

SUPERIOR COURT OF CALIFORNIA

COUNTY OF CONTRA COSTA

LOCAL RULES OF COURT



EFFECTIVE JANUARY 1, 2014

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Rule 1. Adoption and Amendment of Rules

(a) These rules:

- (1) These rules shall be known and cited as the Local Rules for the Superior Court of Contra Costa County.
- (2) These rules first became effective as of January 1, 2000, and have been revised on a regular basis since that time. All rules adopted prior to January 1, 2000, were repealed and, in most cases, replaced as of that date. Nothing in that action, nor in any subsequent amendment, shall be deemed to make invalid or ineffective any action taken, before such enactment or amendment(s), in compliance with a rule or rules in effect at the time of such action.
(Rule 1(a)(2) revised effective 1/1/10)
- (3) These rules may be amended at any time by a majority of the Judges of the Superior Court of Contra Costa County.

(b) The Court for good cause:

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

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

(Rule 1 revised effective 1/1/10)

Rule 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 herein provided therefore. There may be other departments as designated by the Presiding Judge.

(Rule 2 revised effective 1/1/00)

Rule 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 3 revised effective 1/1/00)

Rule 4. Executive Committee

(a) The Executive Committee

The Executive Committee shall consist of: the Presiding Judge, the Assistant Presiding Judge, the Supervising Judges 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 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 Trial Court Budget Commission.
- (3) The Executive Committee shall review and approve the organization structure for the administration of the Court system 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 4(b) revised effective 1/1/10)

(Rule 4 revised effective 1/1/14)

Rule 5. Administration of Civil Litigation

(a) 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 Rule of Court 3.740. Special provisions are made for expediting Unlawful Detainer cases (see Rule 5(L).)

(Rule 5(a) revised effective 1/1/13)

(b) Definitions

As used in Rule 5:

- (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 5(b) revised effective 1/1/00)

(c) Transferred Cases

Unless excluded under subdivision (H)(1)(c), all cases transferred from another jurisdiction are subject to this Rule.

(Rule 5(c) revised effective 1/1/00)

(d) Policy

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 5(d) revised effective 1/1/13)

(1) It is the goal of the Court to conclude 75% of all unlimited civil litigation cases and 90% of limited civil litigation cases filed within 12 months of the filing of the complaint, 85% of all unlimited civil litigation cases and 98% of all limited civil litigation 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 5(d)(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 5(d)(2) revised effective 1/1/13)

(3) 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 5(d)(3) revised effective 1/1/01)

(4) All unlimited 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 5(d)(4) revised effective 1/1/13)

(5) The following policy applies to uninsured motorist cases:

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

- (B) The declaration shall be captioned "Request for Temporary Exemption - Uninsured Motorist Case."
 - (C) 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 prior to the review hearing date and provide a status report and, if necessary, a request with supporting justification for additional time to conclude the case.
- (6) It is the policy of the Court that each case be completely disposed of and to accomplish that, 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.
 - (7) 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 Rule.
 - (8) 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: (See Appendix C)

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

CV-659d – Stipulation to Attend ADR and Delay First Case Management Conference 90 Days (Limited Jurisdiction Civil Cases)
 - (9) It is the policy of the Court that proper notice be given to the Court of the disposition of cases. (Refer to Rule 8 for settlements.)

(Rule 5(d) revised effective 1/1/13)

(e) Venue, Filing and Form of Papers

- (1) Unlimited and limited jurisdiction civil cases:
 - (A) All new Unlimited and Limited jurisdiction civil cases (excluding limited jurisdiction Unlawful Detainers and Small Claims cases), and any

subsequent papers shall be filed in Martinez. See the California Rules of Court for form of papers (see Rule 2.100.)

(Rule 5(e)(1)(A) revised effective 1/1/13)

(B) Limited Jurisdiction Cases filed prior to January 1, 2006:

- i. All limited jurisdiction civil cases filed prior to 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.
- ii. All limited jurisdiction civil cases filed prior to 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 5(e)(1)(B)ii revised effective 1/1/13)

(2) Limited Jurisdiction Unlawful Detainer Cases

- (A) 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.
- (B) 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 5(e)(2)(B) revised effective 1/1/13)

(3) Small Claims Cases

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

- ii. 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
- iii. The locality where a substantial part of the events in question occurred; or
- iv. If there is no appropriate locality under any of the preceding provisions, in any locality.

