

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA**

LOCAL RULES OF COURT



EFFECTIVE JANUARY 1, 2016

Local Rules of the Superior Court of California, County of Contra Costa

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Title One. General Governance of Judicial and Non-Judicial Court Operations

Chapter 1. Administrative Rules

Rule 1.1. Adoption and Amendment of Rules

(a) Rules

- (1) These rules shall be known and cited as the Local Rules for the Superior Court of California, County of Contra Costa.
- (2) Effective January 1, 2015, these rules have been substantially reorganized and renumbered to correspond with the structure of the California Rules of Court. They have also been restructured to incorporate all content previously included as Appendices into the body of the Rules. Nothing in these actions, nor in any subsequent amendments, shall be deemed to make invalid or ineffective any actions taken, before such enactments or amendments, in compliance with a rule or rules in effect at the time of such action.

(Rule 1.1(a)(2) revised effective 1/1/15)

- (3) These rules may be amended at any time by a majority of the judges of the Superior Court of Contra Costa County.

(b) Good cause

The Court, for good cause, may waive the application of these rules in an individual case.

(Rule 1.1(b) revised effective 7/1/02)

(Rule 1.1 revised effective 1/1/15)

Rule 1.2. Department Designations

Certain departments shall operate under the following designations: Presiding Judge, Probate, Civil Litigation, Criminal, Juvenile, Family Law and Grand Jury, and they shall exercise the particular functions provided herein. There may be other departments as designated by the Presiding Judge.

(Rule 1.2 revised effective 1/1/15)

Rule 1.3. Presiding Judge

The Presiding Judge and Assistant Presiding Judge shall be selected and have the authority as provided in the California Rules of Court and shall serve for a term of two calendar years.

(Rule 1.3 revised effective 1/1/15)

Rule 1.4. Executive Committee

(a) The Executive Committee

The Executive Committee shall consist of: the Presiding Judge, the Assistant Presiding Judge, the Supervising Judge of the Civil, Criminal, Juvenile, Family Law, Probate and Traffic Divisions; the Supervising Judges in branch court locations, and the immediate past Presiding Judge. The Presiding Judge shall preside over the proceedings of the Executive Committee, but shall not be entitled to vote except to break ties.

(Rule 1.4(a) revised effective 1/1/14)

(b) Duties of the Executive Committee

- (1) The Executive Committee shall review, in its discretion, the decisions and actions of the Presiding Judge and the Executive Officer and, where appropriate, recommend Court policy and procedures for implementation by the Presiding Judge and assist the Presiding Judge on all matters related to court administration.
- (2) With the assistance of the Executive Officer, the Executive Committee shall adopt an annual budget for submission to the Judicial Council.
- (3) The Executive Committee shall review and approve the organizational structure for the administration of the Court under the Court's Executive Officer.
- (4) The Executive Committee shall review and recommend major personnel and administrative policies. Adoption of these policies shall be subject to the approval of a majority of the judges of the Superior Court.

(Rule 1.4(b) revised effective 1/1/10)

(Rule 1.4 revised effective 1/1/15)

Rule 1.5. Definition of Vacation for Judge

"A day of vacation" for a judge of the Contra Costa Superior Court is an approved absence of one full business day. Other absences from the court listed in California Rules of Court, Rule 10.603(c)(2) are excluded from this definition.

(Rule 1.5 revised effective 1/1/15)

Chapter 2. Media Coverage

Rule 1.20. Media Coverage

These procedures are adopted by the Court for the protection of all parties to ensure the secure and efficient handling of cases and events in all courtrooms of the Superior Court for Contra Costa County and related facilities including all buildings containing courtrooms. No filming, photography or electronic recording is permitted in the courthouses except as permitted in the courthouse or

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the courtroom consistent with California Rules of Court, Rule 1.150 and this Local Court Rule. Violation of this rule may result in termination of media coverage, removal of equipment, contempt of court proceedings, or monetary sanctions as provided by law.

(Rule 1.20 revised effective 1/1/15)

Rule 1.21. Requests for Coverage

Requests for any type of video, still photography, or audio coverage, including pool cameras, must be made in compliance with California Rules of Court, Rule 1.150(e)(1), and submitted to the judicial officer assigned to hear the case on the, "Media Request to Photograph, Record, or Broadcast," (Judicial Council Form MC-500) accompanied by the, "Order on Media Request to Permit Coverage" (Judicial Council Form MC-510). For such requests that do not involve a courtroom, they must be submitted to the Presiding Judge on the same forms.

(Rule 1.21 revised effective 1/1/15)

Rule 1.22. Limitation on Coverage

The following limitations apply, unless an exception is expressly permitted by written judicial order or as permitted by of this rule 1.25.

- (1) Videotaping, photographing, or electronic recording by the media and/or the general public is not permitted in any part of the courthouse, including but not limited to, lobby areas, halls, stairs, elevators, clerks' windows, or meeting rooms.
- (2) Videotaping, photographic equipment, and electronic recording devices must be turned off while transporting them in any area of the Court.
- (3) All audible electronic devices must be turned off when they are in courtrooms.
- (4) Any photography of the interior of a courtroom through glass door windows or from between the two sets of doors to a courtroom is prohibited, even if an exception is granted for courthouse areas outside of the courtroom.
- (5) When audio and/or video recording is not permitted by the judicial officer assigned to hear a case, electronic recording devices may be taken into the courtroom, only if they are not turned on and remain inside an enclosed case, bag or other container, unless otherwise prohibited by the judicial officer assigned to the case.

(Rule 1.22 revised effective 1/1/15)

Rule 1.23. Prohibited Coverage

In no event will coverage be allowed as to any of the following: [see California Rule or Court 1.150(e)(6)]

- (1) A proceeding closed to the public (e.g.: juvenile cases);
- (2) Jurors or spectators;

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- (3) Jury selection;
- (4) Conferences between an attorney and client, witness, or aide;
- (5) Conferences between attorneys;
- (6) Conferences between counsel and a judicial officer at the bench (“sidebars”); or
- (7) Proceedings held in chambers.

(Rule 1.23 revised effective 1/1/15)

Rule 1.24. Parking Limitations for Media Vehicles

No media vehicles may be parked in an unauthorized place surrounding the courthouse except with permission from the Presiding Judge. If at any time any vehicle is parked improperly, without such permission, the order permitting photographic and/or electronic coverage, in regard to the operator of that vehicle, may be revoked without further hearing.

(Rule 1.24 revised effective 1/1/16)

Rule 1.25. Areas in Court Facilities Where Media Activities are Authorized

Photos, news conferences, and on-camera statements to members of the media or the general public are allowed only in areas specified for that purpose. The following areas are allowed unless otherwise ordered by the Presiding Judge. Requests for exceptions must be made to the Presiding Judge.

- (1) Wakefield Taylor Courthouse [725 Court Street, Martinez]. Front steps and sidewalk area as long as entering or exiting through the related doorways is not blocked in any way.
- (2) A. F. Bray Courthouse [1020 Ward Street, Martinez]. Front entryway and sidewalk area as long as access to the exterior entrance to the courthouse is not blocked in any way.
- (3) A. F. Bray Courthouse - Court Annex [entrance southeast of entry to courthouse]. Exterior entry to courtrooms or jail as long as access to the exterior entrance to the courthouse is not blocked in any way.
- (4) Peter Spinetta Family Law Center [751 Pine Street, Martinez]. Front plaza and outside stairs as long as access to the exterior entrance to the courthouse is not blocked in any way.
- (5) Richard E. Arnason Justice Center [1000 Center Drive, Pittsburg]. Area outside front foyer as long as the entrance is not blocked in any way.
- (6) George D. Carroll Courthouse [100 37th Street, Richmond]. Courtyard in front of entrance to the courthouse as long as the entrance is not blocked in any way. [Access to adjacent County Health Building also may not be blocked or impacted in any way.]

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- (7) Walnut Creek Superior Court [640 Ygnacio Valley Road, Walnut Creek]. Southside sidewalk area to the west of the entry doors as long as the entrance is not blocked in any way.

Access to the courthouse means that a person or persons entering or leaving the building can pass by easily maintaining a distance of at least five feet between himself or herself and the media, interviewee, and any spectators to the media interview or conference.

(Rule 1.25 revised effective 1/1/16)

Rule 1.26. Video Recording and Still Photography

Unless otherwise specifically prohibited by a judicial officer, video recording and still photography are allowed for non-adversarial proceedings such as weddings or adoptions.

(Rule 1.26 revised effective 1/1/15)

Title Two. General and Administrative Rules

Chapter 1. Jurors

Rule 2.1. Selection of Prospective Jurors

Persons qualified to perform the public duty of jury service shall not be excused from such service except for the causes specified by Code of Civil Procedure Section 204. The Jury Commissioner shall be fair and impartial in the selection of prospective jurors, using the methods and processes under the supervision and control of the Court, best suited for these purposes. No prospective juror shall be rejected because of political affiliation, religious faith, disability, race, ethnicity, national origin, social or economic status, occupation, gender, sexual orientation, or gender identity.

(Rule 2.1 revised effective 1/1/16)

Rule 2.2. Juror Source Lists

The names of prospective trial jurors shall be taken from the last published and available registered voters list of Contra Costa County and the Department of Motor Vehicles list (see California Code of Civil Procedure Section 197(b)).

(Rule 2.2 revised effective 1/1/16)

Rule 2.3. Determining Juror Qualifications, Excluding Prospective Jurors

The Jury Commissioner shall determine the statutory qualifications of each prospective juror and the existence of any illness or ailments which would impair due performance of jury duty. The Jury Commissioner shall exclude from service all those he or she shall find are not competent to serve by law.

(Rule 2.3 revised effective 1/1/16)

Rule 2.4. Statutory Excusals of Jurors

The Jury Commissioner may grant an excuse from jury service to prospective jurors who qualify for excuse pursuant to statute and the California Rules of Court. Before granting or refusing any excuse from jury service, the Jury Commissioner shall fairly weigh and consider all pertinent data, documents and information submitted by or on behalf of the prospective juror and may require any person to answer under oath, orally or in written form, questions necessary to determine the person's qualifications and ability to serve as a prospective trial juror.

(Rule 2.4 revised effective 1/1/16)

Rule 2.5. Employment While Serving as Juror

The Court, counsel and litigants are entitled to the full attention of jurors and therefore jurors are not permitted to engage in any employment or occupation that would affect their ability to properly serve as jurors.

(Rule 2.5 revised effective 1/1/15)

Rule 2.6. Period of Juror Service

Jurors and prospective jurors shall be excused from further service or further call after they have appeared for one day or served upon a jury to a verdict, unless otherwise directed by the Court, until summoned again.

(Rule 2.6 revised effective 1/1/15)

Rule 2.7. Juror Telephone Standby

The Jury Commissioner shall utilize telephone standby for prospective jurors whenever practicable. Prospective jurors placed on telephone standby shall be given credit for service. Telephone standby jurors will not receive compensation.

(Rule 2.7 revised effective 1/1/15)

Rule 2.8. Jury Assembly Room

A jury assembly room has been provided for prospective jurors. Attorneys, litigants or witnesses are not permitted in the jury assembly room.

(Rule 2.8) revised effective 1/1/15)

Rule 2.9. REPEALED

Rule 2.10. Jury Fees

Jury fees shall be deposited and may be refunded as provided in Code of Civil Procedure Sections 631 and 631.3. No refund of the jury fees deposited shall be made unless the party making the deposit has given the Jury Commissioner written notice of settlement, of the granting of a motion

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for continuance, or of the waiving of a jury, at least two (2) court days before the date set for trial, or by Order of Court.

(Rule 2.10 revised effective 1/1/15)

Chapter 2. Grand Jury

Rule 2.30. Grand Jury Impanelment

A Grand Jury shall be drawn and impaneled once each fiscal year by the appointed Grand Jury Judge.

(Rule 2.30 revised effective 1/1/16)

Rule 2.31. Solicitation for Grand Jury Applications

- (1) On or before the first court day in March, the Jury Commissioner shall seek applications for appointment to the Grand Jury as follows:
 - (A) Mail or email notices to all relevant media outlets and public agencies;
 - (B) Post the application and information about grand jury service on the court's website at: www.cc-courts.org/grandjury
 - (C) Solicit referrals from social, community and political groups; and
 - (D) Solicit referrals from Judges and former Grand Jurors.
- (2) All persons who submit an application are to receive a formal questionnaire which must be returned no later than April 15 of that year. This questionnaire will be available to anyone upon request from the Superior Court Secretary's Office.

(Rule 2.31(2) revised effective 1/1/16)

(Rule 2.31 revised effective 1/1/16)

Rule 2.32. Grand Jury Qualifications

The Jury Commissioner will assess the qualifications of each application according to the criteria specified under Part 2, Title 4, Chapter 2, Articles 1 and 2 of the Penal Code, and the referenced sections of the Code of Civil Procedure. The Jury Commissioner shall make such preliminary investigation of the applicants as may be directed by the Grand Jury Selection Committee.

(Rule 2.32 revised effective 1/1/16)

Rule 2.33. Grand Jury Selection Committee

The Grand Jury shall be selected in accordance with the standards and requirements of law. Accordingly, the Presiding Judge will appoint a Grand Jury Selection Committee of five (5) Judges. The selection process will be administered as follows:

- (1) The Selection Committee will oversee the process by which sixty (60) applications are selected, making every reasonable effort to ensure proportional representation from supervisorial districts and sociological group representation.
- (2) Each of the five Selection Committee Judges will interview twelve (12) applicants over a period of three (3) court days, allotting fifteen (15) minutes to each applicant. On the fourth day, the five Judges will meet, discuss the sixty (60) applicants and prepare a final list of thirty (30) names.
- (3) The Selection Committee will present the list of thirty (30) names to the Superior Court Judges before June 1, at which time, the judges will vote whether or not to ratify and confirm the actions of the Grand Jury Selection Committee. Once approved by a majority of judges, the names shall constitute the Grand Jury list which shall be filed with the County Clerk and made a public record.

(Rule 2.33 revised effective 1/1/16)

Rule 2.34. Additional Grand Jury

The Presiding Judge may order and direct the impanelment, at any time, of one additional Grand Juror (see Penal Code Section 904.6).

(Rule 2.34 revised effective 1/1/16)

Rule 2.35. Sealing of Grand Jury Transcript

The filing party must serve all Motions to Seal a Grand Jury Transcript on all parties and the court reporter(s). When an Order is issued by the Court to seal a Grand Jury transcript, in whole or in part, the prevailing party must serve the Order on all parties and the court reporter(s).

(Rule 2.35 revised effective 1/1/06)

(Rule 2.35 revised effective 1/1/15)

Chapter 3. Attorney's Fees and Appointment of Counsel

Rule 2.40. Attorney's Fee Schedule

The following fee schedule is established for all cases where the obligation sued provides for attorney's fees, EXCEPT in Unlawful Detainer actions. This schedule will be used by the Clerk and the Court respectively to fix attorney's fees in default judgments entered pursuant to Code of

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Civil Procedure Section 585 or judgment by the Court pursuant to Code of Civil Procedure Section 437(c).

In Unlawful Detainer actions, and Judgments pursuant to Section 437(c), the attorney's fee shall be fixed at the sum of \$375.00 or at a fee set pursuant to the within schedule, whichever is greater.

FEE SCHEDULE

MINIMUM AMOUNT		MAXIMUM AMOUNT	FEE
\$1.00	TO	\$500.00	\$150.00
501.00	TO	1,000.00	\$150 plus 30% on amount over \$500
1,001.00	TO	2,000.00	\$300 plus 25% on amount over \$1,000
2,001.00	TO	5,000.00	\$550 plus 10% on amount over \$2,000
5,001.00	TO	10,000.00	\$850 plus 6% on amount over \$5,000
10,001.00	TO	50,000.00	\$1,150 plus 3% on amount over \$10,000
50,001.00	TO	100,000.00	\$2,350 plus 2% on amount over \$50,000
100,001.00 and over			\$3,350 plus 1% on amount over \$100,000

(Rule 2.40 revised effective 1/1/15)

Rule 2.41. Schedule for Use Entering Default Judgment

When the Clerk is authorized by statute to enter judgment in an action upon a contract providing for an attorney's fee, the foregoing schedule of attorney's fees in default cases shall be used by the Clerk in determining the amount to be included in the judgment, but in no event shall the amount included by the Clerk exceed the amount of attorney's fees requested.

(Rule 2.41 revised effective 1/1/16)

Rule 2.42. Setting Attorney Fees in Contested Case

The judge shall have complete discretion in setting attorney's fees contingent upon all the attendant circumstances.

(Rule 2.42 revised effective 1/1/15)

Rule 2.43. Attorney Fees in Foreclosure Cases

When an attorney's fee is allowed on the foreclosure of a mortgage or trust deed, a reasonable attorney's fee shall be deemed to be that computed as provided in Local Court Rule 2.40, increased by ten (10) percent.

(Rule 2.43 revised effective 1/1/15)

Rule 2.44. Itemization of Extraordinary Services

Every application for compensation for extraordinary services rendered by an attorney in any case mentioned in this rule and every application in any other case, as authorized by law, for allowance, fixing or recovery of attorney's fees, shall be accompanied by an itemized statement of the services rendered.

(Rule 2.44 revised effective 1/1/16)

Chapter 4. Court Reporting Services

Rule 2.50. Notice of Availability of Court Reporting Services

The Court's policy is set forth in the Court's Notice of Availability of Court Reporting Services, which is posted in the Clerk's Office and on the Court's website.

(Rule 2.50 revised effective 1/1/15)

Rule 2.51. Unavailability of Court-Provided Court Reporters and Procurement of Outside Private Reporters

(a) Unavailability of court reporters by case type

Unless otherwise noted in the Court's Notice of Availability, pursuant to California Rules of Court, Rule 2.956, the Court does not provide court reporters for hearings in the following civil case types:

- (1) Unlimited and Limited Civil
- (2) Family Law
- (3) Probate

(b) Procurement of private court reporter

For matters where the court does not provide a court reporter due to unavailability, any party who desires a verbatim record of a court proceeding from which a transcript can later be prepared, may procure the services of a private certified court reporter pro tempore to report any scheduled hearing or trial (see Government Code 70044 and California Rules of Court, Rule 2.956). The Court does not provide referrals to private court reporting service providers and does not have any contractual or employment obligation related to pro tempore reporters hired by the parties for this purpose. It is the party's responsibility to arrange for and pay the outside reporter's fee for attendance at the proceedings but the expense may be recoverable as part of the costs, as provided by law, (See California Rules of Court, Rule 2.956(c)).

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(c) Requirement to meet and confer to select court reporter

For contested matters, the parties must meet timely and confer as to the selection of a qualified court reporter and provide a written stipulation, on the court-provided form (see Government Code 70044).

- (1) The reporter must be licensed as a Certified Shorthand Reporter in California and comply with all California statutory and rule provisions for reporting court proceedings. The court reporter pro tempore must provide their name, CSR number, business address and phone number and/or email address to the courtroom clerk and all parties present on the day of the hearing in the event of an appeal or if a party wishes to procure a transcript from the reporter (see California Rules of Court, Rule 2.950).
- (2) The court reporter pro tempore must execute the court's required written agreement as to the obligations of the court reporter in accepting the reporting assignment.
- (3) If court reporters become available and at the court's discretion are provided by the court for any civil hearings (including family law and probate matters), the parties will be required to pay the applicable reporter attendance fee provided for in Government Code Sections 68086(a)(1)(A) or (B) in a timely manner.

(Rule 2.51(c) new effective 1/1/13)

(Rule 2.51 revised effective 1/1/16)

Rule 2.52. Requests for Transcripts

Whenever a party requests a court reporter to furnish a transcript of all or a part of a trial or proceedings, the reporter shall immediately inform all other parties of such request and inquire whether any party desires a copy of the transcript.

Parties shall be responsible for all transcript costs listed in Government Code Section 69953.

(Rule 2.52 revised effective 1/1/16)

Chapter 5. Sanctions

Rule 2.60. Sanctions

A violation of any of these rules may result in sanctions and penalties including, but not limited to, dropping a matter from the calendar, vacating a trial date, dismissal for lack of prosecution, imposition of a fine or imposition of costs payable to the Court, actual expenses and counsel fees, witness fees and jury fees arising as a result of such violation payable to opposing counsel.

(Rule 2.60 revised effective 1/1/16)

Chapter 6. Information and Forms

Rule 2.70. Form of Documents Filed with the Court

All documents filed with the Court must comply with California Rules of Court, Rules 2.100 et seq, and 3.1110.

(Rule 2.70 revised effective 1/1/15)

Rule 2.71. Identifying Information on Filed Documents

- (a) Every pleading or paper filed by the Clerk of the Court must include the name, address and phone number of the attorney or party on the first page (see California Rules of Court, Rule 2.100).
- (b) No substitution of a party appearing in person in place of an attorney shall be filed unless the mailing address and phone number of such party is contained in such substitution.

(Rule 2.71 revised effective 1/1/16)

Chapter 7. Facsimile Transmitted Documents

Rule 2.80. Definition of Facsimile Document

A facsimile document is a document that is produced electronically by facsimile machine (FAX) scanning and transmission or by similar means.

(Rule 2.80 revised effective 1/1/15)

Rule 2.81. Facsimile Document Compliance with California Rules of Court

Facsimile-produced documents submitted for filing with the Court shall comply with California Rules of Court, Rule 2.300, and all Contra Costa Local Rules of Court. All documents filed must be plain paper copies that are permanently legible copies. There is no provision for direct facsimile transmission to the Court or Court Clerk.

(Rule 2.81 revised effective 1/1/15)

Rule 2.82. Signatures

Signatures on facsimile-produced documents shall be treated as original signatures unless a request is timely made to produce or substitute the original document.

(Rule 2.82 revised effective 1/1/15)

Rule 2.83. Request to Produce Original Documents

When a facsimile-produced document is filed or served in an action in the Court, the party against whom the document is filed or served may, at any time, request the filing or production of the original document in the Court. The request to file or produce the original document shall be served upon the party filing or serving the facsimile-produced document, who shall file or produce the original document in the Court within fifteen (15) calendar days thereafter.

In the event that the original document is not filed or produced, the party, on notice to the filer or server of the facsimile-produced document, may petition the Court in which the action is pending to order the filer or server of the facsimile-produced document to file or produce the original document.

(Rule 2.83 revised effective 1/1/16)

Rule 2.84. Incorporation of Exhibits

In the event that a proper facsimile-produced document submitted for filing requires or refers to attached exhibits which, because of the nature of such exhibits cannot be accurately transmitted via facsimile transmission, such documents shall be filed with an insert page for each missing exhibit describing the exhibit and why it is missing. Unless the Court otherwise orders, the missing exhibits shall be mailed or otherwise delivered to the Court, for filing and attachment to the filed document, not later than five (5) court days following facsimile transmission of the document for filing. The date on which the facsimile-produced document is filed determines the filing date of the document and not the date when the exhibits are received and attached to the filed document. Failure to send the missing exhibits to the Court for attachment to the document as required by this paragraph shall be grounds for the Court to strike any such document or exhibit.

(Rule 2.84 revised effective 1/1/15)

Rule 2.85. Requirements for Service of Process

This subdivision applies only to filings with the Court. The complete document must, where required, be served on all parties in accordance with applicable time limits, and a certificate to that effect must accompany the filing.

(Rule 2.85 revised effective 1/1/15)

Rule 2.86. Pilot Project - Limited Facsimile Filings

(a) General rules - authorization of pilot project

To enable the Court to evaluate the feasibility and effectiveness of instituting direct facsimile filing of court documents, a pilot project permitting the limited filing of documents in specified areas will be allowed. Any facsimile transmissions other than as authorized by Rule 2.86 will be rejected and will not be accepted by the Clerk.

- (1) A facsimile filing shall be accompanied by a Judicial Council Facsimile Filing Cover Sheet as specified in California Rules of Court, Rule 2.304(b).

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- (2) Each facsimile document shall contain the phrase “By fax” below the document’s title.
- (3) A party using facsimile transmission to file a document must utilize a machine that generates a transmission record and maintain that record in case there is an error in the transmission or the Court fails to process the document. In either instance, the filing party may move the Court for an order filing the document nunc pro tunc by including the proof of transmission with the document. The form of this proof shall be as specified in California Rules of Court, Rule 2.304(d).

(b) Special rules applicable to Juvenile Dependency filings

Subject to finalizing satisfactory arrangements with the Department of Social Services, the Court will accept the filing of initial dependency petitions and accompanying documents by way of facsimile transmission. Check the court’s website at www.cc-courts.org for the correct facsimile number.

- (1) For this Pilot Project, the filing of only initial dependency petitions in juvenile matters will be allowed by facsimile transmission. Any subsequent filings in these juvenile matters shall be made by regular filing process.
- (2) Before filing the initial Dependency petition via facsimile, the petitioner shall contact the Clerk of Court Juvenile Department by telephone to inform the appropriate Clerk’s Office staff that a juvenile dependency petition is being transmitted via facsimile.
- (3) Petitions received by the Clerk’s Office by 5:00 p.m. via facsimile transmission will be considered filed as of the day received. Petitions received after 5:00 p.m. will not be considered as filed by the Clerk’s office until the next business day following receipt of the facsimile transmission.
- (4) In addition to any other required information, the Facsimile Filing cover sheet shall indicate the time, location and department of the scheduled detention hearing in the matter.
- (5) Upon receipt, the Clerk’s Office shall stamp the petition as filed, and shall transmit by return facsimile to the petitioner a copy of the initial page of the petition reflecting the dated file stamp. The petitioner shall present a copy of that file stamped petition to the Court at the detention hearing.
- (6) The original petition shall be delivered to the Clerk of Court Juvenile Department for filing the next business day following the facsimile filing of the petition. The original petition shall be stamped as filed by the Clerk with the date the facsimile petition was received and filed. The facsimile copy of the petition shall be retained in the court file along with the original petition.

(Rule 2.86(b)(6) revised effective 1/1/13)

(Rule 2.86 revised effective 1/1/16)

Chapter 8. Standards of Professional Courtesy

Rule 2.90. Consideration of History of Breaches in Professional Courtesy

The Court acknowledges that the Contra Costa County Bar Association has adopted "Standards of Professional Courtesy," which are incorporated in these Local Court Rules.

In any motion filed pursuant to Code of Civil Procedure Sections 128, 128.7, 177 and 177.5 and various local rules, the Court may take into consideration counsel's history of breaches of these standards in deciding what, if any, sanctions to impose.

(Rule 2.90 revised effective 1/1/15)

Rule 2.91. Standards of Professional Courtesy

(a) Purpose of these standards

Attorneys are most often retained to represent their clients in disputes. The practice of law is largely an adversarial process. Attorneys are ethically bound to zealously represent and advocate their clients' interest. Nonetheless, there exist certain standards of professional courtesy that are observed, and certain duties of professionalism are owed by attorneys to their clients, opposing parties and their counsel, the Courts and other tribunals, and the public as a whole. Members of the Contra Costa County Bar Association have practiced law with a level of professionalism that goes well beyond the requirements of the State Bar mandated Code of Professional Conduct. The following standards of professional courtesy describe the conduct preferred and expected by a majority of attorneys practicing in Contra Costa County in performing their duties of civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, cooperation and competence. These standards are not meant to be exhaustive. They should, however, set a tone or guide for conduct not specifically mentioned in these standards.

(b) Professional courtesy standards

These standards have been codified to make the level of professionalism reflected in them the standard for practice within Contra Costa County, with the hope that their dissemination will educate new attorneys and others who may be unfamiliar with the customary local practices. These Standards have received the approval of the Board of Directors of the Contra Costa County Bar Association. They have also been endorsed by the Judges of the Superior Court of Contra Costa County, who expect professional conduct by all attorneys who appear and practice before them. They will be considered by those judges in their rulings pursuant to California Code of Civil Procedure Sections 128, 128.7, 177, and 177.5, as provided for in Local Court Rule 2.90.

All attorneys conducting any practice of law in Contra Costa County are encouraged to comply with the spirit of these standards and not simply blindly adhere to the strict letter of them. The goals stated and inherent herein are equally applicable to all attorneys regardless of area of practice.

(c) Conformity with other statutes or rules

This Code is, of course, not a substitute for the statutes and rules, and no provision of this Code is intended to be a method to extend time limitations of statutes and rules, including fast track time limitations, without appropriate court order.

(Rule 2.91 revised effective 1/1/15)

Rule 2.120. Scheduling

(a) Advance notice of scheduling activities

- (1) Attorneys should communicate with opposing counsel before scheduling depositions, hearings, meetings and other proceedings and make reasonable efforts to schedule such meetings, hearings, depositions, and other proceedings by agreement whenever possible, at all times attempting to provide opposing counsel, parties, witnesses and other affected persons, sufficient notice.
- (2) Where such advanced efforts at scheduling are not feasible (for example, in an emergency, or in other circumstances compelling more expedited scheduling, or upon agreement of counsel) an attorney should not arbitrarily or unreasonably withhold consent to a request for scheduling accommodations that do not prejudice their clients or unduly delay a proceeding.

(b) Sufficient time to complete proceedings

In all cases an attorney should attempt to reserve sufficient time for the completion of the proceeding to permit a complete presentation by counsel for all parties.

(c) Avoid continuances or undue delays in scheduling

An attorney should not engage in delay tactics in scheduling meetings, hearings and discovery. An attorney should not seek extensions or continuances for the purpose of harassment or solely to extend litigation.

(d) Notice of scheduling conflicts

Attorneys should notify opposing counsel, the Court and others affected, of scheduling conflicts as soon as they become apparent and shall cooperate in canceling or rescheduling. An attorney should notify opposing counsel and, if appropriate, the Court or other tribunal, as early as possible of any resolutions between the parties that renders a scheduled hearing, position or meeting unnecessary or otherwise moot.

(e) Requests for time extensions

Consistent with existing law and court orders, attorneys should grant reasonable requests by opposing counsel for extensions of time within which to respond to pleadings, Discovery and other matters when such an extension will not prejudice their client or unduly delay a proceeding.

(f) Disclosure of identity of witnesses

Attorneys should cooperate with opposing counsel during trials and evidentiary hearings by disclosing the identities of all witnesses reasonably expected to be called and the length of time needed to present their entire case, except when a client's material rights would be adversely affected. They should also cooperate with the calling of witnesses out of turn when the circumstances justify it.

(g) Time and manner of service of papers

The timing and manner of service of papers should not be calculated to disadvantage, overwhelm or embarrass the party receiving the papers. An attorney should not serve papers simply to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience the adversary, such as late in the day (after normal business hours), or so close to a court appearance that it inhibits the ability of opposing counsel to prepare for that appearance or to respond to the papers (if permitted by law), or in such other way as would unfairly limit the other party's opportunity to respond to those papers or other matters pending in the action.

(Rule 2.120 revised effective 1/1/16)

Rule 2.121. Discovery

(a) Purpose of discovery

Attorneys should pursue discovery requests that are reasonably related to the matter at issue. Attorneys should not use Discovery for the purpose of harassing, embarrassing or causing the adversary to incur unnecessary expenses, as a means of delaying the timely, efficient and cost effective resolution of a dispute, or to obtain unfair advantage.

(b) Response to requests for discovery

Attorneys should ensure that responses to reasonable discovery requests are timely, organized, complete and consistent with the obvious intent of the request. Attorneys responding to document demands and interrogatories should not do so in an artificial manner designed to assure that answers and responses are not truly responsive or solely to attempt to avoid disclosure.

(c) Discovery questions

Attorneys should avoid repetitive or argumentative questions, questions asked solely for purposes of harassment, or questions which are known to the questioner to be an invasion of the rights of privacy of third parties not present or represented at the deposition.

(d) Conduct of deposition proceedings

Attorneys should bear in mind that depositions are to be taken as if the testimony was being given in court, and they should therefore not engage in any conduct during the deposition that would not be allowed in the presence of a judicial officer. An attorney

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should avoid, through objections or otherwise, improper coaching of the deponent or suggesting answers.

(e) Requirement to meet and confer on discovery

Attorneys should meet and confer on Discovery requests in a timely manner and make good faith attempts to actually resolve as many issues as can possibly be resolved before proceeding with motions concerning the discovery. Before filing a motion concerning discovery, or otherwise, an attorney should engage in more than a mere pro forma effort to resolve the issue(s).

(Rule 2.121 revised effective 1/1/15)

Rule 2.122. Conduct Towards Other Attorneys, the Court and Participants

(a) Professional conduct

Attorneys must remember that conflicts with opposing counsel are professional and not personal, that vigorous advocacy is not inconsistent with professional courtesy, and that they should not be influenced by ill feelings or anger between clients in their conduct, attitude, or demeanor toward opposing attorneys.

(b) Service of papers

An attorney should never use the mode, timing or place of serving papers primarily to embarrass a party or witness.

(c) Filing of motions

Motions should be filed sparingly, in good faith and when the issue(s) cannot be otherwise resolved. An attorney should not engage in conduct which forces opposing counsel to file a motion and then not oppose the motion, or provide information called for in the motion only after the motion is filed.

(d) Professional demeanor

Attorneys should refrain from disparaging or denigrating the Court, opposing counsel, parties or witnesses before their clients, the public or the media.

(e) Conduct of clients and witnesses

Attorneys should be, and should impress upon their clients and witnesses, the need to be courteous and respectful and not rude or disruptive with the Court, court personnel, opposing counsel, parties and witnesses.

(f) Instructions to attorneys on witnesses

Attorneys should make an effort to explain to witnesses the purpose of their required attendance at depositions, hearing or trial. They should further attempt to accommodate the schedules of witnesses when setting or resetting their appearance, and promptly notify them of any cancellations. Dealings with nonparty witnesses should always be courteous

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and designed to leave them with an appropriately good impression of the legal system. Attorneys should instruct their clients and witnesses that they are not to communicate with the Court on the pending case except with all counsel or parties present in a reported proceeding.

(g) Notification to opposing party regarding ex parte

Where applicable laws or rules permit an ex parte application or communication to the Court, before making such an application or communication, an attorney should make diligent efforts to notify opposing party or opposing counsel known to represent or likely to represent the opposing party, should make reasonable efforts to accommodate the schedule of such attorney or party to permit the opposing party to be represented, and should avoid taking advantage of an opponent's known absence from the office.

(h) Drafting court documents

Attorneys should draft agreements and other documents promptly and so as to fairly reflect the true intent of the parties.

(i) Prohibiting bias

No attorney shall engage in any act of age, gender, sexual orientation, physical or mental impairment, religion, or race bias while engaging in the practice of law in Contra Costa County.

(Rule 2.122 revised effective 1/1/15)

Rule 2.123. Candor to the Court and Opposing Counsel

(a) Accuracy of written and oral statements

Attorneys should not knowingly misstate, misrepresent or distort any fact or legal authority to the Court or to the opposing counsel, and shall not mislead by inaction or silence. Written materials and oral argument to the Court should accurately state current law and fairly represent the party's position without unfairly attacking the opposing counsel or opposing party.

(b) Manner to present new information

If, after all briefing allowed by law or the Court has been submitted, an attorney locates new authority that s/he desires to bring to the Court's attention at a hearing on the matter, a copy of such new authority shall be provided to both the Court and to all opposing counsel in the case at or before the hearing.

(c) Proposed orders

Attorneys should draft proposed orders promptly, and the orders should fairly and adequately represent the ruling of the Court. When proposed orders are submitted to counsel for approval, attorneys should promptly communicate any objections to the party

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preparing the proposed order so that good faith discussions can be had concerning the language of the proposed order.

(d) Court rulings

Attorneys should respect and abide by the spirit and letter of all rulings of the Court.

(e) Opposing letters to counsel

An attorney should not draft letters assigning to an opposing party or opposing counsel a position that party or counsel has not taken or to create a “record” of events that have not occurred.

(Rule 2.123 revised effective 1/1/16)

Rule 2.124. Efficient Administration

(a) Avoid unnecessary action

Attorneys should refrain from actions which cause unnecessary expense, or delay the efficient and cost-effective resolution of a dispute.

(b) Stipulate to facts and legal authority

Attorneys should, whenever appropriate, stipulate to all facts and legal authority not reasonably in dispute.

(c) Encourage negotiation and resolution

Attorneys should encourage principled negotiations and efficient resolution of disputes on their merits.

(d) Punctuality and preparedness

Attorneys should be punctual in communications with others, and punctual and prepared for all scheduled appearances.

(e) Consider Alternative Dispute Resolution (ADR)

In every case, and as soon as the case can be reasonably evaluated, an attorney should consider whether the client’s interest could be adequately served and the case more expeditiously and economically disposed of by settlement, arbitration, mediation or other form of alternative dispute resolution.

