filed by the Court shall include the words "BY FAX" immediately below the title of the document.
3. The Superior Court toll free fax filing number can be obtained by calling 1-800-322-4945. To fax directly to the court's 800 fax number, filing attorneys and parties need to register their fax number, credit card number and expiration date when calling. While the fax will be in operation 24 hours a day, any fax received after 5:00 p.m. or on court holidays or weekends shall be deemed filed on the next court business day. (Eff. 07/01/98)

6-101 JUVENILE COURT FAX FILING

- A. Pursuant to California Rules of Court (CRC) Rule 1406.5, certain persons and agencies may file specified documents by facsimile (FAX) with the court. Each document must be accompanied by Judicial Council form Facsimile Filing Cover Sheet - Juvenile (JV-520), which shall be the first page transmitted.
- B. For those persons and agencies as defined in Rule 1406.5(d) CRC, the FAX filing telephone number for Juvenile Delinquency documents is (209)468-5573. The FAX filing telephone number for Juvenile Dependency documents is (209)468-9343. FAX documents will be accepted by the Clerk's Office during regular business hours of 8:00 a.m. to 5:00 p.m. (Eff. 07/01/99)

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 submitted emergency requests. The requests shall be limited to those specified in the 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 Declaration re: Notice of Application of Emergency Orders with their pleadings. (Exhibit A) (Eff. 01/01/14)

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. (Eff. 01/01/14)
- 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. (Eff. 01/01/14)
- C. In addition thereto, 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. 07/01/98)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

)	Case No.
)	
Petitioner/Plaintiff,)	DECLARATION RE: NOTICE OF
)	EX PARTE APPLICATION
v.)	
)	
)	
Respondent/Defendant.)	
_____)	

I, _____ declare:

That I am:
 In Pro Per
 Counsel for: Petitioner / Plaintiff Respondent/Defendant Claimant Other

Pursuant to California Rules of Court, Rule 5.165, I have given notice of this ex parte application to:
 Petitioner / Plaintiff Respondent / Defendant Claimant Other

The purpose of this ex parte application is to:

The reason emergency orders are necessary is:

Notice of the time and date and place of the hearing and the specific order requested was given in the following manner:
 by telephone call at _____ a.m./p.m. on _____ 20 ____
 I spoke to _____
 by letter mailed on _____ 20 ____
 I faxed a notice on _____ at _____ a.m./p.m.
 Other _____

I have not given notice of this ex parte application for the following reason:
 Notice of this application would frustrate the purpose of the orders sought. [Explain below.]
 The applicant would suffer immediate and irreparable harm before the adverse party could be heard in opposition as set forth in the Request for Order.
 I was unable to give notice after a good faith attempt and further efforts would be futile or unduly burdensome. The attempted efforts are as follows:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ 20 ____ at _____, California

Signature of Declarant

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. (Eff. 07/01/98)
- 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. (Eff. 07/01/98)

- E. Ex-parte communication with Superior 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. (Eff. 01/01/04)
- 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-habitators) to the extent permitted by the Code. (Eff. 07/01/98)
- (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. "RESERVED FOR FUTURE USE" [Repealed 07/01/06]

Rule 7-106 repealed effective July 1, 2006. The repealed rule related to Family Law Commissioner.

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. (Eff. 01/01/14)
- (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 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.

This section shall remain in effect until December 31, 2014. As of that date, it is repealed unless extended beyond that date by a new or revised local rule. (Eff. 01/01/14) *Rule 7-110 repealed effective July 1, 2006. The repealed rule related to Original Dissolution Filings.*

7-110.5 PRE-TRIAL EXCHANGE OF DOCUMENTS AND INFORMATION

The parties shall exchange trial briefs five days prior to trial. The trial brief shall include:

- (a) The information and documents required by Rules of Court, Rule 5.394;
- (b) 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; and
- (c) A list of witnesses and a brief summary of their testimony.

This section shall remain in effect until December 31, 2014. As of that date, it is repealed unless extended beyond that date by a new or revised local rule. (Rev. 01/01/14)

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) 468-2363 and all other counselor parties if there are no attorneys, no 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 announcements telephone number is (209) 468-9325. Failure to call by 4:00 p.m. will result in the matter not being calendared the next day and precluding the

court from hearing any arguments that 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; and
- (f) Motion for change of venue (Eff. 01/01/14)

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. (Eff. 01/01/14)

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 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. 07/01/06)

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. (Eff. 07/01/05)

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. 01/01/99)

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.
SMALL CLAIMS E-FILING

9-100. ELECTRONIC FILING PROGRAM/SCOPE

The Superior Court of California, County of San Joaquin, hereby adopts an Electronic Filing Program and Policy for its Small Claims Court Division in accordance with California Code of Civil Procedure Section 1010.6. There shall be no direct electronic transmission of any pleadings or papers to the court except where specifically authorized by the court in these rules. Electronic filing in these rules specifically does not include telephone “fax” transmission. (Eff. 10/15/02)

9-101 ELECTRONIC FILING PROCESS

Electronically transmitted documents must be both submitted to the court and accepted for filing by the court in order to be considered duly filed in accordance with these rules.