(B) The geographic territory for filing in the appropriate court location effective January 1, 2013 is as follows

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.

Pittsburg: Antioch, Bay Point, Bethel Island, Brentwood, Byron, Discovery Bay, Knightsen, Oakley, Pittsburg and adjacent unincorporated areas.

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 5(e)(3)(B) revised effective 1/1/13)

(f) 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 5(f) revised effective 1/1/06)

(g) 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.

- (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 5(g) revised effective 7/1/02)

(h) Case Management Conference Procedure

(Formerly referred to as a Status Conference)

(1) Filing of Complaint

(A) Upon filing a complaint, a completed Civil Case Cover Sheet (Judicial Council Form) shall be filed with the complaint by the plaintiff. The plaintiff shall receive the following from the Clerk or Court support staff:

- i. Summons and Complaint and notification of the assigned department for Superior Court cases;
- ii. Notice and date of the First Case Management Conference. (The First Case Management Conference will be set within 140 days of the filing date of the original Complaint);
- iii. Notice to Defendants (Local Court Form CV-655d);
- iv. A blank Case Management Conference Questionnaire (CMCQ) Judicial Council Form CM-110 and in limited jurisdiction cases a blank Issue Conference Statement (ICS);
- v. An Alternative Dispute Resolution Information Sheet; and
- vi. For limited jurisdiction cases: A form Stipulation to Attend ADR and Delay First Case Management Conference 90 Days and for unlimited jurisdiction cases: A form Stipulation and Order to continue First Case Management Conference to attend ADR.

(B) Any cross-complainant naming any new party will also be served with a blank CMC Questionnaire.

(C) 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) days from the Order of Transfer. If no responsive pleading has been filed, the First Case Management Conference will be set within ninety (90) days from the Order of Transfer. In all other particulars, the plaintiff in a transfer case will receive the same information and items as described above.

- (2) Notice. 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 a blank CMCQ and in limited jurisdiction cases a blank ICS, an Alternative Dispute Resolution

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Information Sheet, and a form Stipulation to Attend ADR and Delay First Case Management Conference 90 Days (local court form).

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

Rule 5(h)(3) revised effective 7/1/02)

- (4) Requesting 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 5(h)(4) revised effective 1/1/09)

- (A) Requests must be in writing, but may be informal such as in letter format. They should be lodged with the department assigned the matter rather than filed.
- (B) Such requests must be served upon all parties that have appeared in the action.
- (C) 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 believed to be ascertainable by advancing the conference.
- (D) Any party opposing a request shall lodge and serve an informal statement of opposition, with reasons, within five (5) days of receiving the request.
- (E) 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.

- (5) First Case Management Conference. The First Case Management Conference shall be conducted in accordance with California Rule of Court Rule 3.721. Counsel are required to be thoroughly familiar with and abide by that rule.

(Rule 5(h)(5) revised effective 7/1/02)

- (6) Subsequent Case Management Conferences. Unless otherwise ordered by the Court, a party need not file a 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 5(h)(6) revised effective 9/1/04)

(i) Telephone Appearances

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

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

(Rule 5(i) revised effective 7/1/08)

(j) 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 5(j) revised effective 1/1/00)

(k) Issue Conference

Within fourteen (14) days prior to the trial date unless otherwise ordered, an Issue Conference will be held before the trial judge. At that conference 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.

- (1) Motions in Limine. All motions in limine must be in writing and are to be filed and served at least ten (10) 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) 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 5(k)(1) revised effective 1/1/08)

- (A) 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.
- (B) 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).
- (C) Evidence of, or reference to, settlement negotiations, mediation, and materials related thereto which are privileged under the evidence code or by agreement of the parties shall not be allowed.

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- (D) 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.
- (E) Evidence of, or reference to, other claims or actions against any party to the litigation shall not be allowed without permission from the Court.
- (F) 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 5(k)(1)(F) revised effective 9/1/04)

(2) Issue Conference Statement. (Rev./Eff. 9/1/04) An "Issue Conference Statement" of not more than ten (10) pages must be served upon all parties and filed with the Court at least five (5) court days prior to the Issue Conference. The following shall be included in the Issue Conference Statement and will be considered at the Issue Conference.