(f) Make legitimate objections during deposition or trial

An attorney in making objections during a deposition, trial or hearing should do so for legitimate and good faith reasons and should not make such objections only for the purpose of making a speech, harassment or delay. All remarks, argument, objections and requests by counsel during trial shall be addressed to the Court rather than directly to adversaries. Objections should be in legal form and without argument, unless directed to make argument by the Court.

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(g) Arrange witness appearance to eliminate delay

An attorney shall arrange for the appearance of witnesses during presentation of their case so as to eliminate delay caused by waiting for witnesses who have been placed on call.

APPROVED BY THE BOARD OF DIRECTORS OF THE CONTRA COSTA COUNTY BAR ASSOCIATION JUNE 1993.

(Rules 2.124 revised effective 1/1/16)

Rule 2.150. Committee on Bias

The Superior Court, in cooperation with the Contra County Bar Association, re-establishes a Committee on Bias, and adopts the procedures and stated purpose that are in these Local Rules of Court (see Title 10, Standard 10.20, Standards of Judicial Administration).

(Rule 2.150 new effective 1/1/15)

(a) Informal complaint process defined

The Judges of the Superior Court and the Contra Costa County Bar Association, have agreed upon an informal complaint procedure addressing issues of age, gender, sexual orientation, disability, socioeconomic status, religion, national origin and race bias in the Courts (see Title 10, Standard 10.20, Standards of Judicial Administration).

(b) Intent of procedure

The intent of this procedure is not to discipline, but to educate with the purpose of improving the problem and preserving the integrity and impartiality of the judicial system.

(c) Complaint procedure

- (1) Notify Committee on Bias. If a participant (participant includes, but is not limited to counsel, witnesses, parties or jurors) believes a bench officer has engaged in an act of bias or otherwise failed to ensure that proceedings are conducted in a manner that is fair and impartial to all participants, such person may forward a letter addressed to the Committee on Bias, 2300 Clayton Rd, Suite 520, Concord, CA 94520. Anonymous complaints will not be considered. Complaints are limited to behavior or conduct occurring in courtroom proceedings.
- (2) Review of Committee on Bias. The Committee on Bias will review the letter. The Committee's focus will be on incidents that do not warrant discipline but that should be corrected. If the Committee believes the letter raises the appearance of bias, the Committee will forward the substance of the letter, without disclosing the identity of the complainant, to the Presiding Judge. The Presiding Judge will meet with the bench officer who is the subject of the letter and take appropriate corrective action.

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- (3) Conduct of Committee on Bias. In determining whether a complaint raises an appearance of bias, the Committee may conduct its own investigation which may include contacting the complainant for additional information.
- (4) Investigation of Committee on Bias. Any investigation conducted shall be undertaken, with the utmost care not to violate the confidentiality of the complainant.
- (5) Resolution of Complaint. It is hoped that making the bench officer aware of the complaint will resolve the issue if one exists. If both the bench officer and the complainant wish to confer about the matter, or try to further resolve any outstanding problems, they may do so. However, this would be subject to the agreement of both and to the complainant's decision to waive any confidentiality.
- (6) Return of letter to Committee. After the Presiding Judge informs the Committee that the bench officer who is the source of the complaint has been contacted, the letter will be returned to the Committee for destruction. However, for educational purposes, the Committee may maintain data as to the types of complaints received.
- (7) No referral of and to Commission on Judicial Performance. Those matters referred in this manner will not be used as a basis for a referral to the Commission on Judicial Performance by the Committee.
- (8) Notification to Complainant. With respect to those incidents that, if substantiated, would warrant discipline, the Committee will advise the complainant of the appropriate disciplinary authority.

(d) Committee membership and length of service

- (1) Composition of Committee. The Committee on Bias is to be composed of representative members of the court community, including but not limited to, judges, lawyers, court administrators, representatives and individuals from minority, women's and gay and lesbian bar associations and from organizations that represent persons with disabilities.
- (2) Number of members on Committee. The Committee on Bias will consist of five members, appointed by the President of the Contra Costa Bar Association. The Presiding Judge can also appoint a judge and/or a court administrator to the committee. However, if the judge appointed to the committee is the subject of the complaint, the judge is precluded from participating in the review of the complaint.
- (3) Term of Committee members. Committee members will serve for staggered terms. A quorum will be necessary for meetings and a majority vote of those in attendance will be required before any action can be taken.

(Rule 2.150, revised effective 1/1/16)

Chapter 10. Communication of Concerns

Rule 2.170. Concerns

Concerns regarding court services or personnel, other than those related to a particular court case, must be submitted in writing. Each concern will be considered carefully, and a written response will be issued. Written concerns must be signed, include an address where the court's response can be sent, and addressed to the Court Executive Officer at:

Email: mediainfo@contracosta.courts.ca.gov

Or

Mail: P.O. Box 431, Martinez, CA 94553

(Rule 2.170 new effective 1/1/15)

Title Three. Civil Rules

Chapter 1. Administration of Civil Litigation

Rule 3.1. Applicability

Unless otherwise specified, this rule applies to all civil cases except Juvenile, Probate and Family Law cases, extraordinary writs, Asset Forfeiture cases under Health and Safety Code Section 11470 et seq., and Limited Jurisdiction Collections Cases under provisions of California Rules of Court, Rule 3.740. Special provisions are made for expediting Unlawful Detainer cases (see Rule 3.12).

(Rule 3.1 revised effective 1/1/15)

Rule 3.2. Definitions as Used in Title Three

As used in Title 3:

- (1) The term "counsel" includes parties representing themselves.
- (2) The term "plaintiff" also includes cross-complainant.
- (3) The term "defendant" also includes cross-defendant.

(Rule 3.2 revised effective 1/1/15)

Rule 3.3. Transferred Cases

Unless excluded under Rule 3.8(c), all cases transferred from another jurisdiction are subject to this Rule.

(Rule 3.3 revised effective 1/1/15)

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Rule 3.4. Policy

(a) Civil case management

It is the policy of the Superior Court of Contra Costa County to track and manage all cases from the moment the complaint is filed until disposition and to conclude all civil cases as expeditiously as possible within the limits of available funding and staffing.

(Rule 3.4(a) revised effective 1/1/13)

(b) Disposition goals

(1) It is the goal of the Court to conclude 75% of all Unlimited Jurisdiction Civil cases and 90% of Limited Jurisdiction Civil cases filed within 12 months of the filing of the complaint, 85% of all Unlimited Jurisdiction Civil cases and 98% of all Limited Jurisdiction Civil cases filed within 18 months of the filing of the complaint, and 100% of all civil litigation cases within 24 months of the filing of the complaint.

(Rule 3.4(b)(1) revised effective 1/1/13)

(2) It is the policy of the Court that all civil cases, not court-designated as “complex”, are presumed to be appropriate for a disposition goal of 12 months. The Court may modify this disposition goal at any time upon the showing of good cause or insufficient staffing due to lack of funding.

(Rule 3.4(b)(2) revised effective 1/1/13)

(c) Hearings

It is the policy of the Court that unnecessary hearings, which tend to delay the progress of litigation, be avoided. The Court urges counsel to meet and confer on disputed issues before motions are filed.

(Rule 3.4(c) revised effective 1/1/01)

(d) Assignment of Unlimited Jurisdiction Civil cases

All Unlimited Jurisdiction Civil cases subject to this rule will be assigned to one judge for all purposes unless otherwise determined by the Presiding Judge for good cause.

(Rule 3.4(d) revised effective 1/1/13)

(e) Uninsured motorists

The following policy applies to uninsured motorist cases:

(1) Promptly upon learning that an action is to proceed as an uninsured motorist case, plaintiff's counsel shall file a declaration setting forth the information upon which such a determination has been made. The declaration shall include: A statement that coverage exists under an uninsured motorist's insurance policy; the name of the carrier and limits of coverage. It shall also include a statement that counsel believes that the limits of coverage are adequate to compensate for known loss or damage; that plaintiff(s) will promptly pursue such remedy and that it is counsel's

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present intention to assign the claim or dismiss the pending action upon receipt of a recovery by settlement or award.

- (2) The declaration shall be captioned "Request for Temporary Exemption - Uninsured Motorist Case."
- (3) Upon review of the declaration, the Court may designate the action as an uninsured motorist case in which event the time requirements under this Rule will be suspended for up to 270 days from the date the complaint was filed or from such other date the Court, in its discretion, shall fix. The case will be monitored by the setting of a review hearing at the end of the suspension period. If a dismissal has not been filed, plaintiff's counsel must file a further declaration five (5) court days before the review hearing date and provide a status report and, if necessary, a request with supporting justification for additional time to conclude the case.

(Rule 3.4(e) revised effective 1/1/16)

(f) Dismissal of "DOES" upon disposition

It is the policy of the Court that each case be completely disposed. At the time of adjudication of the case, by request for dismissal or request for entry of judgment, all remaining parties including DOES, will be dismissed by the Court unless otherwise specified.

(Rule 3.4(f) revised effective 1/1/16)

(g) Exception order

Nothing in this Rule shall be interpreted to prevent the Court in an individual case from issuing an Exception Order based on a specific finding that the interest of justice requires a modification of the routine procedures as prescribed by this Local Court Rule.

(Rule 3.4(g) revised effective 1/1/13)

(h) Alternative Dispute Resolution (ADR)

It is the policy of the Court to encourage the parties in all cases to consider the use of appropriate alternative dispute resolution options as a means of resolving their disputes without trial. The Court encourages parties who can agree to use ADR before the first Case Management Conference to use the appropriate local court form:

- (1) CV-655b – ADR Case Management Stipulation and Order (Unlimited Jurisdiction Civil Cases)
- (2) CV-659d – ADR Case Management Stipulation (Limited Jurisdiction Civil Cases)

(Rule 3.4(h) revised effective 1/1/13)

(i) Notice to court upon disposition

It is the policy of the Court that proper notice be given to the Court of the disposition of cases. (Refer to Rule 3.100 for settlements).

(Rule 3.4(i) revised effective 1/1/13)

(Rule 3.4 revised effective 1/1/16)

Rule 3.5. Venue, Filing and Form of Papers

(a) Unlimited and Limited Jurisdiction Civil cases:

All new Unlimited and Limited Jurisdiction Civil cases (excluding Limited Jurisdiction Unlawful Detainer and Small Claims cases), and any subsequent papers shall be filed in Martinez (see California Rules of Court, Rule 2.100 for form of papers).

(Rule 3.5(a) revised effective 1/1/16)

(b) Limited Jurisdiction Civil cases filed before January 1, 2006:

- (1) All Limited Jurisdiction Civil cases filed before January 1, 2006, in Richmond or Pittsburg Branch Courts shall remain in the branch court where the complaint was filed and any subsequent papers filed in such matters shall only be filed in the originating branch court.
- (2) All Limited Jurisdiction Civil cases filed before January 1, 2006 in Concord or Walnut Creek are transferred to Martinez effective January 1, 2013, and any subsequent papers filed in such matters shall only be filed in Martinez. All hearings that are scheduled to occur in Limited Jurisdiction cases after January 1, 2006, will be held in Martinez.

(Rule 3.5(b) revised effective 1/1/16)

(c) Limited Jurisdiction Unlawful Detainer cases

- (1) All Limited Jurisdiction Unlawful Detainer cases, and all subsequent filings in these cases, must be filed in the appropriate court location based upon the location of the property in question with the exception of those that currently fall under the jurisdiction of the Concord/Mt. Diablo and Walnut Creek branch courts.
- (2) Effective January 1, 2013, Limited Jurisdiction Unlawful Detainer cases where the property is located in the following cities and adjacent unincorporated areas must be filed in the Martinez Clerk's Office at 725 Court Street, Martinez, CA:

Avon, Alamo, Blackhawk, Camino Tassajara, Canyon, Clayton, Clyde, Concord, Danville, Lafayette, Martinez, Moraga, Orinda, Pacheco, Pleasant Hill, Rheem, Rossmoor, San Ramon, St. Mary's College, Walnut Creek, Ygnacio Valley and adjacent unincorporated areas.

(Rule 3.5(c)(2) revised effective 1/1/13)

(d) Small Claims cases

- (1) All Small Claims cases must be filed in one of the following locations. All subsequent filings must be filed in that same location.
 - (A) The locality where one or more of the defendants resides; or

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- (B) If the action arises from operation of a business by one or more defendants, the location where such a defendant has his, her, or its principal place of business; or
 - (C) The locality where a substantial part of the events in question occurred; or
 - (D) If there is no appropriate locality under any of the preceding provisions, in any locality.
- (2) The geographic territory for filing in the appropriate court location effective January 1, 2013 is as follows
- (A) **Martinez:** Avon, Alamo, Blackhawk, Camino Tassajara, Canyon, Clayton, Clyde, Concord, Danville, Lafayette, Martinez, Moraga, Orinda, Pacheco, Pleasant Hill, Rheem, Rossmoor, San Ramon, St. Mary's College, Walnut Creek, Ygnacio Valley and adjacent unincorporated areas.
 - (B) **Pittsburg:** Antioch, Bay Point, Bethel Island, Brentwood, Byron, Discovery Bay, Knightsen, Oakley, Pittsburg and adjacent unincorporated areas.
 - (C) **Richmond:** Crockett, El Cerrito, El Sobrante, Hercules, Kensington, North Richmond, Pinole, Point Richmond, Port Costa, Richmond, Rodeo, Rollingwood, San Pablo, Tilden Park North and adjacent unincorporated areas.

(Rule 3.5(d)(2) revised effective 1/1/13)

(Rule 3.5 revised effective 1/1/16)

Rule 3.6. Challenge to assigned Judge

In both Unlimited and Limited Jurisdiction Civil cases (which are assigned to one judge for all purposes), a challenge to the assigned judge pursuant to Code of Civil Procedure Section 170.6 must be made in accordance with the time requirements set forth in that section. Upon acceptance of a proper challenge under Code of Civil Procedure Section 170.6, the case will be reassigned.

(Rule 3.6 revised effective 1/1/15)

Rule 3.7. Service of Summons, Complaint, Cross-Complaint, Responsive Pleadings and Default Judgments

- (1) Counsel are to be familiar with and follow with particularity the rules set forth in California Rules of Court, Rule 3.110 as to service and filing of pleadings and proofs of service and the notice of default judgments.
- (2) Upon failure to serve the complaint and file a proof of service as required, an Order to Show Cause shall issue as to why counsel shall not be sanctioned for failure to comply with California Rules of Court, Rule 3.110.

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- (3) Responsive papers to the Order to Show Cause must be filed and served no less than five (5) court days in advance of the hearing.

(Rule 3.7 revised effective 7/1/15)

Rule 3.8. Case Management Conference Procedure (Formerly Referred to as a Status Conference)

(a) Filing of complaint

Upon filing a complaint, which includes a completed Civil Case Cover Sheet (Judicial Council Form CM-010) and the Case Management Statement (Judicial Council Form CM-110), the plaintiff will receive the following from the Clerk or Court support staff:

- (1) Summons and Complaint and notification of the assigned department for Superior Court cases;
- (2) Notice and date of the First Case Management Conference. (This court-generated notice includes the assigned date, time, and department);
- (3) Notice to Defendants (Local Court Form CV-655(d) for Unlimited Civil Jurisdiction cases and Form CV-659(b) for Limited Jurisdiction Civil cases);
- (4) A blank Case Management Statement (Judicial Council Form CM-110) and an Alternative Dispute Resolution Information Sheet (Local Court Form CV-655(c) for Unlimited Civil Jurisdiction cases and Form CV-659(e) for Limited Jurisdiction Civil cases);
- (5) In Limited Jurisdiction Civil cases only, the Case Questionnaire for Limited Civil Cases (Judicial Council form DISC-010) and a blank Issue Conference Statement (Local Court Form CV-659(c));
- (6) Plaintiffs in Unlimited Civil Jurisdiction cases will also receive a ADR Case Management Stipulation and Order (Local Court Form CV-655(b) for Unlimited Jurisdiction Civil cases and plaintiffs in Limited Jurisdiction Civil cases will receive an ADR Case Management Stipulation (Local Court Form CV-659(d)).

(b) Case questionnaire for Limited Jurisdiction Civil cases

Any cross-complainant naming any new party in a Limited Jurisdiction Civil case will also be served with a blank Case Questionnaire for Limited Civil Cases (Judicial Council Form DISC-010).

(c) Setting the Case Management Conference for transfer-ins

If a case is transferred from another jurisdiction after a responsive pleading has been filed, the First Case Management Conference will be set within forty-five (45) calendar days from the Order of Transfer. If no responsive pleading has been filed, the First Case Management Conference will be set within ninety (90) calendar days from the Order of

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Transfer. In all other particulars, the plaintiff in a transfer case will receive the same information and items as described above.

(d) Notice of first CMC

At the time of serving the Summons and Complaint (and a cross-complaint upon a new party), the responding party shall be served with the Notice of the First Case Management Conference and an ADR Case Management Stipulation and Order (Local Court Form CV-655(b)) for Unlimited Jurisdiction Civil cases, and the ADR Case Management Stipulation. The responding party in Unlimited Jurisdiction Civil cases and plaintiffs in Limited Jurisdiction Civil cases will receive an ADR Case Management Stipulation (Local Court Form CV-659(d)) for Limited Jurisdiction Civil cases. The responding party in Limited Jurisdiction Civil Cases will also receive a blank Case Questionnaire for Limited Civil Cases (Judicial Council form DISC-010).

(e) File and serve Case Management Statement

Each appearing party shall file and serve the completed Case Management Statement, (Judicial Council Form CM-110), at least fifteen (15) calendar days before the First Case Management Conference as provided by California Rules of Court, Rule 3.725.

Rule 3.8(e) revised effective 7/1/02)

(f) Request for early Case Management Conference

One or more parties to a civil action may request that the assigned department advance the date of the first case management conference in the action, subject to the following:

(Rule 3.8(f) revised effective 1/1/09)

- (1) Requests must be in writing, but may be informal, such as in letter format. They should be lodged (rather than filed) with the department assigned the matter.
- (2) Such requests must be served upon all parties that have appeared in the action.
- (3) The request shall either recite that all parties join in the request or, if not, must provide a brief but clear explanation of the benefits of advancing the conference date.
- (4) Any party opposing a request shall lodge and serve an informal statement of opposition, with reasons, within five (5) calendar days of receiving the request.
- (5) The Court reserves the discretion to determine whether such an early conference would be beneficial and whether the department's calendar can accommodate the request.

(g) First Case Management Conference

The First Case Management Conference shall be conducted in accordance with California Rules of Court, Rule 3.721. Counsel are required to be thoroughly familiar with and abide by that Rule.

(Rule 3.8(g) revised effective 7/1/02)

(h) Subsequent Case Management Conference

Unless otherwise ordered by the Court, a party need not file a Case Management Statement (Judicial Council Form CM-110) for subsequent conferences unless that party has not previously filed that form. Parties are welcome to file narrative status conference statements with proper material that they believe would be helpful to the Court.

(Rule 3.8(h) revised effective 9/1/04)

(Rule 3.8 revised effective 1/1/16)

Rule 3.9. Telephone Appearances

The Unlimited Jurisdiction Civil departments (fast track departments) generally use the CourtCall® system. If a department does not use CourtCall®, the CourtCall® operator will so advise and the parties wishing to appear by telephone should then contact the department involved for telephone appearance instructions.

The Court reserves the right in any matter to require a personal appearance (see California Rules of Court, Rule 3.670(e)(2)).

(Rule 3.9 revised effective 1/1/16)

Rule 3.10. Sanctions

If the Court finds that any party has not proceeded with due diligence or has otherwise failed to comply with this Rule, sanctions may be imposed.

(Rule 3.10 revised effective 1/1/15)

Rule 3.11. Issue Conference

(a) Time and purpose of Issue Conference

Within fourteen (14) calendar days before the trial date, unless otherwise ordered, an Issue Conference will be held during which all matters necessary to be resolved before trial will be before the Court. All trial counsel must be present, along with all principals or clients and claims representatives with settlement authority.

(Rule 3.11(a) revised effective 1/1/16)

(b) Motions in limine

All motions in limine must be in writing and are to be filed and served at least ten (10) calendar days before the conference. Motions in limine should be numbered consecutively and if a party files more than five (5) motions an index must be provided. Any objections to motions in limine must be filed and served five (5) calendar days before the conference, with a copy lodged with the chambers of the department to which the case is assigned. Parties should not submit motions in limine upon the following topics as each fast track trial department will issue orders sua sponte as follows:

(Rule 3.11(b) revised effective 1/1/16)

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- (1) No witness may be called, except with Court permission in exceptional circumstances, unless notice has been given to all parties of the date when the witness will testify. Such notice shall be given no later than at the end of the court day preceding the court day when the witness is to testify.
- (2) All witnesses will be excluded from the courtroom, unless otherwise ordered, excepting those for whom an exception exists at law (e.g. parties and corporate representatives).
- (3) Evidence of, or reference to, settlement negotiations, mediation, and materials which are privileged under the evidence code or by agreement of the parties shall not be allowed.

(Rule 3.11(b)(3) revised effective 1/1/16)

- (4) Evidence of, or reference to, insurance, or the fact that an attorney is employed by, or has been compensated by, an insurance company, shall not be allowed.
- (5) Evidence of, or reference to, other claims or actions against any party to the litigation shall not be allowed without permission from the Court.
- (6) Evidence of, or reference to, the financial position or wealth, or lack thereof, of any party to the litigation, shall not be allowed without permission from the Court.

(Rule 3.11(b)(6) revised effective 9/1/04)

(c) Issue Conference Statement

For Unlimited Jurisdiction Civil cases, parties must file an Issue Conference Statement (Local Court Form CV-559(c)) of not more than ten (10) pages upon all parties and filed with the Court at least five (5) court days before the Issue Conference. The following shall be included in the Issue Conference Statement and will be considered at the Issue Conference:

- (1) A statement of the facts, law and respective contentions of the parties regarding liability, damages (with specific dollar details), nature and extent of injuries, any unusual evidentiary or legal issues anticipated at trial, and all matters of fact believed by any party to be appropriate for stipulation;
- (2) A witness list, including only those witnesses that each party actually expects to have testify, with a brief statement of anticipated testimony, and exhibit list;
- (3) A trial length estimate and a proposed statement of the case to be read to the jury, and proposed voir dire questions; and
- (4) A list (index) of proposed CACI jury instructions, as required by California Rules of Court, 2.1055, and copies of any proposed special instructions [note: copies of CACI instructions should not be submitted with the Issue Conference Statement.

(Rule 3.11(c) revised effective 1/1/16)

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(d) Settlement statement

Each party shall lodge with the assigned department, at the time of filing of the Issue Conference Statement, a settlement statement in the form and content described in Local Rule 3.101.

(Rule 3.11(d) revised effective 1/1/08)

(e) Jury questionnaires

- (1) If any party intends to request that a specific written questionnaire be submitted to the jury, said party shall, no later than twenty (20) court days before the Issue Conference, serve a proposed questionnaire on the other parties;
- (2) Any party objecting to any question or proposing additional questions, shall serve said objections or proposals on all other parties no later than fifteen (15) court days before the Issue Conference;
- (3) All parties shall meet and confer to attempt resolution of objections and proposals no later than ten (10) court days before the Issue Conference;
- (4) The questionnaire shall be submitted with the Issue Conference Statement with any unresolved questions requiring a ruling by the Court clearly identified;
- (5) If the Court approves a questionnaire, it shall be the responsibility of the party submitting a questionnaire to have an adequate number of copies delivered to the office of the Jury Commissioner no later than two (2) court days before the scheduled commencement of trial, and to arrange and pay for prompt copying and distribution of the completed questionnaire to the Court and other parties in the order in which jurors will be called; and
- (6) Failure to comply with the requirements of Local Rule 3.11(e)(4) and (5) may result in an order that the case be tried without the use of a written questionnaire.

(Rule 3.11(e) revised effective 1/1/16)

(Rule 3.11 revised effective 1/1/16)

Rule 3.12. Reporting of Court Proceedings in Civil Fast Track Departments

- (1) Official court reporters employed by the court are unavailable in the Unlimited/Limited Civil Fast Track Departments effective January 1, 2013, until further notice. Consult the Notice of Availability on the court's website for current status and any changes.
- (2) Any party who desires a verbatim record of the proceedings from which a transcript can later be prepared, may procure the services of an outside private certified court reporter pro tempore to report any scheduled hearing or trial (see Government Code 70044 and California Rules of Court, Rule 2.956).
- (3) Parties electing to procure the services of an outside reporter must comply with Local Rule 2.51.

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- (4) Pursuant to California Rules of Court, Rule 2.956(d), if a party arranges and pays for the attendance of a certified shorthand reporter at a hearing in a civil case because of the unavailability of the services of an official court reporter, none of the parties will be charged the reporter's attendance fee provided for in Government Code Sections 68086(a)(1)(A) or (B).
- (5) If court reporters become available and in the court's discretion are provided by the court for any civil hearings, the parties will be required to pay the applicable reporter attendance fee provided for in Government Code Sections 68086(a)(1)(A) or (B).
- (6) Parties shall be responsible for all transcript costs pursuant to Government Code Section 69953.

(Rule 3.12(6) revised effective 1/1/13)

(Rule 3.12 revised effective 1/1/16)

Rule 3.13. Unlawful Detainer Cases

- (1) Unlawful Detainer cases entitled to expedited handling shall be adjudicated or a memo to set or conditional settlement shall be filed within forty-five (45) calendar days from the filing of the complaint unless the time limit is authorized to be stayed or extended by a judge. The plaintiff shall be issued an OSC re: sanctions or dismissal if the case has not been adjudicated or a memo to set or conditional settlement has not been filed within forty-five (45) calendar days from the filing of the complaint or within any extended time limit authorized by a judge. Responsive papers to the Order to Show Cause must be filed at least five (5) court days in advance of the hearing.
- (2) The plaintiff will file a memo to set when the case is ready for trial.

(Rule 3.13 revised effective 1/1/16)

Rule 3.14. Relief Following Breach of a Settlement Agreement in Limited Jurisdiction Cases

(a) Unlawful Detainer cases

A settlement agreement may provide that, in the event of default, the non-defaulting party may seek additional relief from the Court by filing an ex parte application. If it does, then:

- (1) An ex parte application filed pursuant to this provision must either:
 - (A) Contain a Proof of Service showing that the application was served on the defaulting party, or
 - (B) Include a declaration stating either:
 - (i) Notice of the filing of the application was given to the defaulting party, specifying how and when that notice was given, or

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- (ii) Notice should be excused pursuant to California Rules of Court, Rule 3.1204.
- (2) Such an application may be heard no sooner than forty-eight (48) hours after the later of:
 - (A) Filing the application, or
 - (B) Notice to the allegedly defaulting party unless notice is excused pursuant to California Rules of Court, Rule 3.1204. If notice is given by mail, the time for hearing the ex parte application will be extended by three (3) calendar days.
- (3) A statement that the non-defaulting party told the defaulting party that it "would be applying" for further relief is not adequate. The non-defaulting party must give notice that it "has applied" for relief, describing the relief requested and the time at which the relief will be sought.
- (4) If the ex parte application is accompanied by a declaration proving that the defaulting party has been given notice of default and does not then object to the granting of the additional relief sought, the ex parte application may be heard before the expiration of the time required by paragraph (a)(2).
- (5) If the allegedly defaulting party wishes to contest the application, it must file a written objection, stating the reasons for the objection. Any such objection must be filed within forty-eight (48) hours of the notice given pursuant to paragraph (a)(2).
- (6) If objection is made, the Court may consider the ex parte application on the papers submitted or may set the matter for expedited hearing.
- (7) If a settlement agreement does not contain a provision such as is described in paragraph (a), then the non-defaulting party seeking additional relief must file a motion to obtain that relief. Applications for Orders Shortening Time will be viewed with presumptive favor in unlawful detainer cases seeking possession and other cases in which time is of the essence.

(b) Non-Unlawful Detainer cases

- (1) A settlement agreement may provide that, in the event of default, the non-defaulting party may seek additional relief from the Court. However, the non-defaulting party will not be granted additional relief without notice to the defaulting party.
- (2) The proper form for seeking additional relief is a noticed motion. The parties may agree, in advance, to an Order Shortening Time for the hearing of such a motion, provided that (except in exceptional cases, for good cause shown) the time for noticing the motion shall not be less than ten (10) court days.
- (3) If the settlement agreement does not provide for shortened time, as described in paragraph (b)(2), then a party may file an ex parte application to have the motion

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heard on shortened time. Any such application must comply with the California Rules of Court, Rule 3.1200 and, where applicable, Rule 3.46 of the Local Court Rules.

- (4) If, at the time of the default, the defaulting party stipulates in writing to further relief, the Court will entertain an application for entry of an order upon stipulation without need for formal motion. Nothing in this rule shall preclude a party from seeking to enforce the terms of a settlement agreement (as opposed to seeking additional relief for breach) by an appropriate motion pursuant to Code of Civil Procedure Section 664.6 or other controlling authority.

(Rule 3.14(b)(4) revised effective 1/1/05)

(Rule 3.14 revised effective 1/1/15)

Rule 3.15. Complex Litigation Cases

- (1) There shall be designated a Complex Civil Litigation Department to which cases covered by California Rules of Court, Rule 3.400 shall be assigned, unless otherwise ordered by the Court.
- (2) Counsel for plaintiffs shall use the most current form of civil cover sheet to indicate whether a matter is or is not deemed complex. Other parties may counter-designate at or before the time for the filing of a first appearance (see California Rules of Court, Rule 3.402).

(Rule 3.15(2) revised effective 1/1/16)

(Rule 3.15 revised effective 1/1/16)

Rule 3.16. CEQA Claims

The title of any pleading seeking relief under the California Environmental Quality Act, whether by petition or complaint, shall clearly identify that the matter is a CEQA action. [e.g. "CEQA claim: Complaint for Damages"].

(Rule 3.16 revised effective 1/1/15)

Rule 3.17. Conforming Copies

The Superior Court Clerk will conform a maximum of two copies of any document at the time of filing. Additional copies will be provided by photocopying and the standard Superior Court Clerk fee for copies will be charged.

(Rule 3.17 revised effective 1/1/15)

Chapter 2. Civil Law and Motion

Rule 3.40. Law and Motion Calendar

There shall be a Civil Litigation Division (which includes a Discovery Commissioner when available funding permits) which will handle civil law and motion matters except as follows:

- (1) All law and motion matters relating to Family Law shall be heard in the Family Law Departments;
- (2) Motions in Unlawful Detainer cases shall be heard in the appropriate court or department scheduled;

(Rule 3.40(2) revised effective 1/1/13)

- (3) As provided in Local Rule 7.1, most law and motion regarding probate matters shall be heard in the Probate Department.
 - (A) Each judge in the Civil Litigation Division shall designate one day of the week for his or her Law and Motion matters.
 - (B) Each judge in the Civil Litigation Division shall designate the day(s) of the week and time(s) that discovery matters and ex parte applications will be heard in their department.

(Rule 3.40(3)(B) revised effective 1/1/13)

(Rule 3.40 revised effective 1/1/16)

Rule 3.41. Hearing Dates

- (1) With the exception of motions brought pursuant to Code of Civil Procedure section 128.7, all other motion hearing dates will be assigned by the Clerk's Office at the time the motion is filed unless otherwise ordered by the Court. Dates cannot be reserved or given over the telephone.

(Rule 3.41(1) revised effective 1/1/16)

- (2) No hearing will be set by the Clerk's Office for a Discovery Motion unless no discovery responses have been provided or recommendations from a Discovery Facilitator are attached as the first exhibit.

(Rule 3.41(2) revised effective 1/1/15)

(Rule 3.41 revised effective 1/1/16)

Rule 3.42. Papers to Comply with State Rules

- (1) Moving, opposing and reply papers must be filed and served with the Court and parties within the time prescribed by law. The Court will not consider late filed papers unless good cause is shown at the hearing.

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- (2) All memoranda and other papers filed in support of, and in opposition to, motions shall comply with the requirements of the California Rules of Court.

(Rule 3.42 revised effective 1/1/15)

Rule 3.43. Tentative Ruling

- (1) The Civil Litigation Division shall operate a tentative ruling system for Unlimited Civil law and motion. The tentative rulings can be obtained beginning at 1:30 p.m. the court day preceding the hearing. Phone numbers and tentative rulings for Martinez are available on the court website www.cc-courts.org. If the website is down, or for some reason cannot be accessed by the litigant or counsel, the number to call, during business hours is (925) 646-4099.

(Rule 3.43(1) revised effective 1/1/13)

- (2) The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties call the department rendering the decision to request argument and to specify what issues are to be argued.

Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of his or her decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter.

(Rule 3.43(2) revised effective 1/1/15)

- (3) The prevailing party must prepare an order after hearing in accordance with the requirements of California Rules of Court, Rule 3.1312.

(Rule 3.43(3) revised effective 1/1/01)

(Rule 3.43 revised effective 1/1/15)

Rule 3.44. Telephone Appearances for Law and Motion

If the judge hearing a matter determines on an individual case that a personal appearance is necessary (i.e. that a telephone appearance will not be allowed), the tentative ruling will so indicate unless the Court has previously been advised.

(Rule 3.44 revised effective 1/1/16)

Rule 3.45. Reporting of Law and Motion

Law and motion oral arguments are not reported in Civil Fast Track Departments until further notice. Parties may procure the services of an outside reporter as set forth in Local Rule 2.51.

(Rule 3.45 revised effective 1/1/15)

Rule 3.46. Time to Plead or Respond Following Hearing (Subject to Preemption by the California Rules of Court)

- (1) If the hearing involved a demurrer, motion to strike, motion to quash service of process, motion for a change of venue, or motion to stay or dismiss for "Forum Non Conveniens," and the demurrer is overruled or the motion is denied; the moving party shall have ten (10) calendar days after notice (see Paragraph 3 below) to file an Answer or further responsive pleading.
- (2) If a demurrer is sustained or motion to strike is granted with leave to amend, the party granted leave to amend shall have ten (10) calendar days after notice to amend, and the initial moving party shall have ten (10) calendar days after service of the amendment to file a further responsive pleading.
- (3) Parties shall be deemed to have notice of the Court's ruling as of the date of the hearing, or in the case of a matter submitted for decision, as of five (5) calendar days after the date the Clerk mails notice of the Court's ruling.
- (4) Except as allowed by statute or California Rules of Court, the parties may not extend the stated times in the absence of an approval by the Court. Such a request must be made before the final day to respond or answer.

(Rule 3.46 revised effective 1/1/16)

Rule 3.47. Civil Ex Parte Orders

Ex Parte applications for Orders to Shorten Time will be considered only when accompanied by the proposed moving papers. Orders to Shorten Time will be filed only when the motion has been previously filed or is simultaneously filed.

- (1) Martinez Civil Fast Track ex parte motions, except in emergency situations, will be heard in each department at times designated by the assigned judge. Consult the court's website for designated times. Ex parte motions include applications for restraining orders, writs of mandate and prohibition (see ex parte process for writs of mandate below), other extraordinary writs, and appointment of receivers. Applications for such orders must comply with California Rules of Court, Rule 3.1203 (except temporary restraining orders under Code of Civil Procedure Section 527.6).

(Rule 3.47(1) revised effective 1/1/13)

- (A) Ex Parte Applications for Orders to Shorten Time will be considered only when accompanied by the proposed moving papers, unless, in its discretion, the Court otherwise orders. Orders to Shorten Time will be filed and calendared for hearing only when the motion has been previously filed or is simultaneously filed (see signed order for compliance).

(Rule 3.47(1)(A) revised effective 1/1/10)

- (B) Status Conference and Briefing Schedules for Writs of Mandate. The following rule applies to all writs of mandate except those in which the Department of Motor

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Vehicles is named as respondent. After the Petition is filed in the Clerk's Office and a department is assigned, the filing party shall take a copy of the petition along with a proposed order to the assigned department during ex parte hours. A status conference for the establishment of a hearing date and briefing schedule for writs of mandate will be set by the assigned judge during the designated ex parte hours. The petitioner must comply with California Rules of Court, Rule 3.1203 concerning notice to opposing counsel or unrepresented party of the intent to present an ex parte application to the Court. The petitioning party need not notify the Court before presenting the application to set hearing date and briefing schedule. Once the order is signed and a briefing schedule assigned, the party shall present the order to the clerk's office for filing.