A. Date/Time of Filing

A document may be electronically transmitted to the Small Claims Division of the court at any time of the day. Acceptance of the document for filing with the court shall be deemed to occur (i) on the date the document was submitted to the court if the submission occurred during normal business hours of the clerk’s office, and (ii) on the next business day the clerk’s office is open for business if the submission occurred after normal business hours of the clerk’s office. For purposes of this section, normal business hours shall be 7:30 a.m. through 5:00 p.m., Monday through Friday, excluding court holidays. Nothing in this section shall limit the clerk’s ability to reject filings.

B. Receipt of Date

Upon receiving a document submitted electronically for filing with the court, a Notice of Acknowledgment of Receipt shall confirm the date and time of receipt of the document by the court for review and filing. The clerk shall thereafter determine if the document is acceptable for filing with the court.

C. Error or Malfunctions

If for any reason the court does not receive an electronically transmitted document for submission and filing with the court, the filer will not receive an electronically transmitted Notice of Acknowledgment of Receipt of the document from the court. The filer shall be solely responsible for the accuracy of the information contained in the filing and for obtaining confirmation of the filing of the document by the court.

D. Acceptance of Filing

Documents electronically submitted to the court for filing shall be reviewed by the clerk for required data elements once the document has been submitted to the court. Upon the clerk’s acceptance of the document, the clerk shall cause to be electronically transmitted to the filer an endorsed copy of the document confirming the date and time the documents was in fact filed with the court. The confirmation of filing of the document by the court and verification of the accuracy of the document filed shall be the sole responsibility of the filer.

E. Rejected Filings

If an electronically transmitted document is submitted to the court but subsequently determined to be unacceptable for filing, the clerk shall cause to be electronically transmitted to the filer a notice of rejection of the document for filing with the court. The notice shall set forth the grounds for rejection of the document. It shall be the responsibility of the filer to resubmit rejected documents with appropriate corrections and any required filing fee. The court will retain a log confirming the rejection of electronically transmitted documents.

F. Confirmation of Submission

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.

G. Endorsement

The clerk's endorsement of documents electronically transmitted to the court for filing shall consist of the words "Electronically filed by the Superior Court of California, County of San Joaquin" followed by the date and time of filing and the Executive Officer/Clerk's printed name. Electronically filed documents so endorsed carry the same force and effect as a manually affixed endorsement stamp with the clerk's signature and initials.

H. Payment

All applicable filing fees shall be prepaid as a condition for processing an electronically filed document. Any applicable refunds shall be made in the same manner as fees were originally paid.

I. Waiver of Fees/Costs for Party in Pro Per

1. Any party receiving public assistance benefits as defined in Government Code Section 68511.3(a)(6)(A) will be permitted to electronically file an application for such waiver of fees/costs.

(a) If the party seeking a waiver of fees/costs electronically provides his or her social security number and date of birth or Medi-Cal number, the application for waiver of fees/costs will be accepted. If the party filing the application is not eligible for a waiver of fees/costs, the court will notify the party submitting the application, by electronic mail, of the reasons for its denial of the application within five court days after the application is filed. If payment of the applicable fees/costs is not made within ten calendar days after denial of the application, the claim will be dismissed by the court.

(b) In the event the party seeking a waiver of fees/costs elects not to electronically provide his or her social security number and date of birth or Medi-Cal number, the electronically submitted application for waiver of fees/costs will be granted on a conditional basis. The party will then be required to provide the court, by mail or in person, within ten calendar days after the application is submitted, proof that he or she is receiving public assistance benefits. If the required documentation is not provided, the court will issue an order denying the application and the claim will be dismissed by the court.

2. Any party who seeks a waiver of fees/costs on grounds that the party's income is to pay applicable fees/costs pursuant to Government Code Section 68511.3(2)(6)(B) and (C) will also be permitted to electronically submit a fees/costs waiver application. Such application will be granted on a conditional basis but the party seeking the waiver of fees/costs will be required to provide to the court, within ten calendar days following submission of the application for waiver of fees/costs, verification of income in the form of two consecutive payroll subs or the equivalent. If this documentation is not provided, the court will issue an order denying the application and the claim will be dismissed by the court. If documentation is submitted but deemed insufficient by the court, the party will be notified by electronic mail of the reasons why the documentation was insufficient and will be given ten calendar days to furnish additional information or pay the applicable fees/costs. If eligibility for waiver of fees/costs is still not demonstrated following expiration of the ten-day period, the court will issue an order denying the application for waiver of fees/costs and the claim will be dismissed.

J. Signed Documents

A party who electronically files a document represents that a signed copy of the document is in his/her possession or control. At any time after filing or service of an electronically filed document, the court or any part to the action may require the filing party to produce the signed copy of the electronically filed document. The demand shall be served on all other parties but shall not be filed with the court.

K. Change of Electronic Mail Address

An attorney or in pro per party appearing whose electronic mail address changes while an action is pending shall serve and file written notice of the change of address.(Eff. 10/01/02)