- (A) 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;
- (B) A witness list, listing only those witnesses that each party actually expect to have testify, with a brief statement of anticipated testimony, and exhibit list;
- (C) A trial length estimate and a proposed statement of the case to be read to the jury, and proposed voir dire questions; and
- (D) 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].

(3) 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 8(B)(1).

(Rule 5(k)(3) revised effective 9/1/04)

(4) Jury Questionnaires

- (A) 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 prior to the Issue Conference, serve a proposed questionnaire on the other parties;

- (B) 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 prior to the Issue Conference;
- (C) All parties shall meet and confer to attempt resolution of objections and proposals no later than ten (10) court days prior to the Issue Conference;
- (D) The questionnaire shall be submitted with the Issue Conference Statement with any unresolved questions requiring a ruling by the Court clearly identified;
- (E) 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 prior to 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
- (F) Failure to comply with the requirements of Rule 5(K)(4)(d) and (e) may result in an order that the case be tried without the use of a written questionnaire.

(Rule 5(k) revised effective 1/1/08)

(I) 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 and until further notice. Consult the Notice of Availability on the court's website for current status and any changes.
- (2) Any party who desires to have 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 pursuant to Government Code 70044 and CRC 2.956.
- (3) Parties electing to procure the services of an outside reporter must comply with Local Rule 24.
- (4) Pursuant to CRC 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 5(l)(6) revised effective 1/1/13)

(m) 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) 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) 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 5(m) revised effective 1/1/00)

(n) Relief Following Breach Of A Settlement Agreement In Limited Jurisdiction Cases

(1) Unlawful Detainer Cases

- (A) 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:
- i. 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:
 - (1) notice of the filing of the application was given to the defaulting party, specifying how and when that notice was given, or
 - (2) notice should be excused pursuant to California Rule of Court 3.1204.
- (B) Such an application may be heard no sooner than forty-eight (48) hours after the later of:
- i. filing the application, or
 - ii. notice to the allegedly defaulting party unless notice is excused pursuant to California Rule of Court 3.1204. If notice is given by

mail, the time for hearing the ex parte application will be extended by three (3) days.

- (C) 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.
- (D) 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 1(b).
- (E) 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 1(b).
- (F) If objection is made, the Court may consider the ex parte application on the papers submitted or may set the matter for expedited hearing.
- (G) If a settlement agreement does not contain a provision such as is described in paragraph 1, 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.

(2) In cases other than Unlawful Detainer

- (A) 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.
- (B) 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.
- (C) If the settlement agreement does not provide for shortened time, as described in paragraph 2, then a party may file an ex parte application to have the motion heard on shortened time. Any such application must comply with the California Rule of Court 3.1200 and, where applicable, Rule 7(G) of the Local Rules.

- (D) 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 5(n)(2)(D) revised effective 1/1/05)

(o) Complex Litigation Cases

- (1) There shall be designated a Complex Civil Litigation Department to which cases encompassed by California Rule of Court 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 as provided by California Rule of Court 3.402.

(Rule 5(o)(2) revised effective 1/1/05)

(p) 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 5(p) revised effective 1/1/08)

(q) 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 5(q) revised effective 1/1/10)

(Rule 5 revised effective 1/1/13)

Rule 6. Probate Department

(a) 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 Department. The Probate Department will

manage contested matters that require an evidentiary hearing until resolved or ready for trial, and will then set the trial date and department.

(Rule 6(a) revised effective 1/1/00)

(b) 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 Department at time and date as established.

(Rule 6(b) revised effective 1/1/00)

(c) 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. Said 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 therefore, 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 Department. 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 6(c) revised effective 1/1/00)

(d) Probate Rules

All petitions, motions, and orders to show cause regarding probate matters shall be set in the Probate Department, except motions regarding discovery, summary judgment and summary adjudication of issues. Except as expressly provided otherwise, these rules, including Rule 7, shall apply also to these matters set in the Probate Department. The policies and rules of the Probate Department are attached hereto as Appendix A.

(Rule 6(d) revised effective 1/1/00)

(e) Reporting of Court Reporting in Probate

- (1) Official court reporters employed by the court are unavailable in the Probate Department effective January 1, 2013 and until further notice. Consult the Notice of Availability on the court's website for current status and any changes.
- (2) Any party who desires to have 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 pursuant to CRC 2.956.