(Rule 3.47(1)(B) revised effective 1/1/16)

- (C) A copy of the resulting order concerning the writ is to be delivered to the department in which the writ will be heard as well as to the research attorney's office.

(Rule 3.47(1)(C) revised effective 1/1/06)

- (2) Sufficient notice should be given to all parties in the time and manner provided by California Rules of Court, Rule 3.1203.
- (3) Ex parte applications will be heard only after each party with papers to present has given them to the Court and other counsel who appear, and after both Court and counsel have had adequate time to review them. Therefore, whenever practicable, moving papers should be served on the affected party or that party's attorney by personal delivery, telecopy (fax), express mail, messenger, or similar means before the hearing.

(Rule 3.47(3) revised effective 1/1/16)

- (4) Guardian ad litem. Requests in cases of Unlimited Jurisdiction, for appointment of a Guardian ad litem should normally not seek appointment of a person that has a claim arising from the same event or conduct. The proposed appointee normally should not be a person that has a possible adverse or conflicting interest with that of the minor.

(Rule 3.47(4) revised effective 7/1/08)

(Rule 3.47 revised effective 1/1/16)

Rule 3.48. Original Orders to Show Cause

When an Order to Show Cause has been signed, the original shall be filed immediately in the office of the Court Clerk and service shall be effected by a certified copy, for which no charge shall be made.

(Rule 3.48 revised effective 1/1/15)

Rule 3.49. Continuances

Requests for continuance of Law and Motion matters may be by written motion or stipulation. Moving papers must be filed and submitted by 12:00 noon of the court day before the scheduled hearing.

(Rule 3.49 revised effective 1/1/16)

Rule 3.50. Calendar Matters Heard in Law and Motion Department

All motions to consolidate cases, bifurcate issues of liability or other issues, such as statute of limitations or other special defense, or sever consolidated cases or causes of action for trial may be heard in Law and Motion, or may be reserved for the trial department. Motions to consolidate must be noticed for hearing in the department which is assigned to the lowest numbered case of those cases proposed for consolidation.

(Rule 3.50 revised effective 1/1/15)

Rule 3.51. Name Change Applications

- (1) Name change applications are submitted on the Petition for Change of Name (Judicial Council Form NC-100) and Attachment to Petition for Change of Name (Judicial Council Forms NC-110).
- (2) The petition must be presented personally by the applicant to the clerk at the Probate window in the civil division's clerk's office and shall be accompanied by the following:
 - (A) A completed Order to Show Cause for Change of Name (Judicial Council Form NC-120) that will be signed by the judge.
 - (B) Photographic proof of identification (California Driver's License or ID, or similar).
 - (C) Proof of residency in Contra Costa County (e.g. recent utility bill or tax bill); and
 - (D) For minors, a birth certificate.

(Rule 3.51(2) revised effective 1/1/16)

(Rule 3.51 revised effective 1/1/16)

Rule 3.52. Motions

(a) Proof of Service

Unless otherwise ordered, all returns of Proof of Service of Notice of Motions and Orders to Show Cause shall be filed in the office of the Clerk of the Court not less than two (2) calendar days preceding the time set for hearings.

(Rule 3.52(a) revised effective 1/1/16)

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(b) Failure to appear

Failure of counsel to appear at the time set in the department to which the matter is assigned, unless excused by the judge, shall be deemed cause for placing such matter off calendar, for proceeding to hear the matter in the absence of counsel, or for assessment of costs and sanctions as the Court in its discretion may determine.

(Rule 3.52(b) revised effective 1/1/00)

(c) Motions after trial

All motions after trial until judgment is final shall be heard before the judge who presided over the trial, unless such judge is absent, unavailable or unable to act, in which case the Presiding Judge shall assign an alternate judge; this includes such matters as motions to reopen, motions for new trial, motions for judgment notwithstanding a verdict and hearings on statements of decision.

(Rule 3.52(c) revised effective 1/1/13)

(d) Papers on file

All supporting affidavits, declarations, memoranda of points and authorities, and similar documents shall be attached to the notice of motion, or order to show cause, or other moving papers, when filed. Failure to comply with this requirement shall be deemed cause for taking the matter off calendar. All responsive and opposing documents shall be filed by respondents at least five (5) court days before the day set for hearing. Failure to comply with this requirement shall be deemed cause for acting on the matter without the consideration of documents not so filed. The application of this rule shall not apply to responsive and opposing documents where the moving party has obtained an order shortening time for hearing. This rule shall not be applicable where other time limits are required or provided by law, as in Code of Civil Procedure Section 659(a).

(Rule 3.52(d) revised effective 1/1/00)

(Rule 3.52 revised effective 1/1/16)

Rule 3.53. Uncontested Calendars

(a) Request for hearing

Applications for Default Prove Up Hearings, Minor's Compromises, Adoptions and other uncontested matters requiring hearing shall be made in writing to the Clerk of the Court not less than five (5) calendar days before the hearing.

(Rule 3.53(a) revised effective 1/1/16)

(b) Completion of file

No hearing will be set on an uncontested matter until all requisite pleadings and documents have been filed and the Clerk has entered the default, unless it is a matter

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requiring court entry of default, in which case the Return of Service must be filed before the request for hearing.

(Rule 3.53(b) revised effective 1/1/09)

(Rule 3.53 revised effective 1/1/16)

Rule 3.54. Written Orders

(a) Preparation of order

Whenever a Judge rules upon a motion, order to show cause, or similar matter, and the matter is uncontested, within ten (10) calendar days, a written order shall be prepared, presented to the Judge for signature, and filed. In any contested matter, where opposing counsel appears, a written order shall be prepared and served by the prevailing party and reviewed by the opposing party, in accordance with California Rules of Court, Rule 3.1312. The order shall be prepared whether or not specifically requested by the Court.

(Rule 3.54(a) revised effective 1/1/16)

(b) Judge's signature

Counsel shall not approach the Bench for the purpose of obtaining a Judge's signature, during a hearing or trial; documents requiring a Judge's signature shall be presented during recess or given to the Bailiff while the Judge is on the bench.

(Rule 3.54(b) revised effective 1/1/00)

(c) Subsequent applications for orders

When an application for an order has been made to the Court or a Judge and has been refused in whole or in part, any subsequent application for the same character of relief, although made upon an alleged different state of facts, shall be made before the Judge making the original order in the case, unless the Judge is absent or unable to act, or shall request the Judge of another department to entertain such application; in all such instances, a full disclosure shall be made to such Judge of any and all such prior applications. See Code of Civil Procedure Section 1008.

(Rule 3.54(c) revised effective 1/1/16)

(Rule 3.54 revised effective 1/1/16)

Rule 3.55. Number of Attorneys Examining a Witness

Except by stipulation of opposing counsel or by express permission of the Court, only one lawyer representing the same party may examine or cross-examine a witness.

(Rule 3.55 revised effective 1/1/15)

Chapter 3. Receivers

Rule 3.80. Receivers

Appointment of receivers:

- (1) In proper cases for the appointment of a receiver or a commissioner, and the Court determines that the appointment of an independent third party is unnecessary and no active management is necessary, court clerks may be appointed to such a position.
- (2) Court clerks may not be appointed as a receiver or commissioner by stipulation of counsel.
- (3) Attention is invited to California Rules of Court, 3.1175-3.1184 for provisions relating to appointment of receivers.

(Rule 3.80 revised effective 1/1/16)

Chapter 4. Settlements and Settlement Conferences (Not Applicable To Family Law and Probate Matters)

Rule 3.100. Settlements

Whenever a civil case has settled, counsel shall immediately notify the Court in writing. If a hearing, conference, or trial is imminent, notice must be given orally to the assigned department followed by a confirmation in writing. The writing must specify when all closing papers will be filed with the Court. If a case settles within five (5) calendar days of the trial date, counsel shall have on file a dismissal, stipulated judgment, or conditional settlement or make an appearance at the time and place designated for trial to place the settlement terms on the record. If a case settles before that time, counsel shall:

- (1) Immediately give written notice to the Court, and;
- (2) File a request for dismissal, stipulated judgment, or conditional settlement within forty-five (45) calendar days of the written notice of settlement.

If a request for dismissal, stipulated judgment, or conditional settlement is not filed within forty-five (45) calendar days, an Order to Show Cause shall issue as to why sanctions should not be imposed. Responsive papers to the Order to Show Cause must be filed five (5) court days in advance of the hearing. See California Rules of Court, Rule 3.1385.

(Rule 3.100(2) revised effective 1/1/16)

(Rule 3.100 revised effective 1/1/16)

Rule 3.101. Settlement Conferences

On the Court's own motion, all cases, other than short causes, may be calendared for mandatory settlement conferences, upon written or oral notice to all parties involved. At this conference, all parties shall:

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- (1) Have endorsed by the Clerk of the Court and served on all parties five (5) court days before the conference, a written statement of the facts, law and respective contentions of the parties to prove or disprove the right of recovery, items and amount of special damages, nature and extent of injuries incurred and claimed residuals documented by medical report when possible, any wage loss claim showing methods of computation, and any claim for future medical expenses and earnings loss;
- (2) Have in attendance all principals or clients. Claims representatives shall be in attendance, unless excused in writing, by the Presiding Judge before the Settlement Conference;
- (3) Be prepared to make a bona fide offer of settlement; and
- (4) Participate in good faith in the settlement conference. Failure by any such person or entity to file the required written statements, to prepare for, appear at, or participate in a settlement conference, unless good cause is shown for any such failure, may be considered as an unlawful interference with the proceedings of the court and the Court may impose appropriate sanctions including, but not limited to, costs, actual expenses and counsel fees; and further, the Court may vacate the trial date, or order the case to proceed to trial on the date assigned.

(Rule 3.101(4) revised effective 1/1/08)

(Rule 3.101 revised effective 1/1/16)

Rule 3.102. Special Needs Trusts

Proposed Orders for the placing of the proceeds of a court judgment or settlement into a special needs trust must provide a place for the Court to assign a date in the Probate Department for the first annual review of the operation of the trust. A review date will be assigned in all cases of the approval of such a trust.

(Rule 3.102 revised effective 1/1/15)

Rule 3.103. Special Bench Bar Settlement Conferences (BBSC)

Specialized BBSC settlement proceedings may be held at such times as are designated by the Presiding Judge.

(Rule 3.103 revised effective 1/1/15)

Chapter 5. ADR (Not Applicable to Family Law Matters and Probate Matters)

Rule 3.200. Alternative Dispute Resolution Programs

(a) Availability of Alternative Dispute Resolution (ADR) programs

Judges in the Contra Costa County Superior Court encourage parties involved in lawsuits to use ADR to resolve their disputes without trial. The Court offers several ADR programs

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in general civil and probate cases. The Court also provides mediation services in juvenile dependency and child custody and visitation cases and collaborates with community ADR providers to offer mediation in small claims, guardianship, civil harassment, and unlawful detainer cases.

(b) Application of these rules

These rules apply to all court-administered ADR programs except Child Custody Recommending Counseling (mediation) sessions available from family court services (which is governed separately by the California Family Code, related rules of court, and case law), community mediation services (provided in some small claims, civil harassment, guardianship, juvenile dependency, and unlawful detainer cases), and assignment of temporary judges to hear regular court calendars.

(c) Duty to meet and confer

In the event parties to a civil action agree to use ADR before their first Case Management Conference, they are encouraged to use the appropriate local court form:

- (1) CV-655b – Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days (Unlimited Jurisdiction Civil Cases)
- (2) CV-659d – Stipulation to Attend ADR and Delay First Case Management Conference 90 Days (Limited Jurisdiction Civil Cases)

(d) Voluntary participation

Participation in any of the Court's ADR programs is strongly encouraged and voluntary unless otherwise provided by law, Judge or Local Rule. Parties may choose an ADR option on the Case Management Form (Judicial Council Form CM-110), or by filing one of two local court forms included in the plaintiff's packet:

- (1) (For Limited Jurisdiction cases) - a Stipulation to Attend ADR and Delay First Case Management Conference 90 Days (Local Court Form CV-659d), or
- (2) (For Unlimited Jurisdiction cases) – a Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days (Local Court Form CV-655b).

Parties may also agree (stipulate) orally or in writing to use ADR at any time.

(e) Opening an ADR case

To open a civil or probate ADR case, parties must contact the ADR Programs office. Once a case is opened, the parties will receive a list of panel members with expertise in their type of case. The parties must make their own decision about whether a panel member has the needed expertise, and can help the parties to complete ADR before the Court deadline. All parties must agree on the panel member who will handle the ADR portion of their court case. Parties with child custody and visitation, guardianship, juvenile dependency, small claims, civil harassment and unlawful detainer cases will get separate instructions from the judge assigned to hear their case.

(f) Standard ADR case management timelines

Unless the judge makes different arrangements to accommodate circumstances in individual cases, parties can expect that they must choose their mediator, arbitrator, or neutral case evaluator within fourteen (14) calendar days of the matter being referred to ADR. The Court and ADR department will tell the parties how long they have to finish ADR.

ADR sessions may be scheduled at the parties' and panel members' convenience, as long as they meet the court-ordered ADR completion deadlines.

(g) Blending or changing ADR processes

The Court allows parties to engage in more than one ADR process over the life of their case, as well as to change between most ADR processes only if:

- (1) All parties notify both the Judicial and ADR Department as soon as is practicable of their intent to change processes,
- (2) All parties and the ADR panel member ensure there are clear distinctions made and an agreement signed regarding which ADR processes and associated rules apply to their discussions, court deadlines, and work product.

(h) Changing or abandoning ADR

Some ADR processes are confidential (private) and others are not. Once the Court has made an ADR order, the parties must have permission from the judge to change the ADR process, or to cancel ADR altogether.

(i) ADR panel member requirements

All ADR panel members must meet the training, education, and experience requirements for the mediation, arbitration, neutral case evaluation, and settlement mentor panels. People interested in serving on the Court's ADR panel must complete and update their panel member information as changes occur. If selected to serve on a particular case, panel members must complete and submit all forms and follow all of the Court's Ethical and Practice Standards listed in section seven of these rules.

(j) Complaints

ADR program participants are encouraged to discuss any concerns they have about the ADR process or a panel member's conduct with the panel member first. Consistent with California Rules of Court, Rule 3.865, the Court will address party complaints as follows:

- (1) The party must make a written complaint to the ADR program director. If the ADR program director cannot resolve the complaint informally,
- (2) The written complaint will be forwarded to the Supervising Civil Judge. The panel member must answer the complaint in writing, and a copy of that answer will be given to the person or people making the complaint. If the complaint remains unresolved,

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- (3) The Supervising Civil Judge and ADR program director will convene a review panel to consider the complaint. If the Supervising Judge finds the complaint to be valid, he or she may reprimand the panel member, suspend the panel member until he or she has completed additional training, or remove the panel member from one or all of the Court's ADR program panels.

(k) Service of ADR member

Service as an ADR panel member, and the appearance of a panel member's name on panel lists is at the sole discretion of the Supervising Civil Judge and/or his or her designee. Panel members' services can be terminated without cause, reason, or notice at any time. The Court is under no obligation to use any panel member's services now or in the future.

(l) Panel member evaluation

The Court will periodically evaluate each panel member's performance. In the event performance issues are identified, the Court may:

- (1) Contact the panel member informally or formally to address and resolve any identified issues;
- (2) Suggest or require the panel member attend additional training, or establish a mentoring relationship with an experienced practitioner;
- (3) Issue a formal or information reprimand, suspend the panel member, or remove him or her from the panel.

(Rule 3.200 revised effective 1/1/16)

Rule 3.201. Mediation

(a) Mediation

Mediation allows people to focus on the issues at the heart of their dispute. Mediation conferences are informal. Most mediators start out talking with all the parties together. Later, the mediator may meet with each party separately. Mediators often ask each party to list the issues in dispute, and to offer their ideas for settlement. People often discuss and exchange documents or other information before or during mediation, but do not present evidence as they would in court. Mediators have different ways of handling the mediation process. For example, some mediators are more evaluative and are willing to tell the parties what they think a case is worth or how they think the case might turn out if it went to trial. Other mediators are more facilitative and tend to focus on helping the parties to negotiate and reach agreements of their own design. Parties are free to decide which mediation style they prefer. No matter what approach a mediator takes, he or she is not the decision maker. Agreements can only be reached if all the mediating parties accept the proposed solution.

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(b) Mediator selection

All mediating parties must agree on a mediator and complete a Selection of ADR Panel Member (Local Court Form ADR-201) within fourteen (14) calendar days of the matter being referred to Mediation, unless the judge sets a different selection deadline. Parties must forward the Selection form to the ADR Programs office. If the parties cannot agree on a mediator, the Court or ADR department may appoint one. Once a mediator has been chosen, the ADR Programs office will then file and serve a Notice of Assignment on all parties and the Mediator.

(c) Mediator qualifications

Although most of the Court's mediators are also attorneys, some panel members are professionals and experts from other fields such as: accounting, business, construction, finance, psychology, and real estate.

(1) Mediators appointed to the panel after January 1, 2006 must:

- (A) Have completed an initial 40-hour comprehensive mediation training program that encompasses commonly recognized mediation principles and practices including: confidentiality, voluntary participation, communicating clearly, listening effectively, facilitating communication among all participants, promoting exploration of mutually acceptable settlement options, and conducting oneself in a neutral manner;
- (B) Have mediated five (5) cases or co-mediated at least ten (10) cases. Each mediation counted for this purpose must have lasted two or more hours; and,
- (C) Be familiar with ethical standards as adopted by state and national professional organizations, and with the Uniform Mediation Act.

(2) Alternative qualifications:

A person who does not meet all of the requirements of (c)(1)(a) and (c)(1)(b) may still qualify to be a mediator for the Court if he or she provides the Court ADR Committee or its designee with satisfactory evidence of sufficient alternative education, training, skills and experience. Acceptance of alternative qualifications is at the discretion of the Court ADR Committee and/or its designee. The Court is under no obligation to accept alternative qualifications.

(3) All mediation panel members must:

- (A) Attend at least four (4) hours of continuing education or training related to the practice of mediation every three years. At least 2 hour(s) of that education or training must address ethics, fairness, and bias issues in the mediation context. At least 1 hour of that education or training must address practice and ethical issues that arise when parties are not represented by an attorney.

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- (B) Certify that they meet the requirements of this rule every three years following their appointment as a mediator to the Court ADR panel.
- (C) Agree to abide by the ethical principles established by California Rules of Court, Rules 3.850 et seq. and comply with the competence standards established by California Rules of Court, Rule 3.856.

(d) Mediation fees

The Court's mediation panel members shall not charge fees for the first 30 minutes of case scheduling and preparation time, or for the first two hours of mediation conference time. If more time is needed, the parties must pay that mediator's hourly fee for the time used. Parties who have had their court filing fees waived, (cancelled), may ask the ADR Programs Department to contact the mediator and find out if that party's mediation fees may also be waived (cancelled). Parties are encouraged to have a written agreement with the panel member regarding fees and the management of their ADR case.

(e) Attendance at mediation

Unless excused by the assigned judge before mediation starts, all trial lawyers, principals, clients, claims representatives, and other appropriate decision-makers must attend mediation in person. Telephone standby is not allowed unless approved by the assigned judge before mediation starts.

(f) Confidentiality

Court-connected mediations are confidential (private) per California Evidence Code Sections 1115–1128. The mediator cannot be called to testify in court about what happened or what was said in mediation. Except as otherwise provided by law or these rules, court staff, the mediator, all parties, all attorneys, and any other people facilitating or participating in the mediation process must treat all written and oral communications made in or during mediation, as confidential. The only exceptions to confidentiality in mediation are:

- (1) The law or any other mandate requires the information to be reported; or
- (2) The ADR panel member thinks there might be a danger of serious physical harm either to a party or to another person.

(g) Mediation statements

Parties must prepare and give information about their case to the mediator and other parties at least five (5) court days before the mediation hearing. Parties may use the Mediation Statement (Local Court Form ADR-304), or write this information on their own paper. This form is available online at www.cc-courts.org/adrfoms. Mediation statements must not be longer than five (5) pages and must contain the following information:

- (1) The name and title (or relationship to the case) of all people who will attend mediation;

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- (2) A list of people connected with other parties who, if present at mediation, might improve the chances of settlement;
- (3) A brief statement of the important issues, and the party's views on liability and damages;
- (4) A list of legal or factual issues that, if narrowed or resolved early, would promote settlement;
- (5) A brief description of the history and status of any settlement negotiations; and,
- (6) Copies of any court or other documents that will help the mediator understand the issues in dispute.

(h) Mediator's report

The mediator must forward a copy of the completed Mediator's Report (Local Court Form ADR-305) to the ADR Programs office, counsel, and all self-represented parties. This form is available online at www.cc-courts.org/adrforms.

(i) Blending or changing ADR processes

The Court allows parties to engage in more than one ADR process over the life of their case as well as to change between most ADR processes only if:

- (1) All parties notify both the judicial and ADR Department as soon as is practicable of their intent to change processes, and
- (2) The parties and the ADR panel member must ensure there are clear distinctions made and an agreement signed regarding which ADR processes and associated rules apply to their discussions, court deadlines, and work product.

(Rule 3.201 revised effective 1/1/16)

Rule 3.202. Judicial Arbitration

(a) Judicial Arbitration

Judicial Arbitration is less formal than a court hearing. It allows the parties under oath, to present their case, offer witness testimony, and get a decision. California Code of Civil Procedure Section 1141.10 et seq., allows the Court to require all cases where the amount in dispute is \$50,000 or less to be submitted either to judicial arbitration or to mediation if the judge finds it to be appropriate in a particular case. Cases may also go to judicial arbitration if the person who made the complaint agrees to limit his or her recovery to \$50,000, or if the parties all agree to use arbitration. The award (arbitrator's decision) must be filed with the Court within ten (10) calendar days of the last hearing. If either party disagrees with the arbitration award, he or she may ask the Court to review the case by filing a request for a new court hearing (called a Trial De Novo). The arbitration award becomes a court order unless one of the parties file for a Trial De Novo within sixty (60) calendar days or another time limit set by the judge.

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(b) Arbitrator selection

All parties must agree on an arbitrator and complete a Selection of ADR Panel Member (Local Court Form ADR-201) fourteen (14) calendar days of the matter being referred to Arbitration, unless the judge sets a different selection deadline. Parties must forward this form to the ADR Programs office. If the parties cannot agree on an arbitrator, the assigned judge may appoint one. The ADR Programs office will then file and serve on all parties and the Arbitrator a "Notice of Assignment".

(c) Arbitrator qualifications

Arbitrators must be licensed California attorneys and have an oath of office on file with the ADR Programs office unless the parties jointly agree by stipulation to appoint an arbitrator with other qualifications.

(d) Arbitration fees

Under California Code of Civil Procedure Section 1141.18, arbitrators in judicial arbitration cases are paid \$150 per case or \$150 per day if the arbitration takes more than one day. All of the arbitrators on the Court's panel have agreed either to donate their services, or to be paid by the parties at the rate described in this section.

(e) Attendance at arbitration

As long as all trial attorneys, parties, and other people needed to present the case and answer the arbitrator's questions are included, the parties may choose who will attend arbitration.

(f) Arbitration statements

Parties must prepare and give information about their case to the judicial arbitrator and other parties at least five (5) court days before the arbitration hearing. Parties may use the Arbitration Statement (Local Court Form ADR-404) or write this information on their own paper. This form is available online at www.cc-courts.org/adrfoms. This information must not be longer than five (5) pages and must include:

- (1) The name and title (or relationship to the case) of all people who will attend arbitration;
- (2) A brief statement of the legal and factual issues in the case, and the party's views on liability and damages; and,
- (3) Copies of any documents that will help the arbitrator understand the issues in dispute.

(g) Blending or changing ADR processes

The Court allows parties to engage in more than one ADR process over the life of their case, as well as to convert most ADR processes only if:

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- (1) All parties notify both the Judicial and ADR Department as soon as is practicable of their intent to change processes, and
- (2) The parties and the ADR panel member ensure there are clear distinctions made and an agreement signed regarding which ADR processes and associated rules apply to their discussions, court deadlines, and work product.

(Rule 3.202 revised effective 1/1/16)

Rule 3.203. Settlement Mentors

(a) Settlement Mentor conferences

The assigned judge may refer, or the parties may ask for a conference with a settlement mentor either on the morning of trial, or earlier in the case. These informal conferences usually last about two hours. These processes are not the same as mediation, and are not confidential per Evidence Code Sections 1115-1128. Parties meet with an attorney who has significant litigation experience with similar cases (called a settlement mentor) to review the issues, analyze the case, and consider settlement recommendations. The parties do not present evidence, and witnesses are not called. Although information may be shared with the settlement mentor and not shared with the other party, any information given to the settlement mentor may be shared with the judge. When appropriate, the settlement mentor may involve the judge in the settlement discussions.

(b) Selection of Settlement Mentors

Settlement mentors are assigned by the ADR Programs Department based on their stated areas of expertise, and in consultation with the assigned judge.

(c) Settlement Mentor qualifications

Settlement mentors are attorneys who have background experience in the issues involved in the case.

(d) Settlement Mentor fees and solicitation for future business

Settlement mentors may not charge any fees for their services, and may not invite or encourage the parties to convert the settlement conference to a mediation, or any other process for which fees are normally charged.

(e) Attendance at the Settlement Mentor conference

All trial attorneys, principals, clients, claims representatives, and other decision makers must attend the settlement mentor conference. Telephone standby is not allowed unless approved by the assigned judge before the conference begins.

(f) Confidentiality

Although information given during the settlement mentor conference may be shared with the judge, everyone attending, (including court staff, the settlement mentor, all parties and

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all attorneys), must treat all written and oral communications made in or during the settlement conference as confidential.

When the judge will not be trier of fact, the mentor may report to the judge the settlement positions of the parties to help the parties reach an agreement.

(g) Blending, changing, or converting ADR processes

Although the Court allows parties to engage in more than one ADR process over the life of their case, they may not convert settlement mentor conferences into any other ADR process unless they have first asked for and received permission from the Judge scheduled to hear that case.

(Rule 3.203 revised effective 1/1/16)

Rule 3.204. Neutral Case Evaluation

(a) Neutral Case Evaluation

This program allows litigants and their lawyers to meet with an experienced trial attorney to get an independent opinion about their case, and about likely outcomes if their case were to go to trial (to the extent this is possible in a jury trial system). Evaluators can also help the parties develop a cost-effective plan for exchanging information (or managing discovery) and handling their cases. While commercial, business, real estate, personal injury, and contract matters often benefit from this program; any case might gain from this process if there are only two or three parties, and if there are more than just legal questions to resolve. Because this program does not involve negotiation or other settlement discussions, some parties use the evaluator's recommendations to negotiate their own agreement. Others choose another ADR program (such as mediation or arbitration) to settle their cases.

(b) Selection and assignment of Neutral Case Evaluators

All parties must agree on an evaluator and complete a Selection of ADR Panel Member (Local Court Form ADR-201) within fourteen (14) calendar days of the matter being referred to Neutral Case Evaluation, unless the judge sets a different selection deadline. Parties must forward this form to the ADR Programs office. If the parties cannot agree on an evaluator, the assigned judge may appoint one. The ADR Programs office will then file and serve a Notice of Assignment on all parties and the evaluator.

(c) Neutral Case Evaluator qualifications

Evaluators are attorneys who have significant litigation experience and background in the issues involved in the case.

(d) Neutral Case Evaluation fees

The Court's neutral case evaluators shall not charge fees for the first 30 minutes of case scheduling and preparation time, or for the first two hours of evaluation conference time. If more time is needed, the parties must pay that evaluator's hourly fee for the time used.

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Parties who have had their court filing fees cancelled, (waived), may ask whether the neutral case evaluator is willing to waive that party's fees. Parties are encouraged to have a written agreement with the panel member regarding fees and the management of their ADR case.

(e) Attendance at the Neutral Case Evaluation Conference

All trial lawyers, principals, clients, claims representatives, and other decision-makers shall attend the evaluation conference. Telephone standby is not permitted unless approved in advance by the assigned judge.

(f) Admissibility of Neutral Case Evaluation findings

Neutral case evaluation is not confidential unless the parties and evaluator agree otherwise, and sign an agreement to that effect.

(g) Neutral Case Evaluation statements

Parties must prepare and give information about their case to the neutral case evaluator and other parties at least five (5) court days before the evaluation hearing. Parties may use the Neutral Case Evaluator Statement (Local Court Form ADR-504) or write this information on their own paper. This form is available online at www.cc-courts.org/adrfoms. This information must not be longer than five (5) pages and must include:

- (1) The name and title (or relationship to the case) of all people who will attend the neutral case evaluation conference;
- (2) A brief statement of the important issues in the case, and the party's views on liability and damages;
- (3) The legal or factual issues to be resolved; and,
- (4) Copies of any court or other documents that will help the evaluator understand the issues in dispute.

(h) Blending or changing ADR processes

The Court allows parties to engage in more than one ADR process over the life of their case, as well as to convert most ADR processes only if:

- (1) All parties notify both the judicial and ADR Department as soon as is practicable of their intent to change processes, and
- (2) The parties and the ADR panel member ensure there are clear distinctions made and an agreement signed regarding which ADR processes and associated rules apply to their discussions, court deadlines, and work product.

(Rule 3.204 revised effective 1/1/16)

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Rule 3.205. Temporary Judge Trial - Civil Division

Applicable to Civil Cases

(not including juvenile or family law cases)

(a) Temporary Judge trials

Some parties with civil cases want to choose when their case will be tried, and so will agree to have the Court appoint a temporary judge to hear their case. (This is permitted by Article 6, Section 21 of the State Constitution and Rule 2.831 of the California Rules of Court). Except for appeals in small claims cases (may also be heard by temporary judges), or court appearances where a temporary judge has been appointed to call a particular calendar, these trials are held at a time and location that is convenient for the parties and the temporary judge. Temporary judges have nearly the same authority as a superior court judge. Except for small claims appeal cases or times when the Court appoints a temporary judge to call a particular calendar, parties choose the temporary judge from a list maintained by the ADR Programs office. Temporary judge trials are handled in the same way as other civil trials, except that the trial may not take more than five (5) court days, there is no option for a jury trial, and the temporary judge might not have assistance from a court clerk or other support staff. The parties must provide their own court reporter. The parties in a temporary judge trial can appeal the temporary judge's decision in the same way as following a trial by an assigned sitting judge. Whenever possible, each party must also:

- (1) Pre-mark all exhibits; and
- (2) Give the temporary judge an exhibit list, witness list, and opening statement.

(b) Qualification of Temporary Judges

Consistent with California Rules of Court, Rules 2.810 et seq., all attorneys who act as temporary judges must have been active members of the State Bar for a minimum of ten (10) years, must be active members of the State Bar at the time of appointment, must meet the initial and ongoing training requirements established by California Rules of Court, 2.812 – 15 and established court policy, and must not be the subject of any pending State Bar disciplinary proceeding. Further, all attorneys who act as temporary judges must certify that he or she has not pled guilty or no contest to a felony, or has not been convicted of a felony that has not been reversed. Retired judges need not be active members of the bar as long as they are in compliance with all requirements of the assigned judge's rules and obligations as established by the Judicial Council of California. Retired commissioners must be active members in good standing with the State Bar of California, but are exempt from the requirement to have been active with the State Bar and free of any State Bar Discipline for ten (10) years before their service as a temporary judge.

(Rule 3.205 revised effective 1/1/16)

Rule 3.206. Ethical and Practice Standards for ADR Panel Members

(a) General responsibilities

People serving on the Court's ADR Panel must be familiar with and follow all state or federal laws, California Rules of Court, Local Court Rules, and relevant professional or ADR-specific standards of practice. Further, panel members have a duty to the parties, the Court and themselves to be honest and diligent, to act in good faith, and to not advance their own interests at the parties' expense.

ADR panel members must be reasonably available to schedule ADR conferences, and must make an effort to expedite the ADR process.

(b) Neutrality

ADR panel members must be neutral and act fairly in dealing with the parties. In these rules, neutrality is defined as "freedom from favoritism or bias by appearance, word, or action, and a commitment to serve all parties as opposed to a single party." Further, the mediator may not have a personal interest in the case, and cannot show bias toward individuals and institutions involved in the dispute.

(c) Conflict of interest – definition

Conflicts of interest include (but are not limited to) personal or professional relationships with a party such as: legal representation by the panel member or his or her law firm; representation in business, real property, tax preparation, or other transactions; and, service as a consultant, advisor, therapist, or other expert. All parties should ask panel members whether there would be a conflict of interest if he or she accepted the case. All panel members must disclose any personal or professional relationships that might create a conflict of interest before accepting a case assignment. If there is an actual or perceived conflict of interest, the parties may jointly decide to continue working with that panel member, or contact the ADR Programs office to choose another panel member.

(d) Conflict of interest – duty to disclose

Per California Rules of Court, Rule 3.855, panel members have an ongoing duty to disclose actual or potential conflicts of interest. Panel members must disclose personal or professional relationships with a party including (but not limited to): legal representation by the panel member or his or her law firm; representation in business, real property, tax preparation, or other transactions; and, service as a consultant, advisor, therapist, or other expert. If there is an actual or perceived conflict of interest, the parties may jointly decide to keep working with that panel member, or contact the ADR Programs office to choose another panel member.

(e) Solicitation by panel members

Panel members must accurately state their qualifications, and must not make misleading claims about any ADR process, its costs and benefits, or its outcome. Panel members must not ask for or accept business from an ADR participant (either as a neutral,

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consultant, or representative in any other professional capacity) while that ADR proceeding is pending.

(f) Confidentiality

Except as otherwise provided, panel members must treat all written and oral communications made in or during an ADR process as confidential to the extent provided by the California Evidence Code and relevant case law.

(g) Role of the panel member in settlement

Panel members should help the parties to discuss the issues in dispute, and to carefully consider any proposed settlement options. Further, the panel member must try to identify and limit inappropriate pressures to settle the case. In order to protect the neutrality of his or her role, the panel member may find it advisable, for example, to encourage parties to seek independent advice from legal or other professionals.

(h) Unrepresented interests

Panel members must consider the possibility that people not attending an ADR conference may be affected by the results. The panel member has a duty to encourage the parties to fully consider such interests, when, in his or her judgment, it is appropriate to do so.

(i) Informed consent

Panel members have an ongoing duty to ensure that all parties understand the process and procedures associated with their ADR case. Further, the panel member must make every effort to ensure that the parties understand the panel member's role, and the limits to that role, in managing the ADR process, getting expert advice, and making decisions. Panel members should always have written agreements with the parties in a particular case regarding hourly fees and the management of the ADR case.

(j) Knowledge of ADR process

A panel member must only accept responsibility for delivering ADR services when reasonably certain that he or she has sufficient knowledge, training, or other expertise to administer that process appropriately, and in a way that helps the parties to participate effectively.

(k) Pro bono contributions and fees for service

Panel members must follow the Court's policies regarding ADR services that will be provided at no cost to the parties, and ADR services that may be compensated at the panel member's normal rate. Panel members must prepare billing or invoice statements to the parties that clearly state the purpose for all fees, and reflect the required pro bono service contribution. Specifically:

- (1) Panel members will provide their services at no cost to the parties or the Court when serving as a settlement mentor or as a temporary judge.

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- (2) Panel members will limit their fees for judicial arbitration to \$150 per day or per case, and will look to the parties for payment of these fees.
- (3) Panel members will provide the first thirty minutes of case preparation and scheduling, and the first two hours of mediation and neutral case evaluation conference time at no charge. If the parties request additional time, or additional time is required to provide the requested mediation or evaluation services, the panel member may, with the parties' agreement, charge their normal rates for actual time spent.

(l) Advance deposits for Mediation or Neutral Case Evaluation services

Mediators and evaluators may require the parties to pay a deposit against anticipated mediation or evaluation fees. If the panel member requests a deposit against anticipated fees, he or she may only charge the parties for actual time spent or services provided, and refund any balance due. Mediators and evaluators may not require parties to pay a non-refundable fee for a "minimum" number of mediation or evaluation hours.

(m) Complete and return all ADR forms

Panel members must complete and return, as appropriate, all local and state forms as directed by the Court or the ADR Programs office.

(Rule 3.206 revised effective 1/1/16)

Chapter 6. Discovery Motions and the Discovery Facilitator Program

Rule 3.300. Discovery Facilitator program

In an attempt to avoid protracted, costly and unnecessary discovery disputes, Civil and Probate Departments listed on the Court's website require parties to participate in the Discovery Facilitator Program ("Program") before filing all motions in Court to compel discovery, except as set forth below, or unless the Court specifically orders otherwise. This includes motions pursuant to CCP Section 1987.1.

Cases exempt from the Discovery Facilitator program

The following discovery disputes are exempt from the Program:

- (a) Cases in which there has been no response to discovery requests. Motions to compel under Code of Civil Procedure, Sections 2030.290(b) or 2031.300(b) shall be filed directly with the Court. The moving party should include, "Exempt from Discovery Facilitator Program" on the Notice of Motion.
- (b) Cases in which trial is less than sixty (60) days away.
- (c) Motions necessitated solely by a third party's refusal to comply with a subpoena.

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(d) Those disputes specifically exempted by the trial judge.

(Rule 3.300 revised effective 1/1/15)

Rule 3.301. Discovery Motions and the Discovery Facilitator Program

(a) Mandatory referral to Discovery Facilitator program

- (1) Unless exempt as set forth above, any party wishing to file a Discovery Motion, must first serve a Request for Assignment of Discovery Facilitator (Local Court Form ADR-610) by fax or email on the Martinez Civil Clerk's Office of the Contra Costa County Superior Court ("Martinez Civil Clerk's Office"), Fax 925-957-5796; email: ADRdiscoveryfacilitator@contracosta.courts.ca.gov

A copy of the Request for Assignment of Discovery Facilitator shall also be served on all parties to the action.

If a third party subpoena is the subject of the Discovery Motion, the moving party is responsible for serving a "Notice to Deponent and Deposition Officer of Assignment to Discovery Facilitator Program and Stay of Records Production Date" (Local Court Form ADR-618) on the third party holder of the documents or the subpoena service provider, (if one is handling the production), and all parties to the case. No records shall be produced until receipt of a stipulation of the parties or a court order authorizing production.

The Request for Assignment of Discovery Facilitator (Local Court Form ADR-610) shall provide the name and the fax number and email address of the party who intends to file the Discovery Motion, of all other parties against whom the motion will be filed, and of all other parties in the action.

- (2) The Request for Assignment of Discovery Facilitator (Local Court Form ADR-610) must be served on or before the last date for filing the Discovery Motion. Service of the Request for Assignment of Discovery Facilitator shall be deemed the proper filing of a Discovery Motion for purposes of the rule requiring that Discovery Motions must be filed within forty-five (45) days of service of the discovery responses.
- (3) Discovery Facilitators are experienced attorneys who are volunteering their time to assist the Court in resolving these disputes. There is no cost for participation in the Program. The Court does not expect any Discovery Facilitator to spend more than 4 hours on a case. If the Discovery Facilitator estimates that a case may take more than 4 hours, he or she may decline the case by sending a completed "Notice of Termination of Appointment of Discovery Facilitator" (Local Court Form ADR-615) stating that the matter is expected to take longer than 4 hours to the Martinez Civil Clerk's Office.
- (4) Cases that are exempt from the Discovery Facilitator program pursuant to Local Rule 3.301(a)(3) will be set for OSC or a Discovery Conference within sixty (60) days. The Court will preview the issues with the parties, give guidance on

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alternatives, encourage meaningful “meet and confer” sessions and discussion of the need to appoint a Discovery Referee. The Court may set a date for hearing on a Discovery motion, or impose issue or monetary sanctions, as appropriate.

(b) Discovery Facilitators

- (1) The Martinez Civil Clerk’s Office shall maintain a list of Discovery Facilitators. Cases shall be assigned to Discovery Facilitators in the order in which they appear on the list.
- (2) Before notifying the parties of the assignment of a Discovery Facilitator, the Martinez Civil Clerk’s Office shall contact the proposed Discovery Facilitator to confirm availability and willingness to serve.
- (3) Within three (3) calendar days of being contacted, the proposed Discovery Facilitator shall perform a conflict of interest check. A Discovery Facilitator shall decline the assignment if he or she knows of facts that would serve as grounds for disqualification under CCP § 170.1 if the Discovery Facilitator were a Judicial Officer. The Discovery Facilitator shall also inform the Martinez Civil Clerk’s Office of any disclosures he or she deems appropriate to be forwarded to the parties.
- (4) Discovery Facilitators shall have the following minimum requirements: 10 years of experience in Civil or Probate Litigation.

(c) Assignment of Discovery Facilitator

- (1) The Martinez Civil Clerk’s Office shall serve a Notice of Assignment of Discovery Facilitator (Local Court Form ADR-612) within ten (10) calendar days of receipt of a Request for Assignment of Discovery Facilitator.
- (2) Rejection of Assigned Discovery Facilitator.
 - (A) Parties to the proposed motion shall have ten (10) calendar days after service of the Notice of Assignment to serve on the Martinez Civil Clerk’s Office and the parties in the action a Rejection of Assigned Discovery Facilitator (Local Court Form ADR-617). If the Discovery Facilitator is rejected, a second Discovery Facilitator will be appointed. Objections to the second, or succeeding, Discovery Facilitators may only be made by ex parte application to the Court setting forth good cause for the objection. Failure to set forth good cause, may result in the imposition of monetary sanctions.
 - (B) If no Rejection of Assigned Discovery Facilitator is served within ten (10) calendar days of service of the original Notice of Assignment of Discovery Facilitator, the Notice of Assignment of Discovery Facilitator is confirmed.

(d) Hearing of discovery dispute

- (1) The Discovery Facilitator shall hold a hearing on the discovery dispute no later than thirty (30) days after confirmation of the assignment of the Discovery

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Facilitator. Parties may stipulate in writing to extend the 30 day deadline or it may be extended by the Facilitator for good cause that supersedes the policy of the Program for expedited resolution.

- (2) One of the purposes of this Discovery Facilitator program is to narrow the number of discovery disputes, should a hearing ever be required before a judicial officer. Another purpose is to allow for informal resolution of discovery disputes at a lower cost to the parties than they would otherwise incur. Therefore, the format of briefing done for a hearing before a Discovery Facilitator should be brief, practical, and informal. Within these guidelines, the Discovery Facilitator has the discretion to determine the format of briefing required or whether any briefing will be required, and the schedule for service of such briefing. The Discovery Facilitator shall also have discretion to determine the structure of the hearing, including appearances by telephone or video.
- (3) If the Discovery Facilitator determines that the hearing cannot be scheduled or completed within thirty (30) days of the date of confirmation of the assignment of the Discovery Facilitator because of conduct of one of the parties, the Discovery Facilitator shall issue a Finding of Non-Compliance, specifying the party and/or attorney responsible. In the event a formal Discovery Motion is subsequently filed, the moving party shall attach a copy of the Finding of Noncompliance to its papers as an exhibit and may submit a brief, factual, non-argumentative recitation of the facts regarding the non-compliance. The policy of the court will be to award monetary sanctions against the party responsible for the Discovery Facilitator's inability to schedule or complete the hearing within thirty (30) days, regardless of the outcome on the merits of the motion. In the case of represented parties, the monetary sanction shall be assessed against the attorney and/or the party.
- (4) The Discovery Facilitator program is not a mediation program. The Discovery Facilitators are not mediators, and the proceedings under this Program are not subject to mediation confidentiality rules. While the Facilitator may encourage compromises in discussion at or before the hearing in order to narrow or settle disputes, Discovery Facilitators should not simply try to produce a compromise at any cost. In making his or her recommendations, the Discovery Facilitator will give an opinion on the merits of the dispute in a manner that he or she believes is consistent with applicable law.
- (5) If the discovery dispute is completely resolved at or before the hearing, the parties will confirm the terms of the resolution in writing, and the appointment of the Discovery Facilitator will terminate automatically, unless the Discovery Facilitator and the parties agree that the Facilitator will continue to serve.
- (6) If the discovery dispute is not completely resolved at the hearing, the Discovery Facilitator shall, within ten (10) days of the completion of the hearing, serve a document on the parties entitled "Recommendations of Discovery Facilitator and Termination of Appointment of Discovery Facilitator" (Local Court Form ADR-616). The Recommendation may be on the merits of the motion, may be a recommendation that the matter be referred to the assigned judge for decision,

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may be that the parties are ordered to meet and confer and to provide a report to the Court of the results of such meeting and the matters that remain in dispute, or that a formal Discovery Referee be appointed. The Discovery Facilitator may require the substantially prevailing party to do the initial draft of the recommendations. If so, this initial draft shall not be required to be sent to the opposing party for approval as to form, but rather will be sent directly to the Discovery Facilitator.

- (7) If service of the Recommendations of Discovery Facilitator and Termination of Appointment of Discovery Facilitator does not resolve the dispute, the moving party shall have thirty (30) days from the service of the Recommendations of Discovery Facilitator and Termination of Appointment of Discovery Facilitator to file with the clerk of the court and serve on the parties a formal Discovery Motion. Those moving papers shall include, as the first exhibit, a declaration that the parties have completed the Discovery Facilitator Program and shall attach the Recommendations of Discovery Facilitator and Termination of Appointment of Discovery Facilitator as part of the exhibit.
- (8) If for any reason the Discovery Facilitator fails to serve the Recommendations of Discovery Facilitator and Termination of Appointment of Discovery Facilitator, the moving party shall have forty (40) days from the completion of the discovery hearing to file formal Discovery Motion papers regarding the discovery dispute, which papers shall include, as the first exhibit, a declaration regarding the failure of the Facilitator to serve the Notice.
- (9) The court will consider the Recommendations of the Discovery Facilitator in deciding the merits of the motion. The purpose of this Discovery Facilitator program is to facilitate discovery and the resolution of discovery disputes without, or with minimal, court supervision, given current budgetary restraints on the court.

The policy of the court will be to award monetary sanctions in favor of any party who substantially prevails on a Discovery Motion that is subject to the Discovery Facilitator program.

(e) Urgent discovery motions

- (1) A party may present an ex parte application to the Court to shorten all time frames set forth in this Rule, or to exempt the dispute from the Program, upon a showing of good cause.

(f) Compensation of Discovery Facilitators

- (1) Recognizing the importance of the principle of maintaining access to justice, and the fact that there is only a nominal fee for filing a Discovery Motion to be heard before a judicial officer, Discovery Facilitators shall serve without any monetary compensation. The parties to the discovery dispute are counseled to bear in mind that the Discovery Facilitators are donating their time and grant them the courtesy

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and respect the parties would grant to a judicial officer, and minimize the paperwork that they serve on the Discovery Facilitators.

- (2) If the parties choose to use the services of the Discovery Facilitator after completion of the assignment, compensation shall be pursuant to agreement of the Facilitator and the parties, which agreement should be confirmed in writing.
- (3) The policy of the Program is that a Discovery Facilitator will handle only one Assignment per case without compensation. If there is more than one Request for Assignment of Discovery Facilitator in a case, the parties may use the Facilitator for the second Assignment if an agreement is reached for compensation of the Facilitator. Otherwise, the second Request for Assignment of Discovery Facilitator will be assigned to a different Discovery Facilitator.

(g) Forms used in Discovery Facilitator program

Request for Assignment of Discovery Facilitator

Local Court Form (ADR-610)

Notice of Assignment of Discovery Facilitator

(Local Court Form ADR-612)

Finding of Non-Compliance

Local Court Form (ADR-614)

Notice of Termination of Appointment of Discovery Facilitator

Local Court Form (ADR-615)

Recommendations of Discovery Facilitator and Termination of Appointment of Discovery Facilitator

Local Court Form (ADR-616)

Rejection of Assigned Discovery Facilitator

Local Court Form (ADR-617)

Notice to Deponent and Deposition Officer of Assignment to Discovery Facilitator Program and Stay of Records Production Date

Local Court Form (ADR-618)

(Rule 3.301 revised effective 1/1/16)

Title Four. Criminal Rules

Division I. Criminal

Chapter 1. Criminal Department

Rule 4.1. Motions

(a) Motions procedures

(1) Length

- (A) A memorandum of points and authorities filed in support of or opposition to a motion and produced on a computer must not exceed 4,200 words, including footnotes. Such a memorandum must include a certificate by submitting counsel or an unrepresented party stating the number of words in the memorandum. The person certifying may rely on the word count of the program used to prepare the memorandum.
- (B) A memorandum of points and authorities prepared on a typewriter must not exceed 15 pages.
- (C) The limitations above do not include the caption of the case, the signature block, the word count certification, or any exhibits.
- (D) On application, a judge may authorize filing of a longer memorandum. Except as otherwise ordered, any memorandum submitted in violation of this rule will not be considered.

(2) Consequences for Failure to Comply with Motions rules.

- (A) The failure to comply with the rules governing motions may result in the imposition of monetary sanctions.
- (B) If any motion subject to this rule is not made or heard within the time limits and pursuant to the requirements of this rule, the failure to do so shall constitute a waiver of the right to make the motion. The Court, for good cause shown, may grant relief from the waiver.
- (C) The failure to file any response within the time limits and pursuant to this rule shall constitute a waiver of the right to make a response, but the Court, for good cause shown, may grant relief from the waiver.

(b) Pre-trial motions.

(1) The following motions shall be filed and heard before trial:

- (A) Demurrer to the complaint, indictment or information where the Court authorizes filing after the entry of plea or where a demurrer is filed before entry of plea;

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- (B) Motion to dismiss complaint, indictment or information (e.g. Penal Code Section 995 or non-statutory motions to dismiss);
- (C) Motion under Penal Code Section 1538.5 and other motions to suppress evidence or for return of property unlawfully seized;
- (D) Motion for discovery, including discovery relating to informants claimed to be material witnesses;
- (E) Motion to compel lineup;
- (F) Motion to sever or consolidate cases, counts or defendants, if the parties stipulate that the ruling shall be binding on the trial department;
- (G) Any speedy trial motion where grounds exist at the time set herein for notice;
- (H) Motion to challenge the jury selection system;
- (I) Motion to reinstate complaint;
- (J) Motion to strike or attack the constitutional validity of prior convictions, enhancements or probation;
- (K) Motion to dismiss or for other relief for vindictive prosecution or outrageous government conduct;
- (L) Motion to recuse;
- (M) Faretta motion;
- (N) Motion to appoint advisory counsel;
- (O) Motion to appoint second counsel in capital case;
- (P) Motion to disclose surveillance action; and
- (Q) Any other motion that does not require for its resolution a ruling on admissibility of evidence at trial or is not otherwise a common law in limine trial motion.

(c) Time and place for notice and hearing of pre-trial motions, and rules for filing and service.

- (1) Unless otherwise ordered, all motions and proofs of service shall be filed and served in accordance with the time limitations set forth in California Rules of Court, Rule 4.111 and Penal Code Section 1538.5, and shall be set for hearing in the Criminal Department of the appropriate court.
- (2) The Court, for good cause or upon the stipulation of the parties with court approval, may permit motions to be heard at the time of trial.

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- (3) All pleadings filed in connection with Pre-Trial motions shall be filed in the courthouse where the case is pending at the time the motion is filed. All pleadings shall be served on opposing counsel in his or her regularly assigned office by the most expeditious means available. If the identity of opposing counsel is not known when the pleading is filed, the following service rules shall apply: (1) if the case is being handled by a special unit, the pleading shall be served on the office of the special unit assigned to the case; (2) in all other cases, the pleading shall be served on the office of the opposing party closest to the courthouse in which the case is pending.
- (4) In felony cases, any party filing a pleading in connection with a substantive Pre-Trial motion shall simultaneously serve the Court's Research Attorneys. Pleadings and exhibits in connection with felony motions shall be served on the Research Attorneys by email at the following address: ratts@contracosta.courts.ca.gov.
- (5) If a felony motion is to be continued or dropped from calendar, counsel for the moving party shall promptly notify the Court's Research Attorneys by email and the Research Attorneys will notify the Judge. If the party opposing a motion is unable to file pleadings at least five (5) court days before the time scheduled for the hearing as required by California Rules of Court, Rule 4.111, or as otherwise required by law, counsel shall notify the Court's Research Attorneys by email.
- (6) All papers shall contain in the upper right-hand corner of the first page, the filing party's estimate of the overall time required for the hearing of the matter, date and department number of the hearing, and a request for a removal order if a defendant or necessary witness is in custody outside the Contra Costa County Jail.

(d) General procedures for pre-trial motions:

- (1) A failure of the moving party to appear when the matter is called may, in the Court's discretion, cause the matter to be ordered off calendar. In the event of an unavoidable schedule conflict, the attorney with the conflict can avoid having the matter dropped by calling the Court and also notifying opposing counsel before the scheduled hearing and reporting the conflict.
- (2) A motion that has been duly filed may be dropped from calendar up to forty-eight (48) hours before the appearance date by notifying opposing counsel and the Court. Within forty-eight (48) hours of the date set for hearing, the moving party shall appear unless excused by the Court.
- (3) No matters will be continued, even by stipulation of the parties, except with the approval of the Court for good cause shown. Compliance with Penal Code Section 1050 is required unless excused by the Court.
- (4) Motions and opposition to such motions shall specifically set forth any evidence, theories of law and authorities relied on in support or opposition to said motions. Checklist or "boilerplate" motions will not be considered and may, in the discretion of the court, cause the matter to be dropped from the calendar.

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(e) Motions to be heard by the trial judge.

Except as otherwise ordered, motions not enumerated above as Pre-Trial motions shall be heard by the Trial Judge. Counsel in cases pre-assigned to a trial department shall submit to the Trial Judge all such motions within three (3) court days before the date set for trial.

(f) Ex parte applications.

- (1) All ex parte applications for orders shortening or extending time shall be presented in the Criminal Department to which the motion has or will be assigned, with at least twenty-four (24) hours' notice to the opposing party or counsel. Such applications shall include a written or oral supporting declaration, stating whether that party has been contacted and has agreed to the requested order or why the ex parte order should be issued.
- (2) Except by order of the Court, upon a showing of good cause, all ex parte applications seeking to set a matter on shortened time shall provide for moving papers to be filed and personally served at least five (5) calendar days and for opposing papers to be filed and served at least two (2) calendar days before the hearing date. All papers, including opposition and reply papers, filed in motions brought on an order shortening time, shall be accompanied by a copy of the proposed order.
- (3) Any request for relief from operation of these rules shall be made to the Court, with a showing of good cause, before the papers are filed.

(g) Motion to withdraw as counsel

An attorney who is appointed or retained to represent a client in a criminal proceeding shall not withdraw from such representation except by filing a substitution of attorney bearing the written consent of the defendant or upon a timely motion and order of the court.

(Rule 4.1 revised effective 1/1/16)

Rule 4.2. Discovery.

Any party asserting a work product or other privilege exception pursuant to Penal Code Section 1054.6 or asserting a discovery exception based upon a showing of good cause pursuant to Penal Code Section 1054.7 shall proceed by noticed motion which shall be heard before the first readiness conference.

(Rule 4.2 revised effective 1/1/16)

Rule 4.3. Applications on Behalf of Inmates.

(a) Application to the Sheriff

Except as otherwise stated in this rule, applications by or on behalf of inmates confined in the county jail, for temporary release from custody, for medical, family emergency, education, employment, and related purposes (i.e. requests for “passes”) shall be made to the Sheriff and not to the Court.

(b) Application to the judge of the felony calendar

The following applications shall be made to the judge of the Felony Calendar Department: those made pursuant to Sections 4011, 4011.6 and 4011.8 of the Penal Code.

(c) The Court’s power to determine condition of confinement

Nothing in this rule shall affect the Court's power and duty to make proper determinations and orders with respect to allegedly unlawful conditions of confinement in the county jail in a justiciable controversy properly before the Court in connection with a proper petition for writ of habeas corpus, application for modification of probation, or other similar pleading.

(Rule 4.3 revised effective 1/1/15)

Rule 4.4. Violations of Probation.

(a) Notification by Probation Officer

In all cases involving persons on probation, the Probation Officer shall promptly notify the Criminal Calendar Department responsible for monitoring that probationer of every violation of law (other than minor traffic offenses) that the Probation Officer reasonably believes the probationer has committed.

(b) Where probation violations are heard

Probation violation hearings in felony cases shall be held in the Criminal Department that presides over the felony probation calendar. Probation violation hearings in misdemeanor cases that originally arose in the Richmond and Pittsburg branch courts shall be held in the branch court in which the underlying case arose, in a department designated by that branch court’s Supervising Judge. Probation violation hearings of misdemeanor cases that originally arose in the Walnut Creek or Concord/Mt. Diablo branch courts shall be held in Martinez in a department designated by the Presiding Judge.

(Rule 4.4 revised effective 1/1/15)

Rule 4.5. Disposition of Cases Other than by Trial or Hearing.

The disposition of cases other than by trial or hearing may be discussed only with the judge to whom the Pre-Trial, readiness conference, or probation revocation matter, has been assigned.

(Rule 4.5 revised effective 1/1/15)

Rule 4.6. Relief from Forfeiture of Bail in Misdemeanor and Felony Cases.

(a) Bench warrants upon forfeiture of bail

- (1) When a bailed defendant fails to appear, unless personal appearance has been excused under Penal Code Section 977, or unless the Court grants a continuance under Penal Code Section 1305.1, bail shall immediately be forfeited and a bench warrant shall be issued. The bench warrant shall require bail in an amount not less than the amount of the forfeited bond, and not less than the minimum amount required for entry into automated warrant index systems. Each warrant shall contain a notice to the following effect: "Do Not Cite Release -- Bail in Forfeiture".
- (2) If counsel appears for a bailed defendant whose personal appearance is desired by the Court, and asserts that the defendant's personal appearance is excused under Penal Code Section 977, the Court shall order the defendant to personally appear at a specific date, time and place, pursuant to Penal Code Section 978.5(a)(1). If the defendant does not then appear, bail forfeiture and bench warrant shall be ordered.
- (3) If counsel or the defendant provides the Court with sufficient grounds for a finding that the non-appearance may be excused under Penal Code Section 1305.1, the Court shall enter in the record any such finding and may order a reasonable continuance without immediate forfeiture of bail.

(b) Setting aside forfeiture upon appearance of defendant

- (1) An order of bail forfeiture shall be vacated on the Court's motion if the defendant personally appears before the end of the 180-day period defined in Penal Code Section 1305. Appearance may be by means of arrest on the bench warrant, "voluntary" or "add-on" appearance, surrender by the bail agent, or other means (e.g., a dismissal of the case).
- (2) If the defendant appears on a new or separate matter and the defendant or bail agent advised the Court of the forfeited bond, the Court may, in its discretion, address the bail forfeiture issue on the case in which a bench warrant remains outstanding. The Court does not assume responsibility for identifying a defendant's pending cases involving forfeiture or initiating service of warrants.
- (3) Relief from bail forfeiture without the personal appearance of the defendant will be considered only upon a timely written motion by the bail agent or surety, stating the specific grounds upon which relief is sought, with not less than ten (10) calendar days' notice to both the District Attorney and the County Counsel. A motion for exoneration of forfeited bail will be treated as a motion for a tolling of the 180-day period if the grounds asserted are those of temporary disability, as described in Penal Code Section 1305(e). Repetitive, groundless or otherwise frivolous motions may result in the imposition of sanctions.

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- (4) When the People request dismissal of a case in which bail is in forfeiture, the Court may, on its own motion, waive the defendant's personal appearance and may order forfeiture relief and bail exoneration.

(c) Reinstatement and continuance of bail

After Notice of Forfeiture has been mailed by the clerk, a defendant may be continued on a reinstated bond only with the consent of the bail agent. Consent to reinstatement and continuation of a forfeited bond may be given through personal appearance by the bail agent or in writing, or to a member of the court's staff by telephone. The Clerk's Minute Order shall identify the person giving consent to continuation of the bond, and the method of communicating it.

(d) Exoneration of bail after forfeiture

When an order of bail forfeiture has been vacated on a bond that is not to be continued, the Court may, on its own motion and in its discretion, order bail exoneration without the necessity of a motion or appearance by the bail agent.

(e) Cost assessment as condition of forfeiture relief

- (1) Unless the Court orders otherwise, in its discretion in the interests of justice, any order setting aside a bail bond forfeiture shall be conditioned on the timely payment by the bail agent or surety of an assessment of costs. Written notice of the cost assessment shall be mailed by the clerk to the parties to whom the Notice of Forfeiture was sent, as required by Penal Code Section 1305.2.
- (2) For bail posted after the effective date of this Rule, the following levels of cost assessment shall be "just terms" under Penal Code Section 1306(b): When the defendant's appearance is a result of arrest on the bench warrant issued upon bail forfeiture, the assessment is \$100.00 per bond; when the defendant's appearance is not a result of bench warrant arrest, the assessment is \$75.00 per bond.
- (3) The Court may, in its discretion, order larger assessments, following notice, in cases where criminal justice agencies have incurred extraordinary expenses in returning a defendant to court jurisdiction.
- (4) The Court may, in its discretion, waive imposition of assessments in cases in which the defendant appears and shows the Court that the defendant was, at the time of the order of forfeiture, either in custody in this county or personally appearing in another court.
- (5) The Court may, in its discretion, waive the imposition of cost assessments on a case-by-case basis in the interest of justice.

(e) Cost assessment as condition of forfeiture relief

- (1) Unless the Court orders otherwise, in its discretion in the interests of justice, any order setting aside a bail bond forfeiture shall be conditioned on the timely payment by the bail agent or surety of an assessment of costs. Written notice of the cost

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assessment shall be mailed by the clerk to the parties to whom the Notice of Forfeiture was sent, as required by Penal Code Section 1305.2.

- (2) For bail posted after the effective date of this Rule, the following levels of cost assessment shall be “just terms” under Penal Code Section 1306(b): When the defendant’s appearance is a result of arrest on the bench warrant issued upon bail forfeiture, the assessment is \$100.00 per bond; when the defendant’s appearance is not a result of bench warrant arrest, the assessment is \$75.00 per bond.
- (3) The Court may, in its discretion, order larger assessments, following notice, in cases where criminal justice agencies have incurred extraordinary expenses in returning a defendant to court jurisdiction.
- (4) The Court may, in its discretion, waive imposition of assessments in cases in which the defendant appears and shows the Court that the defendant was, at the time of the order of forfeiture, either in custody in this county or personally appearing in another court.
- (5) The Court may, in its discretion, waive the imposition of cost assessments on a case-by-case basis in the interest of justice.

(Rule 4.6 revised effective 1/1/16)

Rule 4.7. Submitting Sensitive Exhibits.

All controlled substances, guns, money, valuables, and other sensitive exhibits shall be packaged and stored separately from other exhibits. Sharp objects such as knives, needles and glass shall be specially wrapped and labeled for the handler’s protection. (For instance, a syringe shall be packaged by the police agency in a plastic tube). Any party submitting such items, and anyone arranging transfer of such items, shall notify the exhibits clerk or the courtroom clerk of these objects and about any dangers associated with them.

(Rule 4.7 revised effective 1/1/15)

Division 2. Infractions

Chapter 1. Infraction Rules

Rule 4.40. Filing.

The Clerk's Office of the Contra Costa County Superior Court, Traffic Division shall be responsible for processing all adult and juvenile traffic infractions and non-traffic infractions. No misdemeanors shall be filed in the Traffic Division in the Pittsburg, Richmond, and Walnut Creek courthouses.

(Rule 4.40 revised effective 1/1/15)

Rule 4.41. Court Sessions.

Regular court sessions for citations and complaints filed in the Traffic Division for both adult and juvenile matters shall be scheduled as required by the Presiding Judge and published by the Court Executive Officer.

(Rule 4.41 revised effective 1/1/15)

Rule 4.42. Arraignments.

Except for offenses mandating a court appearance, a defendant may waive his/her right to be arraigned on the violation and enter a plea of not guilty at the court counter. The Clerk will assign a trial date within the statutory time requirements of Penal Code §1382, unless the defendant waives that right on the form provided by the Clerk.

(Rule 4.42 revised effective 1/1/15)

Rule 4.43. Continuances.

Except for continuance of a trial date, on or before the date set or required in any matter, the Clerk shall have the authority to grant the defendant one extension of not more than thirty (30) calendar days.

(Rule 4.43 revised effective 1/1/15)

Rule 4.44. Trial Continuances.

When a case has been set for a contested court trial, each side shall be entitled to one continuance of the trial date provided the request is received by the Traffic Division not fewer than twenty (20) calendar days before the assigned date of trial. This request must be received in writing.

(Rule 4.44 revised effective 1/1/16)

Rule 4.45. Juvenile Traffic Infraction Matters.

All juvenile traffic citation matters will be required for a mandatory appearance pursuant to W&I Code 853.6 and 853.6(a). These citation will not be subject to civil assessment pursuant to Penal Code § 1214.1.

(Rule 4.45 revised effective 1/1/15)

Chapter 2. Adjudication of Infraction Matters

Rule 4.60. Trial by Declaration for Traffic Infractions.

(a) Trial by Declaration in traffic infractions

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

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(b) Failure to appear or untimely request for action

Additionally, pursuant to Vehicle Code § 40903, any person who fails to appear as provided by law may be deemed to have elected to have a trial by written declaration upon any alleged infraction, as charged by the citing officer, involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the vehicle code. If there is no timely request for action and the fines and fees are not paid by the due date, the case will proceed to civil assessment pursuant to Penal Code § 1214.1. Additionally, the Department of Motor Vehicles (DMV) may be notified of the failure to appear pursuant to Vehicle Code § 40509.5(b), which can result in a suspension of the defendant's driver's license pursuant to Vehicle Code § 13365(a)(2) until all obligations to the Court are satisfied.

(c) Adjudication pursuant to CVC 40500

In eligible cases the Court will conduct the trial by declaration and it will be adjudicated on the basis of the notice to appear issued pursuant to Vehicle Code § 40500. Once adjudicated, the suspension of the defendant's license will be lifted by the Court to DMV.

(d) Disposition with guilty finding or untimely request for a trial de novo

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

(Rule 4.60 revised effective 1/1/15)

Rule 4.61. Clerks' Authority in Infraction Cases.

For cases that have not been transferred to court collections, deputy clerks are granted the authority to take the following actions at the request of defendants charged with infraction violations:

- (1) Accept not guilty plea and schedule court trial.
- (2) Accept the posting and forfeiting of bail on infraction cases.
- (3) Set trial de novo (must post full bail with cash or certified funds only).
- (4) Accept cash, check, credit payment, certified fund if case is in court control.
- (5) Accept cash payment if case is with AllianceOne of at least 10 percent of the total bail amount for each infraction violation of the vehicle code.
- (6) Accept not guilty plea forms and set cases for hearing (also see Local Rule 4.80, below).
- (7) Schedule same day arraignment calendar.

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- (8) Accept proof of correction for correctable violations with a \$25 proof fee.
- (9) Give one time 30 traffic school extension.
- (10) Give one time 30 day first appearance extension.
- (11) Issue subpoenas for case that have a court trial set.

(Rule 4.61 revised effective 1/1/15)

Rule 4.62. Prohibited Requests in Traffic Matters.

The Court will not grant, or authorize deputy clerks to grant, any of the following requests from defendants or their counsel:

- (1) For the scheduling of a court arraignment or trial after the finding defined in Vehicle Code § 40902.
- (2) Reset of court trial that is not within twenty (20) calendar days before the hearing date.
- (3) Reduction in bail, fines and fees, or community service work hours.
- (4) Remand to county jail in lieu of payment of bail or fines and fees.
- (5) To grant subsequent extension, following an initial 30-day extension, of time to pay or to provide proof of completion of community service work or traffic violator school or to provide proof of correction of correctable offense(s).
- (6) To grant community service work following defendant's failure to appear for a contested traffic trial, where the case has been sentenced in absentia.
- (7) To grant community services for civil assessments.
- (8) To grant out of state community service work.

(Rule 4.62 revised effective 1/1/16)

Rule 4.63. Civil Assessments in Traffic Matters.

(a) Imposition of Civil Assessment

A Civil Assessment in the statutorily accepted amount is imposed against anyone who does not appear (Failure To Appear - FTA) in court and/or pay a court-ordered fine by the due date (Failure To Pay - FTP). The Civil Assessment is added to and is separate from, any fine and fees connected with your case. You must pay the Civil Assessment even if you are not found guilty on the traffic citation.

(b) Procedure to request removal of Civil Assessment

Complete the Defendant's Request and Declaration to Vacate Civil Assessment form (Local Court Form TR-121) which can be found at www.cc-courts.org/forms. Provide a written explanation of the reason you did not appear in court and did not pay and attach

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supporting documentation. If you do not attach documentation, your application will not be processed and all documentation will be returned.

(Rule 4.63 revised effective 1/1/16)

Rule 4.64. Appeals.

(a) The process for filing an appeal in an Infraction case

An appeal is taken by filing with the Clerk in the Traffic Division a written notice of appeal signed by appellant or appellant's attorney. The notice shall be filed within thirty (30) calendar days of pronouncement of judgment or mailing by the clerk of the Notice of Judgment. Any Notice received after the expiration of the time prescribed shall be marked by the Clerk "received (date) but not filed," and the Clerk shall advise the party seeking to file the notice that it was received but not filed because the period for filing had elapsed.

(b) The record on appeal for Infraction cases

The Appellate Division elects to authorize the use of the original court file in lieu of a clerk's transcript as the record on appeal, pursuant to California Rules of Court, Rules 8.910(a)(1)(B) and 8.914.

(c) Authorization to use official electronic recording where available in Infraction cases

The Appellate Division elects to authorize the use of an official electronic recording, where available, as the record of the oral proceeding instead of obtaining a corrected statement on appeal from the judicial officer who presided over the proceeding before the Appellate Division, pursuant to California Rules of Court, Rule 8.916(d)(6)(A).

(Rule 4.64 revised effective 1/1/16)

Chapter 3. Collections Program for Traffic Infraction Cases

Rule 4.80. Enhanced Court Collections Program.

(a) Collection fee when defendant pleads guilty before Failure to Appear

If the Defendant would like to plead guilty to the citation during the sixty (60) calendar days before the scheduled court hearing, the defendant will be referred to AllianceOne. The defendant must pay a \$30 non-refundable administration fee, and must pay imposed fines and fees within sixty (60) days. Should the defendant require longer than sixty (60) days to pay, they must pay an additional \$20 non-refundable accounts receivable fee.

(b) Collection efforts for delinquent cases

At the time the Court determines that a defendant is delinquent in making payments for fines, fees, penalty assessments and surcharges, the Court will deem the case delinquent. Upon such determination, AllianceOne will contact the defendant to determine how the

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unpaid court-ordered debt will be paid. The Court will utilize all available collection methods to resolve these unpaid debts, including skip tracing, referral to the Franchise Tax Board Court Ordered Debt Program for possible wage garnishment, and levy of personal property.

(Rule 4.80 revised effective 1/1/16)

Rule 4.81. Application of Overpayment.

Whenever the Court receives an overpayment for an infraction case and the Court determines that the defendant is delinquent on another felony, misdemeanor or infraction case, the Court will apply the overpayment to that case.

(Rule 4.81 revised effective 1/1/15)

Title Five. Family and Juvenile Rules

Division 1. Family Law Matters

Chapter 1. Family Law Department

Rule 5.0. Definitions and Self-Represented Litigants

(a) Definitions

- (1) California Rules of Court (Family Rules) may be referred to as “CRC’s”.
- (2) Local Rules shall be referred to as “Local Rule”.
- (3) Department of Child Support Services shall be referred to as “DCSS”.
- (4) Family Court Services shall be referred to as “FCS”.
- (5) Income and Expense Declaration (Judicial Council Form FL-150) may be referred to as “I&E”.

(b) Self-represented litigants

Attorneys and self-represented litigants (also known as pro per litigants) shall comply with all applicable statutes in addition to these local family law rules and the California Rules of Court. Where these rules refer to Superior Court forms, the equivalent Judicial Council forms shall also be accepted.

Self-represented litigants shall be treated in the same manner as if represented by counsel and shall be held to the same standards. All references to counsel in these rules apply equally to self-represented litigants.

(Rule 5.0 revised effective 1/1/15)

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Rule 5.1. Assignment of Departments and Matters

(a) Assignment of departments

- (1) The Court designates four or more full-time departments and additional part-time departments (as resources allow) to serve as the Family Law Division of the Court. The Presiding Judge shall make the assignment of departments to the Family Law Division and the designation of one of the judges as the Supervising Judge of the division.

(Rule 5.1(a)(1) revised effective 1/1/14)

- (2) One of the designated departments will operate under the authority of AB 1058 (Stat. 1996, ch. 957). This department will hear all issues described in Family Code Section 14700, whether or not the action was initially filed by the Department of Child Support Services (DCSS). Absent stipulation or other court order providing that this department will also hear any other issues arising in such case (whether or not filed by DCSS) such other issues will be heard in the department to which such action would be assigned if DCSS were not involved in the case.

- (3) The remaining departments will hear all matters filed pursuant to the California Family Code under a direct calendar system. Cases will be assigned to departments, utilizing a plan of assignment which the Supervising Judge of the Family Law Division devises from time to time. These case assignments are deemed “all-purpose” assignments under Code of Civil Procedure Section 170.6(a)(2).

All matters shall be initially calendared in the appropriate department based on the “all purpose” assignment. Except in the case of a matter that has shortened time, the initial hearing date shall be assigned by the Clerk’s Office at the time the matter is filed.

(Rule 5.1(a)(3) revised effective 1/1/15)

- (4) When there is more than one case filed with respect to a given family, the bench officer hearing a matter in one of those cases may order the cases consolidated.
- (5) Applications for Temporary Restraining Orders and for Restraining Orders After Hearing filed pursuant to the Domestic Violence Prevention Act (Family Code Division 10) may be heard in departments located in designated branch courts. Applications for Temporary Restraining Orders and for Restraining Orders After Hearing shall be filed as set forth in Local Rule 5.2 (below).

(Rule 5.1(a)(5) revised effective 1/1/15)

- (6) When filing Custody Order-Juvenile-Final Judgment-Visitation Order-Juvenile” (Judicial Council Form JV-200/JV-205) containing custody and visitation orders, they shall be filed in existing family law cases or, if no case exists, a new file will be opened. If the “Custody Order-Juvenile-Final Judgment/Visitation Order-Juvenile” of the Juvenile Court contains an order described in Local Rule 5.66, then any Request for Order to modify custody or visitation filed within one year of

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the Juvenile Court's "Custody Order-Juvenile-Final Judgment/Visitation Order-Juvenile" shall be heard as provided in Local Rule 5.65(c).

(Rule 5.1(a)(6) revised effective 1/1/14)

(b) Assignment of matters

- (1) The following matters shall be heard in the Family Law Division:
 - (A) All matters filed under the Family Code except (unless assigned by the Presiding Judge) those actions filed under:
 - i. Family Code Division 11
 - ii. Family Code Division 12, Parts 4, 5, and 6, and
 - iii. Division 13
 - (B) All other matters assigned by the Presiding Judge.
 - (C) All other matters which are properly brought before a Family Law bench officer pursuant to an order of the Court.

(Rule 5.1(b) revised effective 1/1/00)

(c) Collaborative law

- (1) Collaborative Law Defined
 - (A) The Court recognizes the unique nature of family law disputes and the fact that family law issues are best resolved by the parties reaching an agreement or agreements over critical matters including child custody, support and property, without engaging in the traditional adversarial litigation process. The Contra Costa County Superior Court strongly supports the use of the collaborative law process as well as other alternate dispute resolution tools for the purpose of developing both short-term and long-term agreements that meet the best interests of the entire family, particularly the children.
- (2) Standards of Collaborative Law Cases
 - (A) No case will be entitled to a designation as a "collaborative law" case unless the parties have signed and filed a collaborative law stipulation.
 - (B) When a case is designated as a "collaborative law" case, the Court shall vacate all matters previously set on the Court's calendar and shall set the matter for a Case Management Conference no later than one year from the date of the designation.
 - (C) The term "Collaborative Law Case" is to be included in the caption of any document filed with the Court from and after the filing of the collaborative law stipulation and order.

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- (D) As to any case designated as a collaborative law case:
 - (i) The Court will consider collaborative law counsel to be advisory and not attorneys of record.
 - (ii) The Court will not impose discovery deadlines or enter scheduling orders.
- (E) The designation of a case as a collaborative law case is voluntary and requires the agreement of all parties. The collaborative law case designation will be removed by stipulation or upon the filing and service of a termination election as provided in the collaborative law stipulation and order. The filing by any party of an At Issue Memorandum, Request for Order, or other pleading requiring judicial adjudication shall automatically terminate the collaborative law case designation and a Case Management Conference will be set.
- (F) Collaborative law cases are governed by the Family Code, the California Rules of Court and other applicable California law.

(Rule 5.1 revised effective 1/1/16)

Rule 5.2. Obtaining Temporary Restraining Orders /Ex Parte Orders

(a) Application

Requests for Temporary Restraining Orders, Ex Parte Orders, and Emergency Orders shall be presented to the family law Legal Technician's Unit. The Legal Technician's Unit will assign the matter utilizing a plan of assignment as determined by the Supervising Judge of the Family Law Division.

With the exception of applications for restraining orders filed under the Domestic Violence Prevention Act (DVPA), all applications must be submitted with the appropriate fee or fee waiver, and the original and two (2) copies of the application. The Court will file all applications submitted (including applications pertaining to domestic violence) whether or not temporary orders are issued.

(Rule 5.2(a) revised effective 1/1/16)

(b) Notice

Except as provided in Family Code Section 6300, unless notice of the application for an ex parte order (including an application for an order shortening time) or a Temporary Restraining Order would result in great or irreparable injury to the applicant before the matter can be heard on notice, the other party must be given the notice required by the California Rules of Court. Parties and attorneys shall use the Declaration Re Notice Upon Ex Parte Application for Orders (Local Form FamLaw-107), which is available on the Court's website.

(Rule 5.2(b) revised effective 1/1/16)

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(c) Requirements

Applications for ex parte orders must comply with California Rules of Court (Family Law Rules).

(Rule 5.2(c) revised effective 1/1/13)

(d) Minor applicants

If the applicant for Temporary Restraining Orders is a minor under 12 years of age an application for appointment of Guardian Ad Litem and order appointing a Guardian Ad Litem shall accompany the application.

(Rule 5.2(d) revised effective 1/1/14)

(Rule 5.2 revised effective 1/1/16)

Rule 5.3. Orders Shortening Time

All applications for Orders Shortening Time (OST) for service or for hearing shall be presented as ex parte applications to the family law Legal Technician's Unit. The Legal Technician's Unit will assign the matter utilizing a plan of assignment which the Supervising Judge of the Family Law Division will determine.

All ex parte applications for an OST shall be submitted in compliance with the application and notice requirements for ex parte applications as set forth in Local Court Rule 5.2 above. Before submitting an application for an OST, the applicant shall contact the opposing counsel or party and request a list of dates counsel or party is unavailable and include that information with his/her own unavailability on the declaration of notice.

(Rule 5.3 revised effective 1/1/16)

Rule 5.4. Calendaring and Hearings

(a) Duty to meet and confer

Consistent with the California Rules of Court, parties shall meet and confer before the date of the hearing relating to a Request for Order (Judicial Council Form FL-300). During this time, parties must discuss and make a good faith attempt to settle all issues. The requirement to meet and confer does not apply to cases involving domestic violence. Parties must also exchange all relevant documents and information.

(b) Initial hearing

When an initial hearing is set pursuant to a Request for Order or other paper seeking relief, the initial hearing shall be set on the assigned judicial officer's short cause calendar. The clerk shall provide the date and time for all initial hearings. All matters set on a short cause calendar are limited to 20 minutes of hearing time.

(Rule 5.4(b) revised effective 1/1/16)

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(c) Transfer of a matter in which a hearing will exceed 20 minutes

If, at any time after a Request for Order is filed, the Court determines that the hearing in the matter will exceed 20 minutes in length, the matter may be continued to another court date which is designed to accommodate long-cause hearings, trials and settlement conferences.

(Rule 5.4(c) revised effective 1/1/15)

(d) Continuances

- (1) All requests for continuances shall be in writing, except as may be authorized by the bench officer hearing the case.
- (2) Each written request for a continuance must be accompanied by payment of the applicable fee.
- (3) A request for a continuance shall be made by ex parte application or by stipulation and shall not be granted unless specifically authorized by the judicial officer to whom the case is assigned or (in that bench officer's absence) by the Supervising Judge. Any such stipulation must be signed by counsel for both sides or, if either side is unrepresented, by that party. Any request or stipulation to continue must contain facts showing good cause for the continuance.

(Rule 5.4(d)(3) revised effective 1/1/15)

- (4) Any request for a continuance must include a statement as to the number of prior requests for continuance that have been granted as to the matter in question.

(Rule 5.4(d)(4) revised effective 1/1/16)

(e) Pleadings

- (1) All pleadings in family law matters shall be in the form prescribed in the California Rules of Court.
- (2) A fully completed, current Income and Expense Declaration (I&E) (or Simplified Financial Statement, when appropriate) shall be filed and served with moving and responsive papers in all hearings involving requests for support, attorney's fees, costs, or other financial relief. (Not required if there is an I&E that is no more than ninety (90) calendar days old on file, unless there have been significant changes).

(Rule 5.4(e)(2) revised effective 1/1/16)

- (3) On a Request for Order to modify a prior order, the moving party shall attach a copy of the prior order to the moving papers.

(Rule 5.4(e)(3) revised effective 1/1/16)

- (4) Moving and responsive pleadings shall be timely filed and served in compliance with the provisions of Code of Civil Procedure Section 1005.

(Rule 5.4(e)(4) revised effective 1/1/15)

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- (5) Pursuant to Family Code Section 217, a party seeking to present live testimony from all witnesses other than the parties must file and serve all parties with their witness list with a brief description of the anticipated testimony. This list shall be filed and served no less than fourteen (14) calendar days before hearing.

(Rule 5.4(e)(5) revised effective 1/1/16)

(f) Motions to be relieved as counsel

Motions to be relieved as counsel must be made in conformity with California Rules of Court, Rule 3.1362 using Judicial Council Forms MC-051, MC-052 and MC-053.

(Rule 5.4(f) revised effective 1/1/00)

(g) Interpreter services

The Court provides interpreters to help non-English speaking parties in family law court proceedings. To ask for an interpreter in your case, consult the Court's website regarding Court Interpreters at www.cc-courts.org/interpreter or ask the clerk.

(Rule 5.4(g) new effective 1/1/16)

(Rule 5.4 revised effective 1/1/16)

Rule 5.5. Procedures to Complete Dissolution/Legal Separation

(a) Default or uncontested proceeding

Follow the checklist set forth by the Judicial Council in the Judgment Checklist – Dissolution/Legal Separation (Judicial Council Form FL-182) to complete the steps and pleadings necessary to submit your Judgment.

(b) Contested proceeding

Once a Response has been filed and both parties have served their Preliminary Declarations of Disclosure and filed a Declaration re: Service of Declaration of Disclosure (Judicial Council Form FL-141), either party may serve and file an At Issue Memorandum (Local Court Form FamLaw-110) with the Court to set the matter for a Case Management Conference. The At Issue Memorandum will not be accepted for filing until all parties have served their Preliminary Declarations of Disclosure and filed Declaration re: Service of Declaration of Disclosure, or obtained a court order waiving this requirement per Family Code Section 2107. The Court may also set a Case Management Conference at its own discretion.

Each shall file and serve a Case Management Conference Questionnaire (Local Court Form GC-20) no later than seven (7) calendar days before the Case Management Conference.

(Rule 5.5(b) revised effective 1/1/16)

(c) Self-represented parties

Self-represented parties who need assistance in determining the next steps in their dissolution or legal separation, including finishing their divorce or other some other action, case can speak with the Family Law Facilitators during help desk hours.

(Rule 5.5 revised effective 1/1/16)

Rule 5.6. Case Management Conference / Family Centered Case Resolution Conference (FCCRC)

(a) Case Management Conference statement

No less than seven (7) calendar days before the date set for the Case Management Conference (CMC) each party shall file and serve a Case Management Conference Questionnaire (Local Court Form FamLaw-12.7).

(Rule 5.6(a) revised effective 1/1/14)

(b) Attendance at conference

Parties shall be present at the Case Management Conference or Family Centered Case Resolution Conference (FCCRC) unless represented by counsel, in which case, counsel shall appear. Appearance may be in person or by CourtCall® if timely arranged. The parties or the attorneys shall be fully prepared to discuss identification of disputed issues, the timetable for disposition of the case by settlement or trial, and be sufficiently familiar with the facts of the case so that the Court may make necessary orders.

(Rule 5.6(b) revised effective 1/1/16)

(c) Orders at Case Management Conference/FCCRC

The parties must address, if applicable, and the Court may take appropriate action with respect to, the following:

- (1) Whether any matters (e.g., the bankruptcy of a party, pending criminal matters impacting issues in the case, or custody orders from another jurisdiction) may affect the Court's jurisdiction or processing of the case.
- (2) Whether discovery has been completed and, if not, the date by which it will be completed.
- (3) What discovery issues are anticipated.
- (4) Whether the case should be bifurcated or a hearing should be set for a motion to bifurcate.
- (5) A date or dates by which Preliminary or Final Declarations of Disclosure are to be exchanged and proofs of service filed.

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- (6) The utility of referring the parties to Family Court Services (FCS) in cases in which custody or visitation (or both) is at issue and no evaluation or private mediation is pending.
- (7) The need for selection and compensation of joint experts by stipulation or motion.
- (8) The need for, selection, and compensation of a Special Master by stipulation or appointment pursuant to Code of Civil Procedure Sections 638 and 639.
- (9) The need for an order for attorney fees and costs by stipulation or motion.
- (10) A date for Mandatory Settlement Conference (MSC).
- (11) Whether to set a Recommendation Conference in cases involving child custody and visitation in cases that have a child custody evaluation pending.
- (12) If a trial date has not been previously set, the date by which the case will be ready for trial. Each side must have available at the conference all necessary information as to unavailable dates as to the parties, their attorneys, and any retained experts.
- (13) The estimated length of trial.
- (14) Setting a trial date.
- (15) Any other matters that should be considered by the Court or addressed in its case management order.
- (16) Whether to set a further Case Management Conference.
- (17) Whether to tailor or modify the requirements of Section 5.8(6) as it relates to the case.
- (18) The stipulation of the parties and consent of the Court to place the matter in further case management pursuant to Family Code Sections 2450 and 2451.

(Rule 5.6(c) revised effective 1/1/16)

(Rule 5.6 revised effective 1/1/16)

Rule 5.7. Mandatory Settlement Conference

(a) Calendaring and attendance

The Court may require the parties to participate in a Mandatory Settlement Conference before a long cause matter or trial is set or heard. Absent a written court order allowing a party to appear by telephone, both parties and their counsel of record must personally attend the Mandatory Settlement Conference. Failure to comply may result in monetary sanctions, issues sanctions, or both. A Mandatory Settlement Conference may be continued by the Court for good cause, either sua sponte or upon a timely, properly noticed motion.

(Rule 5.7(a) revised effective 1/1/16)

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(b) Mandatory Settlement Conference requirements

Unless excused by the trial court, the parties shall comply with the following requirements.

- (1) No later than fourteen (14) calendar days before the Mandatory Settlement Conference, the parties shall:
 - (A) Exchange good faith settlement demands.
 - (B) Exchange Final Declarations of Disclosure (if not already done).
- (2) No later than seven (7) calendar days before the Mandatory Settlement conference, the parties shall:
 - (A) File with the Court a Declaration re: Service of Final Declarations of Disclosure, or alternatively, file a stipulation to waive service of final declarations of disclosure.

(Rule 5.7(b)(2)(A) revised effective 1/1/16)
 - (B) If support or attorney's fees and costs or other financial relief is at issue, the parties shall exchange and file updated I&E. (Not required if there is an I&E that is no more than ninety (90) calendar days old on file, unless there have been significant changes).

(Rule 5.7(b)(2)(B) revised effective 1/1/16)
 - (C) File a Joint Statement of Contested Issues describing all issues that remain in dispute. That statement must include, where it is an issue, a proposal regarding the division of property and debts. If late or missing payments are claimed, a calculation spreadsheet shall also be attached. If the parties are unable to agree upon a Joint Statement of Contested Issues, then each party must file and serve a Separate Statement of Contested Issue which includes all of the information contained in a Joint Statement of Contested Issues.

(Rule 5.7(b)(2)(C) revised effective 1/1/16)
 - (D) File a Mandatory Settlement Conference Statement or other such filings as may be required by the Court.

(Rule 5.7(b)(2)(D) added effective 1/1/15)
- (3) If both parties fail to comply with this Order, then the trial date may be vacated. If only one party fails to comply and the other does, the Court may impose sanctions at the Mandatory Settlement Conference, including but not limited to issue sanctions and monetary sanctions.

(Rule 5.7(b)(3) revised effective 1/1/14)

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(c) Trial judge as settlement judge

The Mandatory Settlement Conference will be conducted by the trial judge. If any party objects to that, written objections must be filed no later than thirty (30) calendar days before the Mandatory Settlement Conference so the Court can attempt to make alternate arrangements.

(Rule 5.7(c) revised effective 1/1/16)

(d) Meet and confer requirement

Counsel and any unrepresented party shall meet and confer either in person or by phone at least five (5) calendar days before the day of the Mandatory Settlement Conference to resolve as many issues as possible and to specify those matters to be litigated.

(Rule 5.7(d) revised effective 1/1/16)

(Rule 5.7 revised effective 1/1/16)

Rule 5.8. Recommendation Conference

(a) Purpose and attendance

The purpose of the Recommendation Conference is to receive the report of a custody evaluator and attempt to resolve custody and visitation issues without trial. Absent a written Court Order allowing a party to appear by telephone, both parties and their counsel of record must personally attend the Recommendation Conference and prepared to discuss the recommendations of the Evaluator. Failure to comply may result in monetary sanctions, issues sanctions, or both. If the parties are unable to resolve custody and visitation issues without trial, the Court may, at the Recommendation Conference, make interim orders pending trial.

(Rule 5.8(a) revised effective 1/1/16)

(b) Timing

Recommendation Conferences are set based on the expectation that the evaluation will be prepared and submitted to the parties and counsel at least ten (10) calendar days before the Recommendation Conference. Should the Evaluator determine that it will not be possible to prepare his/her report by that time, said Evaluator shall forthwith notify both counsel, and provide to counsel a date by which the Evaluator expects the report will be done. Counsel shall notify the Court promptly, either in writing or by telephone conference call. Based on the Evaluator's notice of inability to conclude the report timely, the Court will re-set the date of the Recommendation Conference.

(Rule 5.8(b) revised effective 1/1/16)

(Rule 5.8 revised effective 1/1/16)

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Rule 5.9. Trials

(a) Long cause matters

These rules apply to any trial set on the long cause trial calendar and, as determined by the Court, to any long cause hearings.

(Rule 5.9(a) revised effective 1/1/13)

(b) Trial setting

(1) Matters will generally be set for trial at a Case Management Conference/Family-Centered Case Resolution Conference, a hearing on a Request for Order, at a Settlement Conference, or at a Recommendation Conference.

(Rule 5.9(b)(1) revised effective 1/1/15)

(2) If no hearings are scheduled, a party may initiate the trial setting process by filing an At Issue Memorandum (Local Court Form FamLaw-110). The At Issue Memorandum may only be filed after a response has been filed, and will not be accepted for filing until all parties have served their Preliminary Declarations of Disclosure and filed the Declaration Re Service of Declaration of Disclosure, or obtained a court order waiving this requirement per Family Code Section 2107. The filing of the At Issue Memorandum will result in the setting of a Case Management Conference/Family-Centered Case Resolution Conference.

(Rule 5.9(b)(2) revised effective 1/1/15)

(c) Continuances

Trials may only be continued by the trial judge. Any motion for a continuance must be made in a timely manner, and for good cause.

(Rule 5.9(c) revised effective 1/1/15)

(d) Case Management Order / Family Centered Case Resolution Conference Order

The Court may issue, and amend from time to time, an appropriate Case Management/Family-Centered Case Resolution Conference Order to regulate pre-trial and trial proceedings and to set forth a schedule for the submission of papers such as briefs, documents, forms, and exhibits.

(Rule 5.9(d) revised effective 1/1/14)

(e) Evidence Code section 730 experts

(1) The Court encourages mutually agreed upon experts, especially for such issues as custody evaluations, business valuations, business cash flows (when relevant to support), real estate valuations, stock option calculations and tax consequences. In the absence of a mutually agreed upon expert, the Court may appoint its own expert under Evidence Code Section 730.

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- (2) If one or more written reports are issued by such an expert, copies of all such reports shall be transmitted to each counsel or unrepresented party no later than thirty (30) calendar days before trial.
- (3) If either counsel or an unrepresented party demands the right to cross-examine the 730 expert at trial, that party shall be responsible for arranging for the attendance of the expert at trial. Said arrangements shall be made no later than five (5) calendar days after being served with a copy of the report or forty-five (45) calendar days before trial, whichever event occurs later. If there is no written report of the expert (the Court encourages the use of reports at trial), the party offering the expert shall be responsible for making the witness available.

(Rule 5.9(e) revised effective 1/1/16)

(f) Reporter's fees

- (1) There are currently no court reporters employed by the Court in Family Law Departments. Consult the "Court Reporters: Notice of Availability on the Court's website for the current status and any changes. There will be no official record of the proceedings unless a party who desires an official record makes arrangements for a private certified court reporter as set forth in Local Rule 2.51.
- (2) Any party who desires an official record or transcript of the proceedings, may hire a private certified court reporter to report any scheduled hearing or trial pursuant to Government Code 70044 and California Rules of Court, Rule 2.956.
- (3) Parties electing to hire a private certified court reporter must comply with Local Rule 2.51.
- (4) Pursuant to California Rules of Court, Rule 2.956(d), if a party arranges and pays for the attendance of private certified court reporter at a hearing in a civil case because of the unavailability of the services of an official court reporter, none of the parties will be charged the court reporter's attendance fee provided for in Government Code Sections 68086(a)(1)(A) or (B).
- (5) In the event court reporters become available and at the court's discretion are provided by the court for any family law hearings, the party will be required to pay the applicable reporting attendance fees pursuant to Government Code Sections 68086(a)(1)(A) or (B).
- (6) Parties shall be responsible for all transcript costs pursuant to Government Code Section 69953.

(Rule 5.9(f) revised effective 1/1/16)

(Rule 5.9 revised effective 1/1/16)

Rule 5.10. Preparation and Presentation of Orders

(a) Proposed orders entered at hearing

The Court may consider signing, at the time of hearing, proposed orders attached to the moving or responsive papers or those orders prepared by either party in court immediately following the hearing. Parties are therefore encouraged to submit proposed orders with their moving or responsive papers.

(Rule 5.10(a) revised effective 1/1/15)

(b) Orders submitted after hearing

All orders after hearing shall be submitted in compliance with California Rules of Court, Rule 5.125. If a court reporter was present at the hearing, and the parties require a transcript of the proceedings to resolve disputes over the form of order, the judge is to be advised that the transcript has been ordered and the expected date of availability of the transcript. Failure to submit Orders After Hearing in accordance with California Rules of Court, Rule 5.125 may result in the imposition of sanctions.

(Rule 5.10(b) revised effective 1/1/16)

(c) Stipulations

All agreements, stipulations, or agreed upon orders, reached before hearing shall be in writing, signed by all parties and counsel (where applicable) and submitted to the Court for signature before the hearing on the matter begins. Stipulations shall not be recited on the record, except at the discretion of the bench officer.

(Rule 5.10(c) revised effective 1/1/16)

(Rule 5.10 revised effective 1/1/16)

Rule 5.11. Judgments

(a) Judgment requirements

Pursuant to California Rules of Court, Rules 5.401(c) and 5.411(b), Judgments must include all matters subject to the court's jurisdiction for which a party seeks adjudication, or an explicit reservation of jurisdiction over any matter not proposed for disposition at that time.

(b) Use of judgment checklist form

Parties are directed to utilize, Judgment Checklist-Dissolution/Legal Separation (Judicial Council Form FL-182)

(c) Notarized signatures of self-represented parties to judgment

If the parties submit a signed default Judgment ("default with Agreement"), the signature of the defaulting party must be notarized.

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(d) Approval of Department of Child Support Services (DCSS)

(DCSS) must approve the child support provisions of the Judgment if DCSS is providing services in the case.

(Rule 5.11(c) revised effective 1/1/16)

(e) Relief Requested in True Default

In a True Default, relief may not exceed that requested in the operative Petition.

(Rule 5.11 revised effective 1/1/16)

Rule 5.12. Confidentiality

(a) Placement of confidential documents

Certain documents are required to be kept confidential. They shall be placed in the confidential portion of the court file and may not be disclosed to anyone except in accordance with law. (See for example Local Rule 5.58 below).

(Rule 5.12(a) revised effective 1/1/09)

(b) Substance abuse assessment reports

Substance abuse assessment reports shall be placed in the confidential portion of the court file.

(Rule 5.12(b) revised effective 1/1/15)

(c) Confidentiality of social security number

If any document filed with the Court or offered as evidence contains a social security number, that number must be redacted by the party offering the document before it is filed with the Court or marked as an exhibit.

(Rule 5.12(c) revised effective 1/1/16)

(Rule 5.12 revised effective 1/1/16)

Rule 5.13. Family Law Facilitator

(a) Facilitator services pursuant to Family Code Section 10004-10005

In addition to other services and duties, the Family Law Facilitator must comply with the requirements of state law and perform the services set out in Family Code Section 10005, consistent with funding restrictions and priorities for service that are periodically set by the Court.

(Rule 5.13(a) revised effective 1/1/15)

(b) Additional duties

If the foregoing has been accomplished, the Family Law Facilitator may also:

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- (1) Assist the Court with research and any other responsibilities which will enable the Court to be responsive to the litigants' needs; and
- (2) Develop programs, assist with, work in conjunction with and/or coordinate with the a State or Local Bar Association and community outreach through day and evening programs, videotapes, and other innovative means that will assist unrepresented and financially-limited litigants in gaining meaningful access to family court. These programs may specifically include, but not be limited to, providing information concerning under-utilized legislation, such as expedited child support orders, and pre-existing court-sponsored programs such as Family Court Services, supervised visitation and appointment of attorneys for children.

(Rule 5.13(b) revised effective 1/1/16)

(Rule 5.13 revised effective 1/1/16)

Rule 5.14. Temporary Spousal or Partner Support

(a) Discretionary guideline

The Court will use the formula established by the Superior Court of Alameda County as its discretionary guideline for temporary spousal support or partner support in marital and domestic partnership dissolution cases.

(Rule 5.14(a) new effective 1/1/15)

(b) Adjustment for tax consequences

In domestic partnership cases, the Court will adjust the formula to account for tax treatment under state and federal laws if necessary.

(Rule 5.14(b) revised effective 1/1/15)

(Rule 5.14 revised effective 1/1/15)

Rule 5.15. Presence of Children in Courtroom

- (1) Unless a child whose custody or visitation is at issue has been given court permission to address the court or testify per Family Code Section 3042, that child shall not be present in the assigned courtroom while the matter is being heard, unless the judicial officer has specifically given permission for the child to be present.
- (2) Parents disputing custody/visitation shall participate in child custody recommending counseling services or private recommending mediation before a decision by the court as to whether or not a child will address the court.

(Rule 5.15 new effective 1/1/16)

Rule 5.16. Child Custody Recommending Counseling (Formerly “Mediation”)

(a) Good faith effort to reach agreement

Except in those cases where domestic violence or other restraining orders have been issued or are pending hearing, all parties shall make a good faith effort to arrive at an agreement regarding child custody and visitation before contacting FCS to schedule appointments and before the court hearing.

(Rule 5.16(a) revised effective 1/1/16)

(b) Conduct of orientation

All parties with disagreements regarding custody and visitation must complete orientation as well as child custody recommending counseling (hereafter “Custody Counseling”) at FCS. If possible, the orientation shall be scheduled before the Custody Counseling. The purpose of orientation is to provide the parties with information about the Court process, with knowledge of collaborative parenting plan development, child rearing in multiple homes, children’s developmental needs as related to post-separation parenting arrangements.

(Rule 5.16(b) revised effective 1/1/16)

(c) Custody Counseling (formerly “Mediation”)

Upon the filing of the Request for Order, or before a trial which will litigate a custody/visitation dispute, the parties shall complete the online orientation program located on the court’s website: arrange for a mandatory orientation and Custody Counseling appointment with Family Court Services. Sanctions and/or fees may be imposed for failure to arrange those appointments and for failure to appear for scheduled orientation or Custody Counseling appointments.

(Rule 5.16(c) revised effective 1/1/16)

(d) Agreements

If the parties reach a complete agreement regarding custody and visitation before scheduling a custody counseling appointment, they do not need to contact FCS. If they are self-represented, they may obtain assistance at the Help Desk in the Spinetta Family Law Building to prepare a stipulation, so a court hearing can be avoided. If the parties reach a complete agreement regarding custody and visitation after they have scheduled orientation and or Custody Counseling appointments, both parties must contact FCS to cancel existing appointments at least 24 hours in advance. Sanctions and/or fees may be imposed on any party that fails to contact FCS at least 24 hours before the scheduled appointment.

(Rule 5.16(d) revised effective 1/1/16)

(e) Communication in Custody Counseling

All Custody Counseling proceedings shall be held in private, and all communications from the parties to the child custody recommending counselor (hereafter “Custody Counselor”)

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shall be deemed official information within the meaning of Evidence Code Section 1040. The Custody Counselor may exclude attorneys from the Custody Counseling proceeding in the sole discretion of the Custody Counselor.

(Rule 5.16(e) revised effective 1/1/16)

(f) Ex parte communication with Family Court Services Custody Counselors

All communication between Family Court Services Custody Counselors and the parties/attorneys must be by telephone conference or in writing, with copies sent to the other party/attorney, even where the Custody Counselor initiates the communication. If the communication is in writing, the party submitting the writing must send it to the parties/attorneys simultaneously and by the same method (i.e., fax, mail or email). Email and faxes must also be copied to all parties/attorneys. In urgent circumstances or when the Custody Counselor is unable to set up a telephone conference with the parties/attorneys and there is insufficient time to correspond in writing with both parties/attorneys, the Custody Counselor may initiate contact with one party/attorney for the purpose of clarifying information or obtaining additional information for a status report. The Custody Counselor will disclose such ex parte communication to the other party/attorney if this occurs. Questions regarding scheduling or other procedural matters may be discussed with the Family Court Services clerical staff.

(Rule 5.16(f) revised effective 1/1/12)

(g) Custody Counseling complaint process

Within ten (10) calendar days from the date of the Custody Counseling session, a party may file a written complaint, in the form of a declaration signed under penalty of perjury, specifying alleged misconduct of a Custody Counselor. A copy of the declaration shall be served on the other party and a proof of service shall be filed. The party shall also provide a copy of the declaration to the Manager of Family Court Services. The other party may file a written response. A copy of the response shall be served on the other party and a proof of service shall be filed before the next hearing date. The responding party shall also provide a copy of the written response to the Manager of Family Court Services, who shall investigate the complaint and respond in writing to the complainant and the responding party.

(Rule 5.16(g) revised effective 1/1/16)

(h) Custody Counselors as witnesses

In lieu of a subpoena and appropriate fee as described in California Government Code Section 68097.2, should a party wish to compel the appearance of a Family Court Services (FCS) Custody Counselor as a witness at a custody/visitation trial, the party can notify FCS in writing no less than five (5) court days before the hearing date including the morning or afternoon appearance time. A non-refundable check in the appropriate amount as described in California Government Code Section 68097.2 must accompany the written request for the Custody Counselor's appearance.

(Rule 5.16(h) revised effective 1/1/16)

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(i) Return Custody Counseling

- (1) Parties who return to FCS for a review or follow-up Custody Counseling may be charged a fee for such return services in the amount of \$250.
- (2) Where parties attend Custody Counseling, reach agreement, subsequently rescind the agreement, and then wish to return or are ordered to return to Custody Counseling, Family Court Services may charge a fee as set forth in subsection (1) above.

(Rule 5.16(i) revised effective 1/1/16)

(j) Family Court Services reports and recommendations

- (1) Where the parties do not reach an agreement during Custody Counseling, the Custody Counselor shall prepare a written Status Report that includes the Custody Counselor's recommendations. The report shall be submitted to the parties and to the Family Law department hearing the matter. The department shall file the report in a confidential portion of the Court file. Pursuant to the standing Order of the Presiding Judge of this Court, use of this document shall be limited to the pending litigation and no person who has access to the document shall disseminate or disclose its contents to any person not entitled to access, nor shall the parties attach such document to any pleading in this or any other litigation or proceeding. Substantial sanctions shall be imposed upon any party who violates this order, whether intentionally, by mistake or by accident.
- (2) Persons entitled to access the report and the information contained in the report are limited to the parties, their attorneys, federal or state law enforcement, judicial officers, necessary court employees, and minor's counsel, except upon order of the Court.

(Rule 5.16(j) revised effective 1/1/16)

(Rule 5.16 revised effective 1/1/16)

Rule 5.17. Child Custody Evaluations

(a) Court ordered evaluations

All evaluators appointed by the Court to conduct child custody and visitation evaluations, whether by stipulation or otherwise, shall be appointed under Evidence Code Section 730.

(Rule 5.17(a) revised effective 1/1/16)

(b) Evaluator selection

Where the parties are unable to agree on an evaluator to conduct the custody evaluation, the Court shall select an evaluator for the parties in a manner as determined by the Court. If the Evaluator appointed by the Court does not accept the appointment, the parties or their attorneys must contact the Department and request the appointment of a different evaluator.

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FCS will maintain a list of private child custody evaluators who have represented that they meet the training and education requirements of California Rules of Court, Rules 5.225 and 5.230. This list will be kept in a binder for public viewing in the department of the Supervising Family Law Judge and at FCS.

(Rule 5.17(b) revised effective 1/1/15)

(c) Custody evaluation requirements

An Order Appointing Child Custody Evaluator (Judicial Council Form FL-327) shall be filed and given to the Evaluator before the evaluation begins. The Evaluator must file a Declaration of Private Child Custody Evaluator Regarding Qualifications (Judicial Council Form FL-326). Each party and each party's counsel shall follow the procedures set forth in the Order Appointing Child Custody Evaluator. The Evaluator shall comply with the requirements of California Rules of Court, Rule 5.220.

(Rule 5.17(c) new effective 1/1/15)

(d) Scope of the evaluation

When appropriate, in the interest of saving the parties' time, expense and stress, the evaluation may be limited in scope (focused evaluation) to the question or questions that the Court requires answered.

(Rule 5.17(d) revised effective 1/1/01)

(e) Challenge of the evaluator

No peremptory challenge of evaluators shall be allowed. Parties may raise objections to a specific evaluator during the selection process. Parties may object to the conclusions of the report when the report is submitted to the Court, and may bring other appropriate expert testimony to object to the conclusions. (California Rules of Court, Rule 5.220(d)(1))

(Rule 5.17(e) revised effective 1/1/16)

(f) Withdrawal from a case

A private evaluator has the right to withdraw from a case upon a showing of good cause to the trial court making the appointment.

(Rule 5.17(f) new effective 1/1/15)

(g) Information from children

Court relies on the judgment of its experts in making decisions about when, how often, and under what circumstances children are interviewed. The expert shall be able to justify the strategy used in any particular case. Children will be informed that the information provided by the child will not be confidential before beginning the interview. (California Rules of Court, Rule, 5.220(d)(2))

(Rule 5.17(g) revised effective 1/1/16)

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(h) Impartial expert

The court-appointed evaluator shall be impartial. Evaluators should include interviews of both parents or guardians. Exceptions to this may include geographically separated parents. In such instances, attorneys, parties and the expert are expected to make reasonable accommodation to assure that the expert has received adequate information about all parents, guardians, or parties.

(Rule 5.17(h) revised effective 1/1/01)

(i) Grievance procedure

If a party alleges that an unprofessional or inappropriate act has occurred on the part of the Evaluator during the course of the evaluation, he or she may discuss the complaint with the Evaluator directly in order to handle misunderstandings.

Complaints or grievances concerning the Evaluator will not be considered by the Court until after the evaluation is completed, at the Recommendation Conference. All such complaints and grievances must be submitted to the bench officer hearing the matter no later than fifteen (15) calendar days before the Recommendation Conference, with copies to the Evaluator and all other parties. The Evaluator shall submit a written response to all issues raised in the written complaint to the bench officer hearing the matter no later than two (2) calendar days before the Recommendation Conference, with copies to all parties. The bench officer will address the complaint at the time of the Recommendation Conference. If the party submitting the complaint objects to the bench officer's resolution of the complaint, the complaint or grievance shall become an issue at trial.

(Rule 5.17(i) revised effective 1/1/16)

(j) Expectation of settlement

The parties and the attorneys should make a good faith attempt to settle the custody and visitation disputes before the Recommendation Conference and any subsequent trial. Settlement efforts may include joint meet and confer conferences between the parties and counsel unless potential harm exists from this process.

(Rule 5.17(j) revised effective 1/1/16)

(k) Continuing effort

The Court may ask the Evaluator to continue to be available to the family to help resolve problems with any order made following the Evaluator's recommendations.

(Rule 5.17(k) revised effective 1/1/16)

(l) Payment of the evaluation

The Court will order payment of the Evaluator at the time of the appointment. The Evaluator may not withhold a report from the Court because of the parties' failure to pay. Either party or the appointed custody evaluator may file a Request for Order regarding unpaid custody evaluator fee(s).

(Rule 5.17(l) revised effective 1/1/15)

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(m) Evaluation report

- (1) The Evaluator shall prepare and submit both an evaluation report and recommendations to the parties, counsel, and the court. The Department hearing the matter shall secure the evaluation report in a confidential portion of the Court file. Pursuant to the standing Order of the Presiding Judge of this Court, use of this document shall be limited to the pending litigation and no person who has access to the document shall disseminate or disclose its contents to any person not entitled to access, nor shall the parties attach such document to any pleading in this or any other litigation or proceeding. Substantial sanctions shall be imposed upon any party who violates this order, whether intentionally, by mistake or inadvertence.
- (2) Persons entitled to access the report and/or the information contained in the **report** are limited to the parties, their attorneys, federal or state law enforcement, judicial officers, necessary court employees, and minor's counsel, except upon order of the Court.

(Rule 5.17(m) revised effective 1/1/16)

(n) Ex parte communication with evaluator

No party or attorney for a party shall initiate one-sided contact with the Evaluator, either orally or in writing before the first appointment of the initiating party except for the purpose of setting up that first appointment. Parties may initiate one-sided contact with the Evaluator after the first appointment of the party initiating the contact. The Evaluator may contact either (or both) party at any time. Attorneys may initiate contact after the first appointment of a party only by conference call or in writing copied to the other party. Contact may be made to arrange appointments without the necessity of a conference call.

(Rule 5.17(n) revised effective 1/1/16)

(Rule 5.17 revised effective 1/1/16)

**Rule 5.18. Court Communication for Domestic Violence and Child Custody Orders
(Adopted Pursuant to California Rules of Court, Rule 5.445)**

(a) Communication between the Criminal, Family, Juvenile and Probate Courts

- (1) Before requesting a Criminal Protective Order involving a defendant and a victim or witness who have a relationship as defined in Family Code Section 6211, the District Attorney shall make reasonable efforts to determine whether there are any children of the relationship, whether there are any Family, Juvenile, or Probate Court orders for custody/visitation for those children, and whether there are any existing protective/restraining orders involving the defendant, the protected person, and/or the children. The District Attorney shall advise the Criminal Court of the existence of any such orders at the time the proposed Criminal Protective Order is submitted for approval and signature.

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- (2) The Family, Juvenile or Probate Court setting terms of custody or visitation shall make reasonable efforts to determine whether any person requesting custody or visitation is subject to a Criminal Protective Order, including inquiring of the parties whether there are any existing protective/restraining orders involving that person, another person seeking custody or visitation, and/or the children.
- (3) When the Criminal Court issues a Criminal Protective Order protecting a victim or witness who has children with the defendant, the Criminal Court shall consider whether peaceful contact with the protected person should be allowed for the purpose of allowing defendant to have visitation with the children.
- (4) When the Criminal Court issues a Criminal Protective Order that lists the defendant's minor children as protected persons, the Criminal Court shall fax a copy of its Order to the Supervising Judge of the Family Court (or his or her designee) or, if the Criminal Court is aware that a Juvenile or Probate Court proceeding concerning the family is pending, to the applicable Juvenile or Probate Court (or his or her designee), for filing in the appropriate Family, Juvenile or Probate file.
- (5) If any person named in a Criminal Protective Order is also before the Family, Juvenile, or Probate Court in proceedings concerning custody or visitation, a court-employed Child Custody Recommending Counselor or Court Investigator serving the Family, Juvenile or Probate Court shall have access to and review the Criminal Court file, as permitted by applicable law. Confidential information reviewed under this rule remains confidential and shall not be further released except as provided by law or court order.

(Rule 5.18(a) revised effective 1/1/16)

(b) Modification of Criminal Protective Orders

- (1) A party seeking to modify a Criminal Protective Order may calendar the matter for hearing before the Criminal Court, after giving notice to the District Attorney. If the defendant and the protected person do not have any minor children in common, the motion shall be heard by the Criminal Court before which the matter is then pending.
- (2) If a party seeking to modify a Criminal Protective Order also is before the Family, Juvenile or Probate Court with the protected person in proceedings concerning custody or visitation, the motion to modify the Criminal Protective Order shall be noticed and heard on the Domestic Violence Friday morning calendar in Martinez. The party seeking to modify the Criminal Protective Order must give notice of the hearing to the Family, Juvenile, or Probate Court, and to all counsel and parties in both the criminal action and the Family, Juvenile, or Probate matter.
- (3) The Family, Juvenile, or Probate Court may, on its own motion or at the request of a defendant, protected person or other interested party, calendar a hearing before the Criminal Court, on the Domestic Violence Friday morning calendar, for a motion to modify a Criminal Protective Order. Notice of the hearing shall be given

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to all counsel and parties in both the criminal action and the Family, Juvenile, or Probate matter.

- (4) When the Family, Juvenile, or Probate Court calendars a hearing on a motion to modify a Criminal Protective Order, or receives notice that a party with a pending Family, Juvenile, or Probate matter involving minor children seeks to modify a Criminal Protective Order, the Court shall provide the Criminal Court with copies of existing or proposed Orders relating to protection, custody and/or visitation in the pending Family, Juvenile, or Probate matter.

(Rule 5.18(b) revised effective 1/1/16)

(Rule 5.18 revised effective 1/1/16)

Division 2 – Juvenile Matters

Chapter 1. Juvenile Department

Rule 5.50. Adoption, Construction and Amendment of Rules

(a) Citation of Juvenile Rules

These rules for the Juvenile Court may be cited as the "Local Rules for the Juvenile Court of Contra Costa County."

(b) Supplemental authority of local Juvenile Rules

These Local Rules shall be supplementary to and subject to state statutes and any rules adopted by the Judicial Council of the State of California. These rules shall be construed and applied so as not to conflict with such statutes or with the rules adopted by the Judicial Council.

(c) Effective date of Juvenile local court rules

These rules shall, on the date they become effective, supersede rules until adopted by the Superior Court as they relate to the Juvenile Court.

(Rule 5.50 revised effective 1/1/15)

Rule 5.51. Juvenile Judge

(a) Judicial assignments

The Supervising Judge of the Juvenile Court shall be assisted by such judges and subordinate judicial officers (including commissioners, and temporary judges) as may be provided from time to time by the Superior Court. The subordinate judicial officers and temporary judges shall perform their duties under the direction of the Supervising Judge of the Juvenile Court.

(Rule 5.51(a) revised effective 1/1/16)

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(b) Juvenile hearings

The business of the Juvenile Court shall be conducted at the Martinez Courthouse and Juvenile Hall, and may be conducted at Pittsburg and Richmond Courthouses, and at such other facilities of Contra Costa County, and at such times as the Juvenile Court Supervising Judge or Presiding Judge may direct. The Juvenile Court Supervising Judge shall be responsible for the distribution of court business.

(Rule 5.51(b) revised effective 1/1/13)

(c) Types of Juvenile hearings

The Juvenile Court Supervising Judge and assigned judges shall conduct fitness hearings, rehearings and other matters which he or she by order, deem appropriate. Matters to be heard by a Juvenile Court Judge shall be calendared directly by that judge's department.

(Rule 5.51(c) revised effective 1/1/16)

(d) Juvenile bench recusal

If the only Juvenile Court judge available is removed from hearing a matter because of a challenge or otherwise, then the matter shall be referred by the Supervising Juvenile Judge to the Presiding Judge of the Superior Court.

(Rule 5.51(d) revised effective 7/1/05)

(e) Assignment of Juvenile hearings

The Juvenile Court judges shall maintain separate calendars of all matters to be heard by them, which shall be published. When a case is assigned to a Juvenile Court Judge, it is assigned to that judge for all purposes.

(Rule 5.51(e) revised effective 1/1/13)

(f) Juvenile pre-hearing conference

Pre-hearing conferences shall be conducted as determined by the Juvenile Court judges. Where such conference is held, attendance is mandatory as to all persons ordered to attend. At such conferences, counsel shall be familiar with the case, shall be prepared to enter into stipulations binding their clients, and shall be prepared to discuss the facts so as to clarify and simplify issues.

(Rule 5.51(f) revised effective 1/1/13)

(g) Juvenile policy and procedure

The Juvenile Court Supervising Judge, in directing the judicial business of the Juvenile Court, may issue memoranda of policy and procedure to all parties involved in the Juvenile Court process, which shall be binding, subject to the authority of the Executive Committee and the Judges of the Superior Court of Contra Costa County.

(Rule 5.51(g) revised effective 1/1/16)

(Rule 5.51 revised effective 1/1/16)

Rule 5.52. Juvenile Court Commissioner

(a) Appointment of Juvenile Court Commissioner

Pursuant to Government Code Section 70142.11, the Judges of the Superior Court, by majority vote, may, as resources allow, appoint a Juvenile Court Commissioner. Any commissioner so appointed shall have been admitted to practice law in California for not less than ten (10) years, shall hold office at the pleasure of the Supervising Judge of the Juvenile Court, and shall not engage in the practice of law.

(b) Authority of Juvenile Court Commissioner

The Juvenile Court Commissioner shall perform the duties and shall have the powers prescribed by Code of Civil Procedure Section 259, and the duties and powers of a juvenile court referee as specified in Welfare and Institutions Code Section 247.

(c) Juvenile court assignments as temporary judge

Unless otherwise expressly specified, the Juvenile Commissioner, without further order of the Court, shall act as a temporary judge with respect to any and all juvenile actions, causes, or proceedings and whether regularly or specially assigned to the Juvenile Commissioner or to the Department in which the Juvenile Commissioner is sitting. Such duties and powers include, but are not limited to, conducting the trial, contest or hearing assigned actions, causes or proceedings, whether or not contested.

(d) Juvenile subordinate judicial officers

Subordinate judicial officers (including commissioners and temporary judges) shall serve pursuant to the provisions of law. Subject to order of the Juvenile Court Supervising Judge, the subordinate judicial officers shall hear all matters which the law and their calendars permit them to hear.

(Rule 5.52(d) revised effective 7/1/05)

(e) Juvenile stipulation to Commissioner

Subordinate judicial officers shall hear their cases as commissioners and be identified as commissioners to all parties. Any party not objecting to the commissioner hearing the matter is deemed to have stipulated to such commissioner hearing the matter as a temporary judge.

(Rule 5.52(e) revised effective 1/1/16)

(f) Stipulation requirements for temporary judge

When an attorney is sitting as a court-appointed temporary judge and hears a contested matter, the parties whose stipulation should be obtained are: the attorney for petitioner, the attorney(s) for the minor(s), and in applicable cases brought under Welfare and Institutions Code Section 300, the attorney for the parent, guardian or de facto parent.

(Rule 5.52(f) revised effective 1/1/08)

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(g) Vacation approval for subordinate judicial officers

A subordinate judicial officer's vacation time and other time away from his or her calendar shall be approved in advance by the Juvenile Court Supervising Judge. When a Juvenile subordinate judicial officer is absent, his or her calendar may be heard by:

- (1) Court-appointed Temporary Judge
- (2) The Juvenile Court Supervising Judge
- (3) A Juvenile Court Judge or subordinate judicial officer as reassigned by the Juvenile Court Supervising Judge.

(Rule 5.52(g) revised effective 7/1/05)

(Rule 5.52 revised effective 1/1/16)

Rule 5.53. Motions

(a) Presentation of motions

Except as provided by law, all motions shall be in writing, shall be heard before the attachment of jeopardy and shall be heard five (5) or more court days after notice unless the Court orders otherwise. The moving party shall clear the hearing date with the clerk of the juvenile court before filing any such motion.

(Rule 5.53(a) revised effective 1/1/16)

(b) Motion to continue the jurisdiction hearings

A motion to continue the jurisdiction hearing in any proceeding shall be made and heard no less than two (2) court days before the jurisdiction hearing, after service of notice on the opposing party at least five (5) court days before the jurisdiction hearing. Said motion shall be in writing unless all parties to the action, with the concurrence of the Court before whom the hearing is to be held, waive the requirement of written notice. The Court, however, may continue a jurisdiction hearing on motion of any party at the proceeding for good cause without the requirements of this subdivision being fulfilled. Untimely last minute continuances, without good cause, may be subject to sanctions.

(Rule 5.53(b) revised effective 1/1/16)

(Rule 5.53 revised effective 1/1/16)

Rule 5.54. Appointment of Juvenile Court Appointed Counsel

Juvenile Court judges shall be responsible for the appointment of counsel for children or minors in matters subject to the jurisdiction of the Juvenile Court. With few exceptions, appointments for minors in Welfare and Institutions Code Section 300 dependency cases are referred to the contracted dependency counsel program. Appointments for minors in Welfare and Institutions Code Section 602 delinquency cases are referred to the Public Defender's Office.

(Rule 5.54 revised effective 1/1/16)

Rule 5.55. Minute order

Minute orders in juvenile proceedings

- (1) A minute order shall be prepared by the clerk of the Juvenile Court at the conclusion of each court proceeding. Recommendations adopted by the Court may be attached and incorporated into the minute order by reference.
- (2) All parties to the action are entitled to receive a copy of the minute order upon completion of that session of the judicial proceeding.
- (3) Any party to the proceeding may waive receipt of the minute order.

(Rule 5.55 revised effective 1/1/15)

Rule 5.56. Juvenile Detention hearings

In Welfare and Institutions Code Section 602 delinquency cases, the Probation Department shall study and report to the Juvenile Court Judge and in Welfare and Institutions Code Section 300 dependency cases, the Department of Human Services shall study and report to the Juvenile Court Judge as to detention of a minor. The report shall set forth specific facts which pertain to the factors regarding detention under the California Rules of Court and shall recommend whether or not the minor should be detained. The Judge shall make findings as required by the California Rules of Court as to the question of detention.

(Rule 5.56 revised effective 1/1/16)

Rule 5.57. Public Hearings

(a) Closed Juvenile hearings

Unless provided otherwise by law, Juvenile Court proceedings shall be closed to the public; provided, however, that the Juvenile Court judge may admit such persons as he or she deems have a direct and legitimate interest in the particular case or the work of the Court.

(Rule 5.57(a) revised effective 1/1/13)

(b) Discretionary public hearings in Juvenile Delinquency case

The Juvenile Court judge shall permit the public, including news media representatives, to be present at juvenile court delinquency proceedings, pursuant to Welfare and Institutions Code Section 676, et seq., unless the Judge determines that in the interest of justice and in the welfare of the minor, the proceedings should be closed.

(Rule 5.57(b) revised effective 1/1/13)

(Rule 5.57 revised effective 1/1/15)

Rule 5.58. Release of Information

(a) Discovery of Juvenile records.

Except as indicated within this rule, in all cases in which a person or agency seeks access to Juvenile Court Records, including records maintained by the Juvenile Court Clerk, the Probation Department, or the Department of Human Services, the person or agency shall file a Petition for Disclosure (Judicial Council Form JV-570) with the Judge of the Juvenile Court. The Petition shall set forth with specificity the material sought and the relevance of the materials to the underlying action. The Petition shall be supported by a declaration notice to all necessary parties, and if necessary, a Memorandum of Points and Authorities.

In all cases in which a person or agency seeks records held by law enforcement, including police reports regarding children who are the subject of Juvenile Court proceedings, the person or agency shall file a request pursuant to the Police Report Request Form (Judicial Council Form JV-575).

This section does not apply to those persons and agencies designated by Welfare and Institutions Code Section 827(a).

(b) Records access by Court Appointed Special Advocate (CASA)

For the purposes of implementing the Court Appointed Special Advocate (CASA) Program, volunteers serving in the program are considered court personnel as that term is used in Welfare and Institutions Code Section 827. They shall have access to Probation Department and Department of Family and Children's Services files in order to carry out their responsibilities as court appointed advocates.

(Rule 5.58(b) revised effective 1/1/16)

(Rule 5.58 revised effective 1/1/16)

Rule 5.59. Inter-Agency Exchange of Information

(a) Juvenile information access and exchange

The disclosure of information concerning children and their parents by staff associated with Family Court Services, the Probation Department Juvenile Division, the Department of Human Services, Case Management Council, Adult Probation Department and Probate Court Investigator's office is generally prohibited by law. Nevertheless, a limited exchange of information about children or parents between these agencies in certain circumstances will serve the best interest of the child who is before the Court. The Court hereby finds that the best interest of children and victims appearing in court and the public interest in avoiding duplication of effort by the courts and by the investigative agencies serving the juvenile and family courts, and the value of having relevant information gathered by a court agency outweighs the confidentiality interest reflected in Penal Code Sections 11167 and 11167.5 and Welfare and Institutions Code Sections 827 and 10850 et seq., and therefore, good cause exists for the following rule:

In the following types of cases before the Court:

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- (1) Juvenile Delinquency
- (2) Custody Disputes
- (3) Juvenile Dependency
- (4) Probate investigation (Conservatorship and Guardianship)
- (5) Criminal

The representatives of the above listed agencies who are investigating or supervising cases involving children should disclose information to each other, including the exchange of records, reports and other documentation in their files regarding minors within the jurisdiction of the family, probate or juvenile courts or subject to proceedings therein.

(Rule 5.59(a) revised effective 1/1/16)

(b) Application to release information

The Juvenile Court judge will entertain other applications for release of information on a case-by-case basis.

(c) Juvenile inter-agency sharing of information

All county agencies and agencies contracting with the county as to the treatment of juveniles are authorized to share information with each other as to juveniles within the jurisdiction of the Juvenile Court.

(Rule 5.59 revised effective 1/1/16)

Rule 5.60. Timeliness

Attorneys for parties are required to adhere to the statutory timeliness for all hearings as provided in the Welfare and Institutions Codes and California Rules of Court. (See Welfare and Institutions Code Sections: 213.5, 252, 253, 315, 321, 322, 324, 334, 352, 353, 354, 358, 359, 361.2, 361.3, 361.5, 364, 366, 366.21, 366.22, 366.26, 366.3, 367 & 387; California Rules of Court, Rules 5.542, 5.550, 5.612, 5.605, 5.664, 5.666, 5.668, 5.678, 5.680, 5.686, 5.690, 5.695, 5.710, 5.715, 5.720, 5.740).

(Rule 5.60 revised effective 1/1/15)

Rule 5.61. Experience, Training, Education

Effective July 1, 1996, all appointed attorneys appearing in juvenile dependency proceedings shall be familiar with and comply with the minimum standards of competence set forth in California Rules of Court, Rule 5.660 and any applicable Welfare and Institutions Code Sections.

(Rule 5.61 revised effective 1/1/15)

Rule 5.62. Screening for Competency

(a) Minimum competency standards for court-appointed attorneys

All court-appointed attorneys appearing in juvenile dependency proceedings must meet the minimum standards of competence set forth in these rules.

(b) Standards of education and training

- (1) Each court-appointed attorney appearing in a dependency matter before the Juvenile Court shall complete the following minimum training and educational requirements: The attorney shall have either: (1) participated in at least eight (8) hours of training or education in juvenile dependency law, or (2) have sufficient recent experience in dependency procedure. (California Rules of Court, Rule 5.660).
- (2) Each court-appointed attorney who practices before the juvenile dependency court shall complete within every three (3) year period, at least eight (8) hours of continuing education related to dependency proceedings. Evidence of completion of the required number of hours of training or education shall be retained by the attorney and may include a copy of a certificate of attendance issued by a California MCLE provider or a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is a MCLE provider. Attendance at a court-sponsored or approved program will also fulfill this requirement.

(c) Standards of representation

All court-appointed attorneys appearing in dependency proceedings shall meet the following minimum standards of representation:

- (1) Attorneys are expected to meet regularly with clients, including clients who are children, to contact social workers and other professionals associated with the client's case, to work with other counsel and the Court to resolve disputed aspects of a case without hearing, and to adhere to the mandated time lines.
- (2) If the client is a child, the attorney or the attorney's agent shall have contact with the client before each hearing. The attorney or attorney's agent shall interview all children four (4) years of age or older in person, if possible. Whenever possible, the child shall be interviewed or seen at the child's placement. The attorney or attorney's agent should also interview the child's caretaker, particularly when the child is under four (4) years of age.
- (3) If the client is not the child, the attorney or the attorney's agent shall interview the client at least once before the jurisdictional hearing unless that client is unavailable. Afterward, the attorney or the attorney's agent shall contact the client at least once before every hearing unless the client is unavailable.

(Rule 5.62(c) revised effective 1/1/16)

(Rule 5.62 revised effective 1/1/16)

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Rule 5.63. Mediation

(a) Mediation of contested jurisdictional hearings

Absent objection by any party or attorney and with court approval and each jurisdictional matter set for contested hearing, with the exception of cases filed under Welfare and Institutions Code Sections 300(d) or (e), should be scheduled for mediation before contested hearing.

(Rule 5.63(a) revised effective 1/1/16)

(b) Mediation of post-judicial contested hearings

At the request of any party or the Court, and with consent of all parties, all post jurisdictional matters set for contested hearing may be referred to mediation.

(Rule 5.63 revised effective 1/1/16)

Rule 5.64. Reciprocal Discovery

By Order of the Supervising Judge, the discovery provisions and rules of California Rules of Court, Rule 5.546 pertaining to juvenile delinquency matters are equally applicable and reciprocal to the prosecution and defense. (Robert S., 9 Cal. App 4th 1417)

(Rule 5.64 revised effective 1/1/15)

Rule 5.65. Disclosure of Victim or Witness Contact Information

(a) Disclosure of victim or witness contact information

All attorneys participating in juvenile delinquency proceedings shall comply fully with the limitations on disclosing victim or witness contact information prescribed by California Penal Code Section 1054.2. (See Robert S. v. Superior Court (1992) 9 Cal.App.4th 1417, 1422). Attorneys may disclose victim or witness contact information, including but not limited to, addresses and telephone numbers, only in accordance with Penal Code Section 1054.2. Attorneys shall not disclose victim or witness contact information to a child who is the subject of a juvenile delinquency proceeding, or to the child's parent or guardian, unless specifically permitted to do so by the Court after a hearing and a showing of good cause. The same concerns for victim or witness safety that prompted the enactment of Penal Code Section 1054.2 applies with equal force in juvenile delinquency proceedings. (Cf., City of San Jose v. Superior Court (1993) 5 Cal.4th 47, 54).

(b) Redaction of victim or witness contact information by district attorney

The District Attorney shall fully redact all victim or witness contact information before providing police, arrest, and crime reports directly to a child, parent, or guardian, and shall simultaneously give notice that this information is being redacted. (See, California Rules of Court, Rule 5.546, subdivisions (b), (g), and (h)). The District Attorney shall provide unredacted copies of such reports to the attorney for a child, parent, or guardian, and the receiving defense attorney may use such reports in a manner consistent with Penal Code

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Section 1054.2(a). However, the receiving defense attorney shall fully redact all victim or witness contact information before providing police, arrest, and crime reports to the attorney's clients. In situations where the child, parent or guardian is not represented by an attorney, the Court shall issue a protective order consistent with Penal Code Section 1054.2, subdivision (b).

(c) Final order determining custody – modifications in new case filings

Pursuant to California Rules of Court, Rule 5.700 and Welfare and Institutions Code Section 302(d), the Court will enter appropriate custody and visitation orders at the time the Juvenile Court terminates jurisdiction in a dependency case. To ensure there is in fact a significant change of circumstances to warrant modification of that order, when issuing the "Custody Order-Juvenile-Final Judgment-Visitation Order-Juvenile" (Judicial Council Form JV-200/JV-205), the Court may order that any application, order to show cause or motion to change custody or visitation filed within one year of the "Custody Order-Juvenile-Final Judgment/Visitation Order-Juvenile," is to be assigned and determined by a juvenile bench officer. In such cases the juvenile bench officer shall sit as a family law bench officer when hearing such an application, order to show cause or motion, and the matter shall be heard pursuant to the provisions of the Family Code.

(Rule 5.65 revised effective 1/1/15)

Rule 5.66. Notice Regarding Change in Placement for Dependents of the Court

In order to ensure that proper notice is received by attorneys of any change in a child's placement after the jurisdiction hearing:

- (1) In non-emergency situations, Children and Family Services shall give notice to the child's counsel by close of the next business day following a decision to change a child's placement, including a change in address for respite, or a 7-day caretaker notice. In no event in non-emergency situations, shall the child be moved from placement without first providing child's counsel a reasonable opportunity to put the matter on the court calendar for court review.
- (2) In non-emergency situations, Children and Family Services shall give at least ten (10) calendar days' notice before separating siblings placed together.
- (3) Prior to removal of a child from one county to another, Children and Family Services shall give at least fourteen (14) calendar days' notice to all counsel, unless emergency circumstances prevent such notice. In such emergency circumstances, notice shall be given as soon as practicable but no later than close of the next business day.
- (4) Within 48 hours of receipt of information that a child is absent without leave ("AWOL"), Children and Family Services shall notify all counsel.
- (5) Within 48 hours of receipt of information that a child is or was recently hospitalized for medical treatment, including psychiatric hospitalizations, Children and Family

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Services shall notify all counsel and must provide the child's counsel the name and location of the hospital.

- (6) Notice by Children and Family Services relating to the above changes in placement must be given in writing, which includes by facsimile or email. Notice to the child's counsel shall include the child's address, telephone number and name of the caregiver.

(Rule 5.66 revised effective 1/1/16)

Rule 5.67. Parental Visitation

- (1) Visitation/Contact Before Detention Hearing

Immediately after a child is taken into temporary custody, the social worker shall ensure that the child has regular supervised contact with his or her parent pursuant to W&I Code 308 unless the social worker has a reasonable belief that contact with the parent would be detrimental to the child. Detriment may include cases of physical or sexual abuse or coercion by a parent of the child relating to the reporting of abuse or neglect. In such cases, the Court shall address the issue of contact at the initial/detention hearing.

- (2) Visitation/Contact After Detention Hearing

The determination of the right to visitation and contact, the length of any visitation or contact, whether any visitation or other forms of contact will be supervised (and by whom) and the frequency of visitation and contact must be made by the Court. The implementation and administration of the Court's order may be delegated to the social worker. These tasks may include time, place and manner of visitation. The Court may also delegate the discretion to the social worker to increase the frequency and duration of the visits and to permit unsupervised visits (sometimes with the explicit condition that minor's counsel be given notice before such visits).

(Rule 5.67 revised effective 1/1/16)

Rule 5.68. Notice to Caregiver

The social worker shall ensure that notice is provided to the current caregivers of a dependent child, including foster parents, relative caregivers, preadoptive parents, or nonrelative extended family members of all status review and permanency review hearings as required under W&I Code 293. The social worker shall also provide the caregiver, at least thirty (30) calendar days before such hearings, with a Caregiver Information Form (Judicial Council Form JV-290) and instructions on how to complete and file the Instructions to Complete the Caregiver Information Form (Judicial Council Form JV-290-INFO) with the court.

(Rule 5.68 revised effective 1/1/16)

Rule 5.69. Notice to Minor’s Counsel Regarding Subpoenas

In the event that a social worker receives a subpoena or notice of a subpoena of a minor subject to a dependency action, the social worker shall provide immediate notice to minor’s counsel in the dependency action. This notice shall be given at least five (5) business days before the date of the appearance of the minor child or within 48 hours of the social worker’s receipt of information of the subpoena, whichever occurs later. The social worker is to provide minor’s counsel with a copy of the subpoena in the possession of the social worker.

(Rule 5.69 revised effective 1/1/16)

Rule 5.70. Probation Reports Reporting Confirmed Information on AIDS and AIDS-Related Diseases

Medically verified information that a juvenile or a defendant has AIDS, or AIDS-related diseases or is HIV positive, when reported to the Court, shall be reported in a confidential memorandum, attached only to the Court’s copy of the Probation Report. These memoranda will remain confidential, and will be kept permanently sealed.

(Rule 5.70 revised effective 1/1/16)

Rule 5.71. Court Appointed Special Advocates Program Guidelines

Pursuant to Welfare and Institutions Code Section 100, the program guidelines established by the Judicial Council for Court Appointed Special Advocate Programs is hereby adopted, and incorporated herein.

(Rule 5.71 revised effective 1/1/16)

Title Six. Reserved.

Title Seven. Probate Rules

Chapter 1. General Provisions

Rule 7.1. Probate Matters

Matters governed by the Probate Code, except compromises for minors and incompetents arising from matters not governed by the Probate Code, shall be set for hearing in the department(s) designated by the Presiding Judge. These departments will be known collectively as the Probate Division. The Probate Division will manage contested matters that require an evidentiary hearing until resolved or ready for trial, and will then set the trial date and department. For information about Contra Costa Probate Court Calendars, go to the Probate Guidelines section at www.cc-courts.org.

(Rule 7.1 revised effective 1/1/16)

Rule 7.2. Judicial Commitments

Probate matters also include all matters arising under the Lanterman-Petris-Short Act and any other judicial commitments, except Mentally Disordered Sex Offenders, and shall be heard in the Probate Division at time and date as established.

(Rule 7.2 revised effective 1/1/15)

Rule 7.3. Trust Fund Withdrawals

An application for an order authorizing withdrawals of funds on deposit for the benefit of a minor shall be made by completing a form provided by the clerk of the Court for this purpose. The application shall be signed under penalty of perjury and shall set forth the status of the account, the purpose for which the funds are to be withdrawn, the need for the withdrawal, and the reasons why the parents or parent are unable to provide the needed funds. If the funds are held in a probate guardianship, or are blocked by other order of the probate court, the application for release of funds shall be submitted to the Probate Division. If the funds are blocked by order of another department, and there is no probate guardianship of the estate, the application shall be submitted to the Presiding Judge.

(Rule 7.3 revised effective 1/1/15)

Rule 7.4. Probate Rules

All petitions, motions, and orders to show cause regarding probate matters shall be set in the Probate Division. Also see Local Rule 3.41.

(Rule 7.4 revised effective 1/1/15)

Rule 7.5. Reporting of Court Reporting in Probate

(a) Unavailability of court reporters in Probate matters

Official court reporters employed by the court are unavailable in the Probate Division effective January 1, 2013 and until further notice. Consult the Notice of Availability on the court's website for current status and any changes.

(b) Procurement of private court reporters

Any party who desires a verbatim record of the proceedings from which a transcript can later be prepared may procure the services of an outside private certified court reporter pro tempore to report any scheduled hearing or trial (see California Rules of Court, Rule 2.956).

(c) Procurement process for court reporter services

Parties electing to procure the services of an outside reporter must comply with Local Rule 2.51

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(d) Fee not charged for unavailable court reporter

Pursuant to California Rules of Court, Rule 2.956(d), if a party arranges and pays for the attendance of a certified shorthand reporter at a hearing in a probate case because of the unavailability of the services of an official court reporter, none of the parties will be charged the reporter's attendance fee provided for in Government Code Sections 68086(a)(1)(A) or (B).

(e) Attendance fee

If court reporters become available and in the court's discretion are provided by the court for any civil hearings, the parties will be required to pay the applicable reporter attendance fee provided for in Government Code Sections 68086(a)(1)(A) or (B).

(f) Transcript costs

Parties shall be responsible for all transcript costs pursuant to Government Code Section 69953.

(Rule 7.5 revised effective 1/1/16)

Chapter 2. Probate Court Proceedings

Rule 7.50. Probate Calendar

(a) Appropriate placement on Probate calendar

Probate calendars are arranged to facilitate efficient and effective resolution of matters before the Court. For information about probate calendars go to the Probate Guidelines section at www.cc-courts.org.

(Rule 7.50(a) revised effective 1/1/16)

(b) Calendar Procedures

Parties may request, but are not guaranteed, any particular date for calendaring their matter. For information about probate calendaring, go to the Probate Guidelines section at www.cc-courts.org. Parties who want exceptions to application of the calendar procedures as determined by the clerk may request the Probate Examiners make accommodations to the calendaring procedure—and may make verified application to the Probate Division.

(Rule 7.50(b) revised effective 1/1/16)

(Rule 7.50 revised effective 1/1/16)

Rule 7.51. Contested Matters

(a) Scheduling issue conference

The Probate Division will manage probate matters until they are ready for trial and will then schedule the matter for an issue conference as otherwise described in Local Rule 3.11. Also see Local Rule 7.1.

(b) Alternative Dispute Resolution programs for Probate matters

It is the policy of the Court to encourage the parties in all cases to consider the use of appropriate alternative dispute resolution options as a means of resolving their disputes without trial. (See Title 3, Chapter 5).

(Rule 7.51 revised effective 1/1/15)

Rule 7.52. Appearances

(a) Appearances in uncontested matters

Appearances at the first hearing in uncontested matters are not normally required. Unless otherwise ordered, appearances are required in the following matters:

- (1) If a person has been cited or ordered to appear at a hearing, appearances by both the party and the party's attorney of record at that hearing are required. If the citation or order was requested by a party, then the attorney for the requesting party, or the requesting party if in pro per, is also required to appear.
- (2) If the tentative ruling states "Appearances required" then appearances are required by the proponent of the matters on calendar, and all who have responded so the Court can make appropriate case management orders (e.g. discovery deadlines, or trial setting). Attorneys of record may appear for their clients.

(Rule 7.52(a)(2) revised effective 1/1/13)

- (3) The proponent and all who have responded must attend at all subsequent hearings related to case management orders (e.g. discovery deadlines, or trial setting) if a matter has been continued previously, or the parties are advised otherwise by the tentative ruling. Attorneys of record may appear for their clients.

(Rule 7.52(a)(3) revised effective 1/1/16)

(b) Sanctions for failure to appear

A failure to appear as required may result in sanctions pursuant to Code of Civil Procedure Section 177.5.

(Rule 7.52 revised effective 1/1/16)

Rule 7.53. Verifications

Verifications standards:

- (1) The attorney who represents a ward or conservatee may verify pleadings filed on behalf of the ward or conservatee.
- (2) An attorney's verification on behalf of a client may be sufficient for pleading purposes, but unless the verification provides that the facts are within the personal knowledge of the attorney, then this does not provide the evidentiary support necessary for a ruling.
- (3) An attorney's declaration as to facts or attachments which were allegedly intended to be included in a statement previously verified by the attorney's client is ineffective. (Revised effective 1/1/03 per Code of Civil Procedure Section 2015 and California Rules of Court, Rule 7.103)

(Rule 7.53 revised effective 1/1/15)

Rule 7.54. Submission of Proposed Order Before Date of Hearing

Except in the case of confirmations of sales, orders must be submitted to the Probate Division at least three (3) court days in advance of the scheduled hearing date. The hearing date shall be stated in the order. The proposed order shall be prepared on the assumption the petition will be granted, including requested fees. Orders submitted later will be reviewed and processed after the hearing and will generally be available the morning after the hearing.

(Rule 7.54 revised effective 1/1/15)

Rule 7.55. Responses to Tentative Rulings

Tentative rulings or calendar notes are available before the calendar hearings in the Probate Guidelines section at www.cc-courts.org. In order to be considered, responses to tentative rulings must be filed no later than the close of business, two (2) court days before the hearing and endorsed filed copies delivered to the Probate Examiner.

(Rule 7.55 revised effective 1/1/16)

Rule 7.56. Continuances to Cure Defective Pleadings or Procedures

(a) Continuance of first hearing

The first hearing on a matter may be continued to enable the petitioner to correct defective pleadings or procedures identified in the tentative ruling. The continuance can be made by telephone request to the clerk, or by the Court on its own motion, even if no appearance or request for continuance is made.

(b) Continuance or dismissal of matter

After the first hearing, the matter may be dismissed unless the petitioner shows good cause for a further continuance, by a filed declaration or an appearance at the hearing.

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Continuances following the first hearing may not be secured by requesting a continuance from the clerk.

(c) Renotice of dropped matters

A matter once dropped must be renoticed after it has been placed back on calendar. A matter dismissed must be refiled and renoticed.

(Rule 7.56(c) revised effective 1/1/01)

(Rule 7.56 revised effective 1/1/15)

Rule 7.57. JUDICIAL COUNCIL FORMS. REPEALED (See CALIFORNIA RULES OF COURT, RULE 7.101)

Rule 7.58. Discretion to Waive

The Court for good cause may waive the application of any Local Court Rule or Probate Guideline in an individual case.

(Rule 7.58 revised effective 1/1/15)

Rule 7.59. Fees

(a) Fee guidelines

The Probate Division may, from time to time, publish fee guidelines for the assistance of counsel and others. For information about Contra Costa Probate Court Fees and Costs Guidelines, go to the Probate Guidelines section at www.cc-courts.org.

(Rule 7.59(a) revised effective 1/1/16)

(b) Fee petitions for fiduciaries

Fee petitions for fiduciaries and their attorneys, as well as for others seeking payment from an estate in a probate department case (e.g., court-appointed counsel for conservatees with an adequate estate) are governed by a common set of guidelines but are subject to somewhat different considerations depending on the type of case in which they are presented. The common guidelines, dealing with format and acceptable rates and reimbursable costs, are contained in Chapter 12 below, and in the Contra Costa Probate Court Fees and Costs Guidelines at www.cc-courts.org.

(Rule 7.59(b) revised effective 1/1/16)

(c) Evaluation of fee petitions

Other considerations for evaluating fee petitions in more specific contexts are referenced in Local Rules 7.306 (probate administration), 7.426 (probate guardianships and conservatorships, including LPS conservatorships), and 7.450 (trusts). Also, see Local Rules 112 and 116 for additional instructions applying to all fee petitions.

(Rule 7.59(c) revised effective 1/1/15)

(Rule 7.59 revised effective 1/1/16)

Rule 7.60. Record Title

(a) Disclosure of title of record

If a Title of Record for a decedent's interest in an asset is different than the decedent's interest is alleged to be in a petition determining the characterization or disposition of the decedent's interest, the petition shall disclose to the Court what the Title of Record is for the asset. For example, if a Spousal Property Petition is filed seeking determination that community property realty passed to the surviving spouse, and the title of record for the property to the property is held as "joint tenants with right of survivorship" then that fact shall be disclosed.

(b) Community property

Community property held in joint tenancy title will be treated as community property unless there was a formal and express transmutation from community property.

(Rule 7.60 revised effective 1/1/15)

Rule 7.61. Court Ordered Fees for Fiduciaries and Attorneys

- (a) No attorney for a guardian, guardian ad litem, minor, conservator, conservatee or personal representative shall request or accept any compensation from the estate (whether or not subject to court supervision) of the ward, incapacitated person, conservatee or decedent's estate without prior court order. This does not require prior court approval of payments received from trusts or other persons.
- (b) The requirement of prior court approval applies to any attorney for any of the specified fiduciaries who is representing the fiduciary in any other civil action. For example, if a creditor files suit against a decedent's estate, and the personal representative hires separate counsel to defend the suit, prior court approval is required before payment of any fees to the separate counsel.
- (c) In awarding or allowing reimbursement for compensation in situations described in paragraph (a), the Court is neither bound by (1) the terms of any attorney fee agreement executed without prior court approval in the proceeding nor (2) any amounts that have been paid previously. (See California Rules of Court, 7.753, 7.754, 7.755) For information about Contra Costa Probate Court Fees and Costs Guidelines, go to the Probate Guidelines section at www.cc-courts.org.

(Rule 7.61 revised effective 1/1/16)

Rule 7.62. Factual Allegations

Declarations which merely recite or incorporate reference to code sections do not provide an evidentiary basis for action by the Court absent evidence that the declarant is an attorney or otherwise has sufficient expertise to express a credible opinion as to the operation of the code section. Absent such expertise, facts evidencing necessary compliance with a code section shall be stated in the pleadings.

(Rule 7.62 revised effective 1/1/16)

Rule 7.63. Guardian ad Litem

(a) Representation of guardian ad litem

A guardian ad litem must be an attorney or must be represented by an attorney.

(b) Waiver of beneficiary rights

A guardian ad litem may not waive or disclaim any substantive rights of the beneficiary without prior approval by the Court.

(Rule 7.63 revised effective 1/1/15)

Rule 7.64. Special Notice to Attorneys and Clients

A request for special notice by an attorney, absent an express statement otherwise, does not constitute a waiver of the notices required to be sent to the attorney's client under Probate Code Section 1214.

(Rule 7.64 revised effective 1/1/15)

Rule 7.65. Coordination of Fee Petitions with Accountings

(a) Filing fee petitions

Although the Probate Code does not prohibit fee petitions from being filed separately from accountings, the Court prefers to determine the amount of fees for fiduciaries and their attorneys (and if possible, for other attorneys who need prior approval for payment in the case) at the time the fiduciary's accounts are reviewed.

(b) Filing requirements

A petition before an accounting may be filed to determine compensation as long as the Inventory and Appraisal has been filed showing sufficient assets to pay the requested compensation (this condition does not apply to cases, such as trust administration, where an Inventory and Appraisal is not required to be filed). However, the fiduciary and counsel will not be allowed fees or costs from the estate for bringing such early petition, unless good cause for allowing fees before an accounting is shown.

(c) Fee petition clarification

A petition for appointment of a fiduciary that includes a request for periodic payment of fees on account under Probate Code §2643 or §10832 shall not be deemed a "fee petition" under this rule.

(d) Trust administrations

This rule does not apply to trust administrations where court-approved accountings are not required.

(Rule 7.65(d) new effective 1/1/13)

(e) Fee petition by counsel

A fee petition by counsel for a proposed conservatee or ward requesting less than \$5,000 may be submitted for decision during ex parte hours, apart from an accounting, with fifteen (15) calendar days' notice to all persons who would be entitled to notice of the hearing if such petition were set on the regular calendar. For information about Contra Costa Probate Court Fees and Costs Guidelines, go to the Probate Guidelines section at www.cc-courts.org.

(Rule 7.65(e) new effective 1/1/16)

(Rule 7.65 revised effective 1/1/16)

Chapter 3. Petitions, Orders and Notices

Rule 7.100. Titles for Petitions and Orders [Repealed 1/1/03]

Rule 7.101. Material to be Included in Formal Rulings

Formal orders, judgment and decrees shall be drawn so that their full effect may be determined without reference to the petition on which they are based. As necessary for this purpose, documents shall be attached to, and referenced in, the order, judgment or decree, instead of referring to the other document by reference. All probate orders, judgments or decrees shall set forth all matters actually passed on by the Court, giving the relief granted, the names of the persons affected, and the full legal description of any real property (including Assessor's Parcel Number), or the amounts of money affected.

(Rule 7.101 revised effective 1/1/15)

Rule 7.102. Written Response

An objection or other written response to moving papers will be deemed a waiver of further notice as to those papers.

(Rule 7.102 revised effective 1/1/15)

Rule 7.103. Reserved. [REPEALED 1/1/03]

Rule 7.104. Applications for Ex Parte Orders

(a) Ex parte applications

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

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(b) Notice requirements

Since no testimony is taken in connection with ex parte petitions, the application must contain sufficient facts to justify granting the ex parte order. Orders dispensing with notice must be supported by a declaration. REPEALED IN PART (see California Rules of Court, Rule 7.55 & Probate Code 1202)

(Rule 7.104(b) revised effective 1/1/03)

(Rule 7.104 revised effective 1/1/15)

Rule 7.105. Petitions for Family Allowance

(a) Income and expense requirement

A petition for the family allowance under Probate Code Section 6540 et seq. must include a detailed statement of proposed recipient's income and expenses.

(b) Notice requirement for petitions for family allowance

A petition for family allowance, if made before the filing of the Inventory and Appraisal ordinarily may be presented ex parte. However, if the petitioner is someone other than the executor or there is a dispute as evidenced by papers on file in the proceedings, or there is a request for special notice, then all other parties must be notified in person or by telephone at least twenty-four (24) hours in advance of the time and place where the application for the ex parte order will be made. The petition must be presented by the attorney or unrepresented party requesting the ex parte order. Ordinarily, the order will be made for a period commencing with the date of death and continuing until the inventory is filed, but not to exceed six (6) months. If the order will be opposed, call the Probate Division ahead of time to make a specific appointment with the Court.

(c) Application and notification after personal representative qualified

If the application is made more than six (6) months after the personal representative has qualified, it shall be noticed and placed on the calendar.

(d) Time period for subsequent orders

Subsequent orders will be limited to a definite period, usually not to exceed twelve (12) months duration. It is the policy of this Court not to make orders for family allowance for an unlimited period.

(Rule 7.105 revised effective 1/1/15)

Rule 7.106. Bond on Petitions for Authority to Borrow Money

Petitions for authority to borrow money shall set forth the amount of bond in force and the amount of loan proceeds eligible to be covered by bond. If no additional bond is required, or if bond is waived, that fact shall be alleged.

(Rule 7.106 revised effective 1/1/15)

Rule 7.107. Nunc Pro Tunc Orders Correcting Clerical Errors

(a) Correction of error on order

If, through inadvertence, the signed order, judgment or decree fails to state the ruling actually made by the Court, or through some writer's error portions of the order, judgment or decree are incorrect, the Court will make a nunc pro tunc, judgment or decree order correcting the mistake upon declaration detailing the defect. If the modification to the order is the result of an error by an attorney or party, an ex parte application is required. If modification is the result of court error, a declaration in support of the amended order is sufficient.

(b) Nunc pro tunc order

A nunc pro tunc order, judgment or decree must take the form of a complete amended order, judgment or decree. The previously signed order must be attached to the ex parte application or declaration.

(Rule 7.107 revised effective 1/1/16)

Rule 7.108. General Notice Requirements

Counsel are reminded that the notice requirements in the Probate Code vary greatly. No set pattern may be discerned. The specific requirements of the Code (i.e., posting, mailing, publication, personal service, etc.) must be checked for every petition filed.

(Rule 7.108 revised effective 1/1/15)

Rule 7.109. Probate Hearing Once Noticed Cannot be Advanced

When a hearing on a probate matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, except by Court order and new notice.

(Rule 7.109 revised effective 1/1/15)

Rule 7.110. Orders, etc., to be Complete

A judgment, degree or order shall be complete in itself, with attachments as necessary to avoid incorporating other documents by reference.

(Rule 7.110 revised effective 1/1/15)

Rule 7.111. Accounts and Reports

(a) Accountings submitted for court approval

Accountings submitted for court approval shall comply with Probate Code Section 1060 et seq.

(b) Statement of bond in accounting report

The report accompanying an accounting shall include a statement regarding the bond. This shall include the following:

- (1) The amount of the currently posted bond.
- (2) If no bond is posted, a statement of why no bond was required (e.g., “At the time of appointment, there were no assets subject to disposition by the fiduciary” or “Bond was waived in the will”).
- (3) If bond is required, the report shall state:
 - (A) the current value of all personal property subject to the petitioner’s control;
 - (B) the amount of the estimated annual income for the next year;
 - (C) the fair market value, less encumbrances, of any real property which the fiduciary can sell without prior court order; and
 - (D) the amount of any public benefits regarding accounts for guardianships and conservatorships being received by or for the benefit of the ward or conservatee, including the identity of the person receiving the benefit.

(Rule 7.111 revised effective 1/1/16)

Rule 7.112. Petitions to Show who is Entitled to Notice

All petitions shall identify the names, addresses, and relationships of all persons entitled to notice.

(Rule 7.112 revised effective 1/1/15)

Rule 7.113. Identity or Whereabouts Unknown [repealed 1/1/03] (see California Rules of Court, Rule 7.52)

Rule 7.114. Notice Regarding Interests of Deceased Persons [repealed 1/1/03] (see California Rules of Court, Rule 7.51(e))

Chapter 4. Appointment of Executors and Administrators

Rule 7.150. Notice re: Special Letters

Petitions for letters of special administration will not be granted without twenty-four (24) hour (oral or written) notice to the surviving spouse or domestic partner as defined in Probate Code Section 1894, to the person nominated as executor, and to any other person whom the Court determines to be equitably entitled to notice. In making the appointment, preference is given to the person entitled to Letters Testamentary or of Administration, but if it appears that a bona fide contest

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exists between these persons, the Court will consider the advisability of appointing a neutral person or corporation as Special Administrator, upon the filing of a proper petition.

(Rule 7.150 revised effective 1/1/15)

Rule 7.151. Petitions for Probate of Will and for Letters Testamentary; for Letters of Administration; or for Letters of Administration with Will Annexed

(a) Photographic copy of holographic instrument

When a holographic instrument is offered for probate, a photocopy of the instrument must be accompanied by an exact typewritten copy of the instrument, reproducing the instrument line by line and showing any words crossed out. Where an instrument written in a foreign language is offered, it must be accompanied by a copy translated into English by a Court certified translator.

(b) Name of predeceased beneficiary

If a named beneficiary predeceased the decedent or did not survive the designated survival period, that fact must be stated in Attachment 8 of the Petition.

(c) Requirement of personal representative form

Confidential Statement of Birth Date and Driver's License Number (Judicial Council Form DE-147S) is not required.

(d) Name of spouse or deceased person on petition

If Attachment 8 includes a spouse or any other person who is deceased as of the date of the petition, the petition shall state that person's date of death. The Court needs to know whether the person predeceased or survived the decedent.

(Rule 7.151(a)-(d) revised effective 1/1/15)

(e) Proof of Service of Notice of Petition to Administer Estate

A copy of the petition must be served with the initial Notice of Petition to Administer Estate. A copy of the petition should not be published with the Notice.

(Rule 7.151(e) new effective 1/1/15)

(Rule 7.151 revised effective 1/1/15)

Rule 7.152. Notice

(a) The following persons are entitled to NOTICE (see Probate Code § 8110):

- (1) Heirs of the Decedent: Whether or not a decedent died with a will, the petition must contain the names and relationships of all of the decedent's heirs-at-law. An heir-at-law is any person who would be entitled to distribution of a part of the decedent's estate (including distribution by virtue of Probate Code Section 6402.5 if the

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decedent had a predeceased spouse) if the decedent died intestate (without leaving a will);

- (2) **Beneficiaries Named in the Will:** This includes all named contingent beneficiaries who may be entitled to share in the estate, and also includes persons provided for in the Will but whose gifts have been revoked by a subsequent modification to the will;
- (3) **Deceased Heir or Beneficiary** See California Rules of Court, Rule 7.51(e); if heir or beneficiary died before decedent, see also Probate Code § 21110. [REPEALED 1/1/03] (See California Rules of Court, Rule 7.51(e));
- (4) **Trustee Nominee.** Any nominated trustee of a trust created by the will;
- (5) **Beneficiaries of Testamentary Trusts.** The terms “beneficiaries named in the Will” and “named contingent beneficiaries” used above include beneficiaries named in testamentary trusts. It is not adequate merely to give notice to the trustee of a trust where beneficiaries or contingent beneficiaries are named in testamentary trusts;
- (6) **Trustees of Inter-Vivos Trusts** who will receive “pour over” gifts from the decedent’s estate. Item 8 on the Petition For Probate (Judicial Council Form DE-111) requires the petitioner to list “all beneficiaries of a trust named in the decedent’s will or any codicil in which the trustee and personal representative are the same person.” Since use of applicable Judicial Council forms is mandatory and the purpose of Item 8 is to identify persons entitled to receive notice of the petition, the Probate Division will require notice to be given to present and contingent beneficiaries of trusts where the trustee is a beneficiary of the will and the trustee is identical to the proposed personal representative;
- (7) Any non-petitioning Executor, including alternate executors named in the Will; and
- (8) The California Attorney General, where there is a charitable trust involved (Probate Code Section 8111).

(b) Method of giving various notices

- (1) **Unknown Address.** If the address of an heir or beneficiary is unknown, the Court requires a declaration stating specifically what efforts were made to locate such heir or beneficiary before the Court will dispense with notice or prescribe an alternate form of notice. See Probate Code Section 1212 and Code of Civil Procedure Section 413.30 as to what efforts are necessary. In general, these efforts shall include inquiry of relatives, friends, acquaintances, and employers and investigation of appropriate city and telephone directories, and the real and personal property index at the County Assessor’s Office of the county of last known residence of the missing heir or beneficiary. REPEALED IN PART (see California Rules of Court, Rule 7.51(d))
- (2) **Minors.** See Probate Code Section 1460.1 and California Rules of Court, Rule 7.51(d).

(c) Notice by mail - by whom given

If a Probate Code Section requires the clerk to “cause notice of the hearing to be mailed”, the clerk fulfills this function by requiring counsel to do the mailing. Therefore, counsel is charged with this duty.

(Rule 7.152 revised effective 1/1/16)

Rule 7.153. Requirements of Publication for Notice of Petition to Administer Estate

(a) Publication and mailing of notice of petition to administer estate

The publication and mailing of Notice of Petition to Administer Estate under Probate Code Section 8120 is sufficient to include all instruments which are offered for probate filed with, and specifically referred to in the Petition for which notice is given. Any other Wills or supplement to a Will not specifically mentioned in the Petition must be presented to the Court in an amended or second Petition and a new Notice of Petition to Administer Estate must be published and mailed. (Probate Code Sections 8110 and 8120).

(b) Petitioner’s responsibility to publish petition to administer estate

It is the responsibility of the petitioner to arrange for publication. The County Clerk does not have this responsibility.

(Rule 7.153 revised effective 1/1/16)

Rule 7.154. Court Discretion Regarding Bond

Executors nominated to serve without bond may nevertheless be required to post such bond as the Court may require. If the nominated executor is a nonresident of California, the Court will require bond as though the will had not waived bond. If all beneficiaries or heirs waive bond, or if one of multiple personal representatives is a California resident, the Court will consider reducing the bonding requirement for non-resident personal representatives to no less than \$20,000 to provide protection for creditors. A declaration or attachment to the petition setting forth in detail the anticipated liabilities of the decedent and claims against the estate will be necessary to help the court determine the proper amount. FORMER SUBDIVISION B REPEALED IN PART (See California Rules of Court, Rule 7.204)

(Rule 7.154 revised effective 1/1/15)

Rule 7.155. Continuance to Permit Filing of Contest

When a petition for the probate of a Will is called for hearing, if an interested person appears and orally objects and declares that he or she desires to file a written contest, the Court will continue the hearing with the understanding that if a contest is not actually on file at the new hearing date, the hearing will nevertheless proceed as though there were no contest.

(Rule 7.155 revised effective 1/1/15)

Rule 7.156. Multiple Representatives

When multiple personal representatives are appointed, the clerk will not issue letters to less than all of them or separately to any of them, unless the order specifies otherwise.

(Rule 7.156 revised effective 1/1/15)

Chapter 5. Creditors' Claims

Rule 7.200. Nature and Form of Claims

(a) Claim vs. expense of administration

- (1) The Court will not approve "creditors' claims" which represent obligations of the estate arising after the death of the decedent (except reasonable funeral expense). Such expenses are properly expenses of administration, not creditor's claims, and may be included for approval in the account or report.
- (2) The Court will not approve "creditors' claims" which are requests for reimbursement by the person who paid what may otherwise have been a creditor claim. These are claims for equitable subrogation, and may be included for approval in the account or report.

(b) Form of creditor's claims

Creditor's claims will be liberally construed in favor of their sufficiency.

(Rule 7.200 revised effective 1/1/15)

Rule 7.201. Claims Filed with Clerk and Mailed to Personal Representative [Repealed 1/1/03] (see California Rules of Court, Rule 7.401; Probate Code 9150)

Rule 7.202. Claims of Personal Representatives and Attorneys

(a) Creditor's claim by personal representative

A creditor's claim of the personal representative or attorney shall be noted as such. Such a claim must be processed as provided in Probate Code Section 9252 notwithstanding authority to act under the IAEA. Where there is more than one personal representative, a creditor's claim submitted by one of the personal representatives must be approved by the other(s) before submission to the Court for approval.

(b) Hearing on claim of personal representatives or attorney

Unless a claim by a personal representative or attorney for the personal representative appears reasonable, and any persons requesting special notice have waived the notice as to the claim, a hearing shall be held as set forth in Probate Code Section 9252(a) and

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notice given to all persons entitled to such notice, including all residuary beneficiaries, together with a copy of the claim, pursuant to Probate Code Section 1220.

(Rule 7.202(b) revised effective 1/1/15)

(Rule 7.202 revised effective 1/1/15)

Rule 7.203. Funeral Claims

An unusually large claim for the decedent's funeral and/or interment is a questionable claim and may be set for hearing pursuant to the procedure set forth in Local Court Rule 7.202(b) above. Counsel is advised to review the case of Estate of Malgor (1947) 77 Cal.App.2d 535, 176 P2d 66. Where appropriate, the personal representative shall either include facts in the petition or file a separate declaration to justify an unusually large expenditure for funeral expenses by reason of the value of the estate and/or the standard of living adopted by the decedent during his lifetime. Interest will be allowed on creditor's claims for funeral expenses only as made payable by Health and Safety Code Section 7101.

(Rule 7.203 revised effective 1/1/15)

Chapter 6. Sales

Rule 7.250. Sales of Real Property not under IAEA

Rule 7.251. Return of Private Sale

(a) Cash deposit required for purchases to be confirmed by court

Bids for the purchase of real property, when required to be returned to the Court for confirmation, must be accompanied by a minimum deposit of ten percent (10%) of the purchase price at the time of hearing unless the buyers' committed loan proceeds exceed ninety percent (90%) of the purchase price, in which event the minimum deposit shall be the difference between the committed loan proceeds and the purchase price.

(b) REPEALED IN PART (See California Rules of Court, Rule 7.451)

(Rule 7.251(b) revised effective 1/1/03)

(c) Court approval of secured junior deed of trust

The Court will approve the taking of a promissory note secured by a junior deed of trust upon a showing that it serves the best interests of the estate.

(d) Application of statutory formula re overbid

The Court must consider not only whether the bid is arithmetically the highest, but also whether it is in the best interest of the estate. Counsel for the parties involved shall be prepared with factual information that will aid the Court in making this determination.

(e) REPEALED IN PART (See California Rules of Court, Rule 7.452)

(Rule 7.251(e) revised effective 1/1/03)

(Rule 7.251 revised effective 1/1/15)

Rule 7.252. Broker's Commissions

(a) Improved property

Upon the confirmation of sale of improved real property, the Court will ordinarily allow a broker's commission not to exceed six percent (6%). If a greater amount is requested, the petition to confirm sale must be accompanied by written declarations setting forth the advantages to the estate in allowing a larger percentage as commission.

(b) Unimproved property

Upon the confirmation of sale of unimproved real property, the Court will ordinarily allow a broker's commission not to exceed ten percent (10%). The Court will determine the kind of property which constitutes unimproved property in each case and may request counsel to file declarations setting forth relevant facts in the determination of what is "unimproved" real property.

(c) Order must show commission allocation

The order confirming sale must show the total commissions allowed and any allocation agreed upon between the brokers.

(Rule 7.252 revised effective 1/1/15)

Rule 7.253. Broker's Commissions in Overbid Situation

See Probate Code Section 10160 et seq. A chart demonstrating the division of the broker commission when estate property is sold subject to Court confirmation is available in the Probate Guidelines section at www.cc-courts.org.

(Rule 7.253 revised effective 1/1/16)

**Rule 7.254. Exclusive Listings for Sale of Property (Probate Code Section 10150(c)
[Repealed 1/1/03] (see California Rules of Court, Rule 7.453)**

Rule 7.255. Condominiums, Community or Cooperative Apartments

A condominium is an interest in real property and must be sold as such, unless it is held as a limited partnership. A cooperative apartment is also real property and must be sold as such.

(Rule 7.255 revised effective 1/1/15)

Rule 7.256. Purchase of Estate Property by Personal Representative or His or Her Attorney

The purchase of estate property by the personal representative or by the personal representative's attorney is permitted only as set forth in Probate Code Sections 9881-9885. The Court will approve such a purchase with the consent of all residual beneficiaries by a writing filed with the Court.

(Rule 7.256 revised effective 1/1/15)

Rule 7.257. Tangible Personal Property

(a) Perishable or depreciating property

Perishable or depreciating property in an estate shall be disposed of promptly. The personal representative may be held accountable for the value of the property if there has been an unreasonable delay in disposing of such property. Such property may be sold without notice. See Probate Code Sections 10252 and 10259(a)1. If counsel wishes Court confirmation of such sales (10259c), counsel shall use the form Ex Parte Petition for Approval of Sale of Personal Property and Order (Judicial Council Form DE-275).

(b) Non-perishable or non-depreciating property

With the exceptions set forth in Probate Code Sections 10252(a), (b) and (d), non-perishable or non-depreciating personal property may be sold subject to Court confirmation at either public auction or at private sale, after giving notice as set forth in Probate Code Section 10250, et seq. The time for giving notice may be shortened in the discretion of the Court.

(Rule 7.257 revised effective 1/1/15)

Chapter 7. Accounts, Fees and Petition for Distribution

Rule 7.300. Notice of Petition for Distribution

At least fifteen (15) calendar days before the hearing of the petition, notice of the hearing must be served upon each named beneficiary whose interest is affected by the petition and to the heirs of the decedent in intestate estates. Also see Probate Code Section 1220. Notice shall also be given to: a) the trustee of any intervivos trust to which the estate pours over; b) to trust beneficiaries if required under Probate Code Section 1208; c) to the trustee of any testamentary trust.

(Rule 7.300 revised effective 1/1/16)

Rule 7.301. Property to be Distributed must be Listed

(a) Description of property

The petition for distribution must list and describe in detail all property to be distributed, either in the body of the petition or in the prayer, or by a schedule in the accounting, and

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incorporated in the petition by reference. This includes a statement of the amount of cash on hand. A description by reference to the inventory is not acceptable. See also requirements in Probate Code Section 1064.

(b) Tracing survivor of interstate decedent

If an intestate decedent who survived his or her spouse leaves no issue, the applicability of Probate Code Section 6402.5 must be alleged and the necessary tracing must be carried out as far as is possible.

(Rule 7.301(b) revised effective 1/1/03)

(Rule 7.301 revised effective 1/1/15)

Rule 7.302. Form of Accounting

The general guidelines for accountings are now set forth in Probate Code Section 1060 et seq.

(Rule 7.302 revised effective 1/1/15)

Rule 7.303. Waiver of Account

(a) Waiver by residuary beneficiaries

The waiver of account by the residuary beneficiaries alone is sufficient, even though there may be specific legatees and devisees, if the petition for distribution enumerates the specific bequests and devises, shows that there are sufficient assets to satisfy such bequests and devises, and prays that they be distributed. REPEALED IN PART (See California Rules of Court, Rule 7.550 for information required in reports on waiver of account)

(Rule 7.303(a) revised effective 1/1/15)

(b) Distribution from testamentary trust

When property is being distributed in a testamentary trust, an account may be waived by the trustee and all present beneficiaries of the trust. The beneficiaries must all be ascertained, adult and competent, or represented by a guardian, conservator or guardian ad litem, who must execute the waiver.

(Rule 7.303(b) revised effective 1/1/15)

(Rule 7.303 revised effective 1/1/15)

Rule 7.304. Statutory Fees and Allowable Costs [Repealed 1/1/03] (see California Rules of Court, Rule 7.705)

Rule 7.305. Inheritance by Surviving Spouse

Formal probate of community, quasi-community, or separate property passing or confirmed to a surviving spouse in a decedent's estate pursuant to Probate Code Section 13502 must be

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supported by a timely written election expressing acknowledgement of a consideration of the alternative procedures available pursuant to Probate Code Section 13650. Written elections pursuant to Probate Code Section 13502 shall contain an express acknowledgment that the inclusion of property passing to or belonging to the surviving spouse in the probate estate could result in additional appraisal fees, commissions, and attorney fees.

(Rule 7.305 revised effective 1/1/15)

Rule 7.306. Extraordinary Fees

Petitions for compensation for extraordinary services under Probate Code § 10811 shall be supported by a declaration, complying with Contra Costa Probate Court Guidelines from each individual requesting approval of extraordinary fees. For information about Contra Costa Probate Court Fees and Costs Guidelines, go to the Probate Guidelines section at www.cc-courts.org. The petition should recite only the amounts claimed and the relevant period of time, referring to the accompanying declaration(s), which should contain the explanation and justification. See also California Rules of Court, Rules 7.702 and 7.703 for declaration content.

(Rule 7.306 revised effective 1/1/16)

Rule 7.307. The Order

(a) Distribution and listing of cash and non-cash assets

The distribution of property must be separately stated in detail, listing non-cash assets to be distributed as described in the Inventory and Appraisal, as well as the amount of cash to be distributed, under the name of each beneficiary. The order must be complete in itself and the total estate distributed must agree with property on hand as shown on Schedule F of the Summary of Account. Description by reference to the inventory is not acceptable.

(b) Distribution of real property included in order

For real property to be distributed, the order must include the legal description, the street address, if any, and the assessor's parcel number.

(c) Testamentary trusts

For orders establishing testamentary trusts, see California Rules of Court, Rule 7.650.

(7.307(c) revised effective 1/1/08)

(Rule 7.307 revised effective 1/1/15)

Rule 7.308. Segregating Trust Income and Principal

When any part of the estate is to be distributed to a trustee, and the accumulated income is to be paid by the trustee to the trust beneficiaries, the order shall allocate receipts and disbursements between principal and income.

(Rule 7.308 revised effective 1/1/15)

Rule 7.309. Creditor's Claims

(a) Petition for final distribution

The Petition for Final Distribution must show that all of decedent's creditors received a Notice of Administration to Creditors (Judicial Council Form DE-157) at least seventy-five (75) calendar days before the hearing, or were paid or that there were no known creditors of decedent. (Probate Code Section 10900)

(Rule 7.309(a) revised effective 1/1/16)

(b) Payment of funeral or debt expenses after general powers issued

Unless accountings are waived, if any funeral expense or debt of the decedent was paid more than four months after letters with general powers issued, the petition shall show why the claim was not barred or the personal representative may be surcharged with interest for the payment.

(Rule 7.309(b) revised effective 1/1/01)

(c) Payment of funeral and debt expenses from estate

Unless accounts are waived, if a decedent's debt or funeral expense was paid from the estate without the filing of a creditor claim, the petition shall address the five elements (including timeliness of payment) of Probate Code Section 11005.

(Rule 7.309(c) revised effective 1/1/01)

(Rule 7.309 revised effective 1/1/16)

Rule 7.310. Federal Estate Taxes

(a) Proration of federal estate taxes

When proration of federal estate taxes is required by Probate Code Section 20110 et seq., the petition for distribution shall include a schedule showing the computation of the proration.

(b) Final distribution of estate after estate taxes filed and paid

An estate is not ready for final distribution until the estate tax returns have been filed, and the tax paid, unless no estate tax return is required to be filed.

If an estate tax return is required, the order for final distribution shall include a provision that there will be no final discharge until final resolution of the estate tax liability (e.g. receipt of closing letter).

(Rule 7.310(b) revised effective 1/1/08)

(Rule 7.310 revised effective 1/1/15)

Rule 7.311. Specifically Devised Property

As to expenses allocable to specifically devised property (e.g., taxes, maintenance, repairs, insurance, debt servicing) see Estate of McSweeney (1954) 123 Cal.App.2d 787). For apportionment of income and expenses, see Probate Code Sections 12002, 9650, and 1063.

(Rule 7.311 revised effective 1/1/15)

Rule 7.312. Distribution to Minors

Where the Court has discretion, funds for minors or incompetent persons without a guardian or conservator of the estate will be required to be placed in a blocked, federally insured account. The Court does not favor transfer under the California Uniform Transfers to Minors Act unless the Will so provides.

(Rule 7.312 revised effective 1/1/15)

Rule 7.313. Preliminary Distribution

(a) Waiver of bond requirement

In the event of a preliminary distribution made before the time for filing creditor's claims has expired, a bond MUST be required of the distributees (Probate Code Section 11622). After the time for filing claims has expired, the Court will usually require a distributee's bond unless the Inventory and Appraisal has been filed and the Petition sets forth sufficient facts showing that the distribution may be made without loss to creditors or injury to the estate or any interested person.

(b) Petition to not require bond

If the petition requests that no bond be required of the distributees, a clear and concise statement showing why bond should not be required must be included in the petition.

(Rule 7.313 revised effective 1/1/15)

Rule 7.314. Procedure to be Followed by a Personal Representative in Actions for Damages Following Wrongful Death of Decedent or Other Actions that Survive the Death of Decedent

(a) Issue special letters

Special letters may be the proper vehicle for such actions. In appropriate circumstances, the Court may appoint a Special Administrator for a limited purpose with a termination date specified in the order and may require an appearance at a scheduled hearing date for a status report and to continue the appointment of the Special Administrator beyond that date.

(b) Property of the estate

If a personal representative collects damages arising out of the physical injury of the decedent or covering funeral expenses and costs of last illness, he or she shall hold such money in his or her representative capacity as property of the estate.

(c) Damages for wrongful death

Damages for wrongful death are held by the personal representative as a representative of the statutory beneficiaries and are not part of the estate. (Estate of Waits (1944) 23 Cal.2d 676). The disposition of such damages for wrongful death and the amount of attorney's fees and costs shall be determined by the Court on a petition pursuant to Probate Code Section 9835.

(d) Notice requirements

In addition to the usual notices given on hearing of such a petition, under Probate Code Section 9835, notice shall be served on the heirs at law in the same manner as if each had filed a request for special notice. (See also Code of Civil Procedure Sections 377.10 et seq.).

(Rule 7.314 revised effective 1/1/15)

Rule 7.315. Grant of Additional Powers to Testamentary Trustee

Notice must be given under Probate Code Section 17203 where the Petition for Distribution requests the Court to grant a trustee additional powers not conferred by the Will. The Court may require that a guardian ad litem be appointed for persons unascertained or not in being. (Probate Code Section 15405)

(Rule 7.315 revised effective 1/1/15)

Rule 7.316. Application for Final Discharge

All Ex Parte Petitions for Final Discharge and Order (Judicial Council Form DE-295) shall be submitted with a copy of the order of final distribution, and copies of any receipts from distributees. If the order requires distribution of funds to a blocked account, the request for final discharge shall be accompanied by a completed Receipt and Acknowledgment of Order for the Deposit of Money Into Blocked Account (Judicial Council Form MC-356). If the order distributes real property, the copy of the order submitted with the request for final discharge shall show that the order has been recorded in the appropriate county. If the order provided for a withhold greater than \$1000.00 there shall be included a schedule of disbursements for the withhold.

(Rule 7.316 revised effective 1/1/15)

Rule 7.317. Payment of Costs of Administration

A petition for final distribution or to terminate the proceeding must expressly state that all charges for legal advertising, bond premiums, probate referee's services and costs of administration have been paid.

(Rule 7.317 revised effective 1/1/15)

Chapter 8. Inventory and Appraisal

Rule 7.350. Preparation of Inventory and Appraisal

Provide complete descriptions of each asset in the estate. (See Probate Code Section 8850). The legal description, street address (or a notation that the property is “unimproved”) and APN shall be shown for each parcel of real property. See California Decedent Estate Practice (CEB Rev. 2013, Chapter 13); see also California Probate Referees website: probatereferees.net and the Guide to Using California Probate Referees found therein for a complete description of how properly to list assets on the Inventory.

(Rule 7.350 revised effective 1/1/15)

Rule 7.351. Waiver of Appraisal by Probate Referee

(a) Waiver of Probate Referee’s appraisal

The Court does not favor the waiver of the Probate Referee’s appraisal under Probate Code Section 8903 in the absence of exceptional circumstances.

(b) Deferral of Probate Referee’s appraisal

The Court may allow deferral of the Probate Referee’s appraisal on a showing (1) that all beneficiaries have waived the Probate Referee’s Appraisal and (2) that fees and commissions for the personal representative and attorney have been waived. If these conditions remain when the estate is ready for final distribution, the Court may then waive the Probate Referee’s appraisal.

(Rule 7.351 revised effective 1/1/15)

Chapter 9. Guardianships and Conservatorships Guardianships

Rule 7.400. Initiation of Guardianship Investigation

The Probate Investigations Unit will initiate a guardianship investigation except when the court specifically directs otherwise, only after the petitioner(s) has submitted a complete “Proposed Guardianship Information” (Local Court Form GC-20). The Probate Investigations Unit will initiate a termination of guardianship investigation only after the petitioner(s) has submitted a complete “Termination of Guardianship Information” (Local Court Form GC-21).

(Rule 7.400 new effective 1/1/15)

Rule 7.401. Temporary Guardianships

The Court will not order a change of custody under a temporary guardianship unless doing so appears necessary for the protection of the minor. Minimum notice to parents will be required unless justified by a supporting declaration.

(Rule 7.401 revised effective 1/1/15)

Rule 7.402. Consultation with Other Departments re: Custody or Dependency Proceedings

Where a petition for guardianship of the person of a minor is pending and where it appears to the Court that a custody or dependency proceeding concerning the same minor is pending in any other department of the Superior Court, a consultation will be had between the judicial officers of the department in which such proceeding or writ is pending, and a determination made as to whether or not the matter should be heard separately or a consolidation arranged.

(Rule 7.402 revised effective 1/1/15)

Rule 7.403. Guardianships for Dependent Children

A guardianship for dependent minor children must be established in Juvenile Court under Welfare and Institutions Code Sections 366.25(e) or 366.26(d). The Juvenile Court retains jurisdiction to modify, revoke or terminate such guardianships. See Welfare and Institutions Code Sections 366.3 and 366.4.

(Rule 7.403 revised effective 1/1/15)

Rule 7.404. Restriction on Parental Use of Minor's Estate

As there is a statutory liability upon the parents to support their children, where one or both parents are living, the Court will not permit guardianship funds to be used for the minor's ordinary support and maintenance except upon a showing of the parents' financial inability or other circumstances which would justify the Court in departing from this rule in the best interest of the minor.

(Rule 7.404 revised effective 1/1/15)

Rule 7.405. Final Account of Guardian

(a) Appearance by ward

An appearance by the ward at the hearing on the guardian's final account and petition will be required unless either:

- (1) Proof of service is on file verifying that a copy of the final account and petition, and notice of hearing thereon, has been served upon the ward not less than fifteen (15) calendar days before the hearing, (Probate Code Section 1460), or
- (2) The ward's written acknowledgment of receipt and approval of the petition and final account is on file.

(b) Waiver of account by ward

The Court does not favor the waiving by the ward of a guardian's final account when the ward has reached majority, and normally the Court will not approve a petition when the final account is waived, unless the ward is present in Court at the time of the hearing.

(c) Discharge of guardian

- (1) A guardianship of the person and estate will terminate pursuant to Probate Code Sections 1600 and 1601.
- (2) A discharge of the guardian will not occur until the expiration of one (1) year from the date the minor attained the age of eighteen (18) years. See Probate Code Section 2627.
- (3) In the case of a minor for whom a conservatorship will be required, a petition for appointment of a conservator may be filed during the proposed conservatee's minority in order to make the appointment of a conservator effective immediately upon the minor's attaining the age of eighteen (18) years (Probate Code Section 1820 (b)).

(Rule 7.405 revised effective 1/1/16)

Rule 7.406. – Rule 7.410. Intentionally Omitted

Rule 7.411. Appointment of Conservator

(a) Appointment of conservator

Although Probate Code Section 2106 gives the Court discretion to appoint one conservator for several conservatees, the Court will generally not grant a petition joining more than one conservatee in a single proceeding, except husband and wife or domestic partners as defined in Probate Code Section 1894.

(b) Requirement for setting matter conservatorship hearing

The matter shall be set for hearing generally not sooner than forty-five (45) calendar days after the filing date to allow time for the Court Investigator's Report (Probate Code Section 1894).

(Rule 7.411 revised effective 1/1/16)

Rule 7.412. Appointment of Temporary Conservators

Minimum notice to the conservatee and conservatee's spouse, if any, will be required unless the Ex Parte Application for Good Cause Exception to Notice of Hearing on Petition for Appointment of Temporary Conservator (Judicial Council Form GC-112) is approved by the Court.

(Rule 7.412 revised effective 1/1/15)

Rule 7.413. Specific Medical Treatment and Placement

(a) Authority of conservator

A conservator of the person generally has authority to fix the residence of, and place the conservatee in, any facility in this state, including a facility which restricts conservatee's ability to leave. This authority is subject to limitations which may be placed on the conservator by statute or court order. These limitations include, but are not limited to, the following:

- (1) The placement must be the least restrictive appropriate setting which is available and necessary to meet the conservatee's needs. Ordinarily, a conservatee should be allowed to remain in the conservatee's residence in which the conservatee resided before the establishment of the conservatorship so long as this is feasible.
- (2) A conservatee with dementia may be placed in a facility specifically described in Probate Code Section 2356.5(b) only with authorization as provided in that section. The Court will not make an order for placement under Probate Code Section 2356.5(b) absent a showing that the specifically proposed placement is described in Probate Code Section 2356.5(b). A petition for a court order regarding placements in a facility not specifically described in Probate Code Section 2356.5(b) will be deemed a petition for instructions pursuant to Probate Code Section 2359.
- (3) Placement in a mental health treatment facility as defined in Probate Code Section 2356(a) requires an LPS conservatorship.

(Rule 7.413(a) revised effective 1/1/16)

(b) Consent for psychotropic medications in conservatorships

Psychotropic medication in conservatorships under the Probate Code is generally governed by the same provisions as other medical treatment. If the conservatee has been adjudicated to lack the capacity to consent to medical treatment generally, or to the application of psychotropic medication, then the conservator of the person generally has authority to consent to the medication. However, if the medication as described in Probate Code Section 2356.5 is to be given to a conservatee for the treatment of dementia who lacks the capacity to give informed consent to that medication, then the conservator of the person may authorize the medication only with prior authorization as provided by that Section.

(Rule 7.413(b) revised effective 1/1/13)

(Rule 7.413 revised effective 1/1/16)

Rule 7.414. Termination

Conservatorship may be terminated pursuant to Probate Code Sections 1860 et seq., and Section 2626. The filing of a certification of competency issued by the superintendent of a state hospital pursuant to Welfare and Institutions Code Section 7357, or other provision of law, does not, of

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itself, terminate a conservatorship. Conservatorships terminate by operation of law upon the death of the conservatee. Termination does not cause the Court to lose jurisdiction as to some issues, such as approval of accountings or awarding fees (Probate Code Section 2630 et seq.).

(Rule 7.414 revised effective 1/1/15)

Rule 7.415. Accounts of Conservator

Probate Code Section 2621 prescribes the requirement for giving notice of hearing on the account. See, also, Probate Code Sections 2620 and 2630 et seq., regarding provisions pertaining to accounts on termination of conservatorships.

(Rule 7.415 revised effective 1/1/15)

Rule 7.416. Orientation Class Requirements for Unlicensed Conservators

All conservators of person and/or estate who are not California Licensed Professional Fiduciaries (licensed by the Professional Fiduciary Bureau) should make reasonable efforts to complete either or both, depending on appointment, the Contra Costa Superior Court Probate Division Conservator of Person and/or Conservator of Estate classes that are offered monthly by the Contra Costa County Public Law Library. If a course is completed, the course completion form should be filed with the court.

(Rule 7.416 revised effective 1/1/15)

Rule 7.417. – Rule 7.418. Intentionally Omitted

Rule 7.419. Warning on Order [Repealed 1/1/03]

Rule 7.420. Copies for Court Investigator

(a) Extra copy of pleadings

When an account, report or petition is filed as to which an investigation and/or report by the Probate Court Investigator is required, an extra copy of that pleading along with any other pleadings filed in relation to the matter shall be given to the legal process clerk at the time of filing. It is then to be routed to the Court Investigator. This includes (a) any petition for appointment of guardian or conservator, (b) any petition for appointment of temporary guardian or conservator, (c) any accounting except when the guardianship or conservatorship has terminated; and, (d) any petition for medical consent authority.

(Rule 7.420(a) revised effective 1/1/15)

(b) Petitioner to provide copies of pleadings to Court Investigator's office

If the Court requires a report from the Court Investigator after a pleading is filed, or if the extra copy required under this provision was inadvertently not given to the legal process clerk, then copies of all related pleadings, including the petition, accounting, orders, letters,

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inventory and appraisals, etc., shall be furnished by the petitioner by delivery or transmission to the Court Investigator's office.

(Rule 7.420(b) revised effective 1/1/15)

(Rule 7.420 revised effective 1/1/15)

Rule 7.421. Intentionally Omitted and Reserved [Repealed 1/1/13]

Rule 7.422. Temporary Guardian or Conservator

Upon the filing of a petition, a temporary guardian or conservator of the person or estate, or both, may be appointed under Probate Code Section 2250 et seq. A separate petition for the appointment of a general guardian or conservator must be presented to the Court to be filed before a petition for a temporary guardian or conservator will be considered.

(Rule 7.422 revised effective 1/1/15)

Rule 7.423. Instructions Regarding General Duties and Conflicts of Guardian or Conservator

Before Letters are issued, each guardian or conservator must complete, sign and file a Letters of Guardianship (Probate-Guardianships and Conservatorships) (Judicial Council Form GC-250) provided by the Judicial Council. The form shall set forth the guardian or conservator's duties as a fiduciary and outline the responsibilities as an officer of the Court. Social Security Number, driver's license number and date of birth do not need to be supplied on the form.

(Rule 7.423 revised effective 1/1/15)

Rule 7.424. Bonds of Conservators and Guardians

Bond for an individual conservator or guardian will generally not be waived. The Court generally will not require a bond for amounts in blocked accounts. (See Probate Code Section 2328).

(Rule 7.424 revised effective 1/1/15)

Rule 7.425. Accounts

(a) Time of filing accounts with court

The first account shall be filed on or before the first anniversary date of the order appointing the guardian or conservator; and subsequent accounts shall be filed at least biennially thereafter. The first account shall be for a minimum period of nine months from the date of appointment of the general conservator and shall also include any period of temporary appointment of the person as conservator or guardian.

(b) Separate accounts required

Where there are multiple wards or conservatees joined in a single guardianship or conservatorship proceeding, a separate accounting shall be provided for each of them.

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(c) Account ending date

The ending date of an account, except an account ending upon the death of a conservatee, shall not be more than three months before the date it is filed with the Court. Filing an accounting late is not good cause for preventing the Court and court investigators from reviewing the current information regarding the matter.

(Rule 7.425(c) revised effective 1/1/03)

(d) Final account upon termination of guardianship

The final account following termination of a guardianship or conservatorship of the estate must state that all charges for legal advertising, bond premiums, probate referee's services and costs of administration have been paid.

(Rule 7.425(d) revised effective 1/1/13)

(e) Status report in lieu of final account following termination

The final account following the termination of a conservatorship or guardianship of the estate should be filed within six (6) months of the termination date (e.g., the death of the conservatee or age the ward attains majority). If the conservator or guardian is unable to file the final account with the six-month period, the conservator or guardian shall file a status report setting forth the reasons for the delay and how much additional time is needed.

(Rule 7.425(e) new effective 1/1/15)

(Rule 7.425 revised effective 1/1/15)

Rule 7.426. Conservator and Guardian Compensation and Attorney's Fees

(a) Compensation of guardians and conservators

Petitions for compensation of guardians and conservators and their attorneys shall be supported by a declaration, complying with Contra Costa Probate Court Guideline Attachment #2 from each individual requesting approval of fees. For information about Contra Costa Probate Court Fees and Costs Guidelines, go to the Probate Guidelines section at www.cc-courts.org. The court prefers that the petition itself recite only the amounts claimed and the relevant period of time, referring to the accompanying declaration(s), which should contain the explanation and justification. See also California Rules of Court, Rules 7.751(b) and 7.756 for declaration content.

(Rule 7.426(a) revised effective 1/1/16)

(b) Compensation of attorneys

Petitions for compensation of attorneys not representing fiduciaries may incorporate the explanation and justification into the petition, without a separate declaration.

(Rule 7.426 (b) revised effective 1/1/13)

(Rule 7.426 revised effective 1/1/16)

Rule 7.427. Independent Exercise of Powers

(a) Declaration required for independent powers request

The Court will ordinarily not grant the powers enumerated in Probate Code Section 2591. Because of the broad scope of this section, the Court requires a detailed declaration as to the necessity for the specific independent power desired.

(b) Nature of independent power

When independent powers are requested and granted, it is not sufficient to incorporate by reference the statute or its subsections. The power must be described in sufficient detail so that any person reading the document can determine the nature of the power requested or granted. Quoting the full text of the subsection enumerating the power under Probate Code Section 2591 is the preferred method of complying with this rule. Even when granting the requested powers, the Court will normally require confirmation of sale of real property and prior court approval of attorney's fees.

(Rule 7.427(b) revised effective 1/1/15)

(Rule 7.427 revised effective 1/1/15)

Rule 7.428. Investments by Guardian or Conservator (Probate Code Section 2570 et seq.)

(a) Real estate investment

Investment in real estate, either by purchase or encumbrance, will not be authorized unless supported by an appraisal by the Probate Referee regularly appointed in the guardianship or conservatorship proceeding.

(b) Life insurance

A purchase of life insurance on the minor ward's life will not be authorized.

(c) Declaration required for request to invest

If a request for special notice has not been filed, a petition for authority to invest may be heard ex parte provided the Court makes an order dispensing with notice. A declaration justifying dispensing with notice shall accompany or be incorporated in the petition.

(Rule 7.428 revised effective 1/1/15)

Rule 7.429. Account Statements with Accountings

Any account statement submitted pursuant to Probate Code Section 2620 which is required by that section to be confidential shall be filed as a separate document complying with California Rules of Court, Rules 2.100 et seq., including a verified statement by the petitioner identifying the document. The caption of the document shall include the word "CONFIDENTIAL" in all capital letters.

(Rule 7.429 revised effective 1/1/15)

Chapter 10. Trusts

Rule 7.450. Trustee Compensation, and Attorney's Fees

Petitions for approval of prospective or previously paid compensation to trustees and/or their attorneys should discuss the factors in California Rules of Court, Rule 7.776 to the extent warranted by the circumstances of the case. See Probate Code §§ 16243 and 16247. For information about Contra Costa Probate Court Fees and Costs Guidelines, go to the Probate Guidelines section at www.cc-courts.org.

(Rule 7.450 revised effective 1/1/16)

Rule 7.451. Establishment of a Trust

(a) Trust provisions for incapacitated person

Absent special circumstances, whenever a trust is to be established by court order for the benefit of an incapacitated person, the trust shall contain the following provisions:

Protector of Trustor: Regardless of any other provision of the trust, in administering the trust, the trustee shall be subject to the same terms and conditions as a conservator of the estate during the lifetime of the trustor, including but not limited to:

- (1) Posting bond for assets and income of the trust.
- (2) Accounting to the Court (to be filed in this proceeding).
- (3) Abiding with investment limitations.
- (4) Adhering to limitations on gifts, pledge or sales of assets (including returns for confirmation and overbids).
- (5) Providing for the trustor's needs without regard for the interest of the remainder beneficiaries.
- (6) Obtaining prior court approval for payment of fees to attorneys, conservators and trustees.
- (7) Obtaining prior court approval of any change of trustee during the trustor's lifetime.
- (8) Obtaining prior court approval for sale of beneficiary's personal residence, regardless of whether or not the residence was previously property of a conservatorship estate

(Rule 7.451(a)(8) revised effective 1/1/15)

(b) Bond requirement in order

The formal order shall provide that the trustee may not receive assets or otherwise act until the filing of a bond in the amount set by court.

(Rule 7.451 revised effective 1/1/16)

Rule 7.452. Establishment of Special Needs Trust from Inheritance by Court Order

To the extent that a person with special needs has not received a distribution of an inheritance from a probate or trust estate, the court may, upon suitable petition, issue an order establishing a special needs trust under Probate Code 3600 et seq. or 4541 complying with 42 United States Code §1396p(d)(4)(A). Unless the order explicitly excludes application of Local Rule 902. Local Rule 902 shall apply to administration of the special needs trust.

NOTE: For discussion of establishment of special needs trusts by court order, see Sections 11.32 through 11.51 and 15.24 of the CEB treatise on Special Needs Trusts.

(Rule 7.452 revised effective 1/1/15)

Chapter 11. Protective Proceedings

Rule 7.501. Proceeding for Spousal Property Transaction

As to petitions pursuant to Probate Code Section 3100 et seq.:

- (1) The petition must be supported by a declaration of a licensed physician or licensed psychologist within the scope of his or her licensure as to the capacity of the non-petitioning spouse (Probate Code Section 810 et seq.).
- (2) Counsel will be appointed for the non-petitioning spouse if the petition proposes a substantial transfer to the petitioner.
- (3) When the petitioner is predicated upon the non-petitioning spouse's qualification for Medi-Cal benefits, notice shall also be given to the Director of the California Department of Health Services.
- (4) In petitions to transfer assets, related to Medi-Cal eligibility, the petitioner shall provide the Court with schedules showing such calculations as would be required in an administrative hearing to the extent that the Community Spouse Resource Allowance or the Minimum Monthly Maintenance Needs Allowance would be in issue. The Court will not make orders modifying the Community Spouse Resource Allowance nor the Minimum Maintenance Monthly Needs Allowance but may make findings as to the proper amounts as needed to support the order.
- (5) The Court will not issue general support orders in petitions under Probate Code Section 3100 et seq.

(Rule 7.501 revised effective 1/1/15)

Rule 7.502. Establishment of a Trust [Repealed 1/1/13]

Chapter 12. Guidelines for Probate Rules - Attachments

**Guideline, Attachment 1 – The ABCs of Dividing the Commission Pie in Probate Sales
(includes chart)**

LLOYD W. HOMER, ESQ.

CAMPBELL

(a) Division of broker commission

The following chart demonstrates the division of the broker commission when estate property is sold subject to Court confirmation pursuant to Probate Code Sections 10160-10167. If the property subject to sale is being sold pursuant to the personal representative's authority under independent administration, the chart is inapplicable and Probate Code Sections 10400-10600 must be consulted. For sales subject to Court confirmation, the personal representative also needs to consult Probate Code Sections 10250-10264 (personal property) and Probate Code Sections 10300-10316 (real property) regarding the manner of conducting the sale.

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WHO ARE A, B AND C?

A = The estate (Seller). If the estate has a broker, that will be broker A.

B = The bidder (Buyer). If the bidder has a broker, that will be broker B.

C = The successful overbidder (New Buyer). If C has a broker, that will be broker

FACTS:

Original bid \$100,000.

Where there is an overbid, the increased bid is \$110,000

Commission allowed by the Court is 6%

	A SELLER	B BIDDER	C OVERBIDDER	PROBATE CODE SECTION	COMMISSION TO BROKER
1	No Broker	No Broker	No Over bid	None	None
2	No Broker	No Broker	No Over bid	None	None
3	No Broker	No Broker	Broker	10163(b)	"C" receives \$5,000 (Not \$6,600 because of limitation of Section 10162)
4	No Broker	Broker	No Over bid	10162.3	"C" receives \$6,000
5	No Broker	Broker	No Broker	10164	"C" receives \$6,000
6	No Broker	Broker	Broker	10165(c)(2) 10165(b)	"B" receives \$3,000 "C" receives \$3,600 (\$3,000 on original bid and \$600 on the increased bid)
7	Broker	No Broker	No Over bid	10162.5	"A" receives \$6,000
8	No Broker	Broker	No Over bid	10162.7	"A" receives \$3,000 "B" receives \$3,000 (or as "A" and "B" have agreed)
9	Broker	No Broker	No Broker	10162.5	"A" receives \$6,000
10	Broker	No Broker	Broker	10165(c)(1) 10165(b)	"A" receives \$3,000 "C" receives \$3,600 (\$3,000 on original bid and \$600 on the increased bid)
11	Broker	Broker	No Broker	10164(c)	"A" receives \$3,000 "B" receives \$3,000 (or as "A" and "B" have agreed)
12	Broker	Broker	Broker	10165(c)(3)	"A" receives \$1,500 "B" receives \$1,500 (or as "A" and "B" have agreed) "C" receives \$3,600 (\$3000 on original bid and \$600 on the increased bid)

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The following documents are provided as referenced by the local rules, but are not intended to be adopted as local rules. These documents are included for informational purposes only.

(Guideline Attachment 1, revised effective 7/1/06)

Guideline, Attachment 2 – Probate Department Fees and Costs Guidelines

The Probate Department has established these general guidelines for allowable fees and costs in probate, trust, guardianship and conservatorship proceedings.

FEES

(a) Attorney's rates:

The standard maximum attorney's fees for guardianships, conservatorships and extraordinary probate services is \$325.00 per hour. The Court will consider higher hourly rates upon a showing of good cause. The standard maximum attorney's legal assistant rate is \$125.00 per hour.

(Guideline, Attachment 2, Fees (a) revised effective 1/1/11)

(b) Fiduciary rates:

The standard maximum hourly rate allowed for professional fiduciaries is \$125.00 per hour.

(Guideline, Attachment 2, Fees (b) revised effective 1/1/11)

(c) Non-professional fiduciary rates:

The standard maximum hourly rate for other fiduciaries is \$40.00 per hour.

(Guideline, Attachment 2, Fees (c) revised effective 1/1/11)

(d) Higher rates:

The determination of requests for higher rates will be based on all relevant factors presented, including special expertise applicable to the services provided, circumstances of the service, and relationship to the decedent, or other parties.

(Guideline, Attachment 2, Fees (d) revised effective 7/1/02)

(e) Travel time:

The Court will not generally allow attorney fees for more than one hour travel time, total, per appearance.

(Guideline, Attachment 2, Fees (e) revised effective 7/1/02)

(f) Format and content:

- (1) Fee requests, except those calculated using a percentage of the assets, shall include a narrative description of the types of services performed, including the

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number of hours and the rates requested for each type, distinguishing between hours and rates for each person performing each type of service. "Types of services" means a project-based approach, so that all activities (e.g., correspondence and phone calls, drafting pleadings, court appearances, research, etc.) related to a particular objective (e.g., initial petition, general administration, each contested matter, sale of property, substituted judgment, preparation of each accounting, etc.) should be summarized and addressed together as one "type." Do not group and discuss services based on activity (e.g., all court appearances as one "type," all correspondence as another "type," etc.).

(Guideline, Attachment 2, Fees (f)(1) revised effective 1/1/13)

- (2) Copies of timesheets or billing statements need not be attached or provided unless requested by the Court or its staff (probate examiners or court investigators). However, in anticipation that time records or statements may be requested, separate entries should be made for each different activity and project, so that the amount of time expended for one activity is not obscured by "clumping" it with other activities in a single time entry.
- (3) Fee requests, except those calculated using a percentage of the assets (see paragraph G below) and those below the maximum amount without a declaration (see subparagraph F.4 below), shall state the number of hours expended by the attorney in preparing the explanation and justification of the attorney's compensation, and also the number of hours expended by the attorney in preparing the explanation and justification of the fiduciary's compensation, if applicable. The Court will ordinarily approve up to two and a half hours for preparation of the attorney fee explanation without requiring separate justification for the amount of time spent. The Court is likely to require separate justification for attorney time spent in excess of two and a half hours for the attorney fee portion. The Court may require separate justification for any amount of attorney time spent on the fiduciary fee portion. Such justifications are not required with the fee petition or declaration, but parties and attorneys might choose to provide them at the outset to avoid a possible continuance.
- (4) Notwithstanding the foregoing, the Court will ordinarily approve an annual fiduciary fee of up to \$1,500.00 for non-professional fiduciaries, and up to \$3,000.00 for professional fiduciaries, without requiring a declaration.
- (5) See Fee Declaration Template below for example of how narrative description and explanation might be presented.

(Guideline, Attachment 2, Fees (f) revised effective 1/1/16)

(g) Percentage of assets calculations:

The Court will approve, without a supporting declaration, annual fees of one percent (1%) of the present fair market value of all estate property, real or personal, at the beginning of the accounting period, but not including income received during the accounting period nor net gains and/or losses. Good faith estimates of fair market value of real property by the

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fiduciary are sufficient for this purpose. The Court will ordinarily approve a minimum annual fiduciary fee of up to \$1,500.00 for non-professional fiduciaries, and up to \$3,000.00 for professional fiduciaries.

(Guideline, Attachment 2, Fees (g) revised effective 1/1/16)

COSTS AND EXPENSES

(h) Reasonable costs

Reasonable court costs will be allowed.

(i) Disallowed costs

The Court will not allow reimbursement, or approve expenditures, for expenses incurred for ordinary business operations associated with services compensated by:

- (1) statutory compensation or;
- (2) professional fees (e.g., attorneys, professional fiduciaries and corporate fiduciaries). Unusual amounts of such expenses which are disproportionately large in consideration of the fee amount may be approved.

These expenses include, without limitation, copying, postage, telephone calls, cellular telephone charges, facsimile transmissions, email or internet access. Upon a proper and detailed showing, reimbursement for travel and other expenses may be allowed. Attorneys and fiduciaries may claim copy expenses for any timesheets or billing invoices attached to fee declarations or petitions or produced upon request, and for reproduction of documents required under Probate Code § 2620(c), at the rate of 10 cents per page (if reproduced in-house) or actual out-of-pocket expense (if reproduced by outside copy service, for black and white on ordinary copy paper).

(Guideline, Attachment 2, Costs (i)(2) revised effective 1/1/13)

Guideline, Attachment 3 – Fee Declaration Template

Components of fee declaration

[caption]

1. I am [identifying information]. I make this declaration in support of [reference to petition or other purpose]. Statements herein are true of my personal knowledge, except for those stated upon information and belief, which I also believe to be true for the reasons stated.
2. This declaration describes services I have provided from [beginning date] through [ending date]. I am requesting compensation at the rate of \$[rate] per hour for my services and [specify other rates for each person billing time included in this fee

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request]. Total compensation requested is \$[total amount], based on [X] hours @ \$[first rate] (\$[subtotal]) plus [Y] hours @ \$[second rate] (\$[subtotal]) [continue if needed for more than two persons].

3. In addition, I am requesting reimbursement for the following costs: [specify]
4. Services for which I am now seeking compensation are summarized as follows [categories are examples only]:

[The following categories are more typical of attorney services than fiduciary services]

- A. Initial Petition: [Describe services rendered by each person involved.]
- B. Temporary Powers Petition: [Describe services rendered by each person involved.]
- C. General Administration: [Describe services rendered by each person involved.] [Typical activities for this category would be marshalling assets, preparation of inventory and appraisal, investment decisions, bill-paying and account reconciliation. This is by no means an exhaustive list.]
- D. Sale of Residence: [Describe services rendered by each person involved.]
- E. Contested Claim: [Describe services rendered by each person involved.]
- F. Substituted Judgment Petition: [Describe services rendered by each person involved.]
- G. Accounting and Fee Petition: [Describe services rendered by each person involved. In addition, specify amount of time spent preparing this fee declaration and (if declarant is the attorney) amount of time spent preparing client-fiduciary's fee declaration.]

[The following categories are more typical of fiduciary services than attorney services]

- H. Initial Case Evaluation and Document Review: [Describe services rendered by each person involved. This would include conferring with fiduciary's attorney, proposed beneficiary of services and/or his/her attorney, and preparation of pleadings before appointment.]
- I. General Care Management: [Describe services rendered by each person involved.] [Typical activities for this category would be evaluating care needs, hiring and supervising care providers, client status monitoring and visitation, accompaniment on medical professional office visits, and communications with family members and other interested persons regarding general health and care status, including fiduciary's attorney. This is by no means an exhaustive list.]
- J. General Financial Administration: [Describe services rendered by each person involved.] [Typical activities for this category would be marshalling assets, preparation of inventory and appraisal, investment decisions, bill-paying and

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account reconciliation, and communications with fiduciary’s attorney regarding these matters. This is by no means an exhaustive list.]

- K. Sale or Encumbrance of Property: [Describe services rendered by each person involved.]
- L. Eviction or Other Special Proceeding: [Describe services rendered by each person involved.]
- M. Accounting and Fee Petition: [Describe services rendered by each person involved.]

5. Time spent on each type of service is summarized as follows:

[Match first column categories to descriptions used in paragraph 4. For example, if using the attorney-type categories (which are only examples, not mandatory), row descriptions would be as follows:]

	Declarant (\$X/hr)	Person #2 (\$Y/hr)	Person #3 (\$Z/hr)
Initial Petition			
Temporary Powers Petition			
General Administration			
Sale of Residence			
Contested Claim			
Substituted Judgment Pet.			
Accounting and Fee Pet.			
Total hours			
Charges			

- 6. [If paralegal used, give facts to show compliance Probate Code § 2642(a) and California Rules of Court, Rule 7.754.]
- 7. [To extent appropriate, add further explanation or justification, including any relevant and significant factors in California Rules of Court 7.702, 7.756, or 7.776.]

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

Dated: [Date]

[Declarant Name and Office]

(Guideline, Attachment 3, revised effective 1/1/16)

Guideline, Attachment 4 – Probate Department Operations

(a) Calendars

The probate calendars are as follows:

Tuesdays at 1:30 p.m. in Dept 15 – all probate cases involving the Public Guardian.

Tuesdays at 1:40 p.m. in Dept. 15 – all probate cases (e.g. LPS Conservatorships) governed by the Welfare & Institutions Code.

All other probate matters are currently scheduled as follows:

Mondays, Wednesdays and Fridays at 9:00 a.m. for all other conservatorships.

Mondays, Wednesdays and Fridays at 9:30 a.m. for guardianships.

Tuesdays and Thursdays at 9:00 a.m. – all other probate matters.

(Guideline, Attachment 4(a), revised effective 1/1/15)

(b) Ex parte applications

All requests for ex parte orders shall be submitted to the Probate Examiners for review between 9:30 a.m. and 11:00 a.m. Monday through Friday, 725 Court Street, Room 210, Martinez, CA.

(Guideline, Attachment 4(b), revised effective 1/1/15)

(c) Tentative rulings

Tentative rulings are generally available at least five (5) court days before the hearing on the Tentative Rulings Website at www.cc-courts.org/tr. If the website is down, or for some reason cannot be accessed, the number to call between 1:30 p.m. and 4:00 p.m. any time after the ruling is posted, is (925) 957-5781.

Tentative rulings are not posted for matters on the Tuesday, 1:40 p.m. calendars due to confidentiality requirements. Parties to such matters and their attorneys may receive the tentative rulings for their specific matters by calling the probate staff between 1:30 p.m. and 4:00 p.m. at (925) 957-5781.

(Guideline, Attachment 4(c), revised effective 1/1/16)

(Guideline, Attachment 4 revised effective 1/1/16)

Title Eight. Appellate Rules

Chapter 1. General Provision

Rule 8.1. Appellate Department

(a) Sessions

Regular sessions of the Appellate Department of the Superior Court, County of Contra Costa shall be held on the first Friday of each calendar month at 1:30 p.m. Special sessions shall be held at the call of the Presiding Judge.

(Rule 8.1(a) revised effective 1/1/00)

(b) Court record

Pursuant to California Rules of Court Sections 8.830(a)(1)(B) and 8.833(a), the Court elects to use the original trial court file as the record of the written documents from the trial court proceedings instead of a clerk's transcript.

(Rule 8.1(b) revised effective 1/1/11)

(c) Record of oral proceedings

(1) In appeals of infraction cases, the Appellate Division permits the Appellant, pursuant to California Rules of Court, Rule 8.915, to submit as the record of oral proceedings the official electronic recording of the proceedings.

(2) The Appellate Division prefers a transcript or recording of oral proceedings over a Statement on Appeal. If Appellant elects to use a Statement on Appeal, the Appellate Division requires strict compliance with Rule of Court 8.916. If appellant does not comply with Local Rule 8.916, the Appellate Division may dismiss the appeal for lack of an adequate record. If a Statement on Appeal does not adequately apprise the Appellate Division of the content of the proceedings below, the Appellate Division may, on its own motion and with notice to the parties, augment the record pursuant to Rules of Court 8.923 and 8.841 with an official transcript or electronic recording of proceedings.

(Rule 8.1(c) revised effective 1/1/14)

(d) Oral argument

Unless otherwise ordered, counsel for each party, upon all direct appeal matters, shall be allowed fifteen (15) minutes for oral argument. The appellant or the moving party shall have the right to open and close.

(Rule 8.1(d) revised effective 7/1/08)

(e) Briefs

Briefs shall be prepared, served, and filed as provided by California Rules of Court, Rule 8.88. Briefs shall comply with the provisions of California Rules of Court 8.883 and 8.884.

(Rule 8.1(e) revised effective 1/1/10)

Local Rules of the Superior Court of California, County of Contra Costa

(f) Calendaring

A hearing will be set as a matter of right in direct appeals only. All other appellate matters, for example writs, will be set at the discretion of the Appellate Department.

Hearings will be set pursuant to the California Rules of Court. The Appellate Department generally hears all appeals at 1:30 p.m. on the first Friday of each month.

(Rule 8.1(f) revised effective 7/1/08)

(g) Motions

All motions shall be heard at regular sessions unless a different time of the hearing of a particular motion is designated by the Presiding Judge of the Appellate Department.

(Rule 8.1(g) revised effective 1/1/00)

(Rule 8.1 revised effective 1/1/15)

Local Rules of the Superior Court of California, County of Contra Costa

LIST OF FORMS MENTIONED IN LOCAL COURT RULES

(Forms list revised effective 1/1/16)

LOCAL COURT FORMS:

ADR-201	Panel Member Selection <i>(Mandatory)</i>
ADR-304	Mediation Statement <i>(Optional)</i>
ADR-305	Mediator Report <i>(Mandatory)</i>
ADR-404	Arbitration Statement <i>(Optional)</i>
ADR-504	Neutral Case Evaluator Statement <i>(Optional)</i>
ADR-610	Request for Assignment of Discovery Facilitator <i>(Mandatory)</i>
ADR-612	Notice of Assignment of Discovery Facilitator <i>(Mandatory)</i>
ADR-614	Finding of Non-Compliance <i>(Mandatory)</i>
ADR-615	Notice of Termination of Appointment of Discovery Facilitator <i>(Mandatory)</i>
ADR-616	Recommendations of Discovery Facilitator and Termination of Appointment of Discovery Facilitator <i>(Mandatory)</i>
ADR-617	Rejection of Assigned Discovery Facilitator <i>(Mandatory)</i>
ADR-618	Notice to Deponent and Deposition Officer of Assignment to Discovery Facilitator Program and Stay of Records Production Date <i>(Mandatory)</i>
CV-655b	ADR Case Management Stipulation and Order (Unlimited Civil) <i>(Mandatory)</i>
CV-655d	Notice to Defendants <i>(Optional)</i>
CV-659d	ADR Case Management Stipulation (Limited Civil) <i>(Mandatory)</i>
FamLaw-107	Declaration Re Requests for Emergency Orders <i>(Mandatory)</i>
FamLaw-110	At Issue Memorandum <i>(Mandatory)</i>
FamLaw-12.7	Case Management Conference Questionnaire <i>(Mandatory)</i>
GC-20	Proposed Guardian(s) Information <i>(Mandatory)</i>
GC-21	Termination of Guardianship Information <i>(Mandatory)</i>
TR-121	Defendant's Request and Declaration to Vacate Civil Assessment <i>(Mandatory)</i>

JUDICIAL COUNCIL FORMS:

CM-110	Case Management Statement
DE-111	Petition for Probate
DE-157	Notice of Administration to Creditors

Local Rules of the Superior Court of California, County of Contra Costa

DE-275	Ex Parte Petition for Approval of Sale of Personal Property and Order (<i>Mandatory</i>)
DE-295	Ex Parte Petition for Final Discharge and Order
DE-147S	Confidential Statement of Birth Date and Driver's License Number
FL-141	Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration
FL-150	Income and Expense Declaration
FL-182	Judgment Checklist-Dissolution/Legal Separation
FL-300	Request for Order
FL-326	Declaration of Private Child Custody Evaluator Regarding Qualifications
FL-327	Order Appointing Child Custody Evaluator
GC-112	Ex Parte Application for Good Cause Exception to Notice of Hearing on Petition for Appointment of Temporary Conservator
GC-250	Letters of Guardianship (Probate-Guardianships and Conservatorships)
JV-200/JV-205	Custody Order-Juvenile-Final Judgment-Visitation Order-Juvenile
JV-290	Caregiver Information Form
JV-290-INFO	Instructions to Complete the Caregiver Information Form
JV-570	Request for Disclosure of Juvenile Case File
JV-575	Petition to Obtain Report of Law Enforcement Agency
MC-051	Notice of Motion and Motion to Be Relieved As Counsel-Civil
MC-052	Declaration In Support of Attorney's Motion to Be Relieved As Counsel-Civil
MC-053	Order Granting Attorney's Motion to Be Relieved As Counsel-Civil
MC-356	Receipt and Acknowledgment of Order for The Deposit of Money Into Blocked Account
MC-500	Media Request to Photograph, Record, or Broadcast
MC-510	Order on Media Request to Permit Coverage
NC-100	Petition for Change of Name
NC-110	Attachment to Petition for Change of Name
NC-120	Order to Show Cause for Change of Name (Change of Name)

For local court forms, visit: www.cc-courts.org/forms

For Judicial Council forms, visit: www.courts.ca.gov/forms

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