- (3) Parties electing to procure the services of an outside reporter must comply with Local Rule 24.
- (4) Pursuant to CRC 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).
- (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 6(e) new effective 1/1/13)

(Rule 6 revised effective 1/1/13)

Rule 7. Civil Law and Motion

(a) Law and Motion Calendar

There shall be a Civil Litigation Division (which includes a Discovery Commissioner when available funding permits it) 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 7(a)(2) revised effective 1/1/13)

- (3) As provided in Rule 6, 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 7(a)(3)(B) revised effective 1/1/13)

(b) Hearing Dates

- (1) All 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 7(b)(1) revised effective 1/1/12)

- (2) No hearing will be set by the Clerk's Office for a discovery motion unless a certificate of compliance with the Court's Discovery Facilitator Program is included. This includes motions pursuant to CCP Section 1987.1. For the complete program requirements see Appendix E to these rules.

(Rule 7(b)(2) revised effective 1/1/14)

(c) 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.

- (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 7(c) revised effective 1/1/01)

(d) 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 <http://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) 957-5794.

(Rule 7(d)(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 call the department rendering the decision to request argument and to specify what issues are to be argued. Calling counsel must advise all other affected counsel and unrepresented 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 will preclude counsel from arguing the matter.

(Rule 7(d)(2) revised effective 7/1/06)

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

(Rule 7(d)(3) revised effective 1/1/01)

(e) 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 so advised.

(Rule 7(e) revised effective 7/1/08)

(f) 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 24.

(Rule 7(f) revised effective 1/1/13)

(g) 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) 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) days after notice to amend, and the initial moving party shall have ten (10) 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) 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 foregoing times in the absence of an approval by the Court. Such a request must be made prior to the final day to respond or answer.

(Rule 7(g) revised effective 1/1/01)

(h) Civil Ex Parte Orders (Subject to preemption by the California Rules of Court)

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 Rule of Court 3.1203 (except temporary restraining orders under Code of Civil Procedure Section 527.6).

(Rule 7(h)(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 7(h)(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 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 Rule of Court 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 prior to 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 7(h)(1)(B) revised effective 1/1/13)

- (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 7(h)(1)(C) revised effective 1/1/06)

- (2) Sufficient notice should be given to all parties in the time and manner provided by California Rule of Court 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 prior to the hearing.

(Rule 7(h)(3) revised effective 1/1/01)

- (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 7(h)(4) revised effective 7/1/08)

(i) 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 7(i) revised effective 1/1/01)

(j) 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 prior to the scheduled hearing.

(Rule 7(j) revised effective 1/1/01)

(k) 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 7(k) revised effective 1/1/04)

(l) Name Change Applications

- (1) Name change applications shall be upon Judicial Council Forms NC-100 and NC-110.
- (2) The petition shall be presented personally by the applicant at the ex parte calendar held in the designated civil ex parte department and shall be accompanied by the following:

(Rule 7(l)(2) revised effective 1/1/13)

- (A) An order to show cause to be issued by the Court, Judicial Council Form NC-120;
- (B) Photographic proof of identification (California Drivers 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 7(l) revised effective 1/1/13)

(Rule 7 revised effective 1/1/14)

Rule 8. Settlements and Settlement Conferences (not applicable to family law matters and probate matters)

(a) 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) 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 prior to 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) days of the written notice of settlement.

If a request for dismissal, stipulated judgment, or conditional settlement is not filed within forty-five (45) 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 Rule of Court 3.1385.

(Rule 8(a)(2) revised effective 1/1/01)

(b) 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 such conference all parties shall:

- (1) Have endorsed by the Clerk of the Court and served on all parties, five (5) court days prior to 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 prior to 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 8(b)(4) revised effective 1/1/00)

(c) 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 8(c) revised effective 1/1/08)

(d) Special Bench Bar Settlement Conferences (BBSC)

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

(Rule 8(d) revised effective 1/1/08)

(Rule 8 revised effective 1/1/08)

Rule 9. Criminal Department

(a) Criminal Calendar

- (1) All pre-preliminary conferences, post-preliminary hearings and post-indictment felony criminal matters except trials shall be heard by the judge presiding in the Criminal Pretrial Department daily at 8:30 a.m., and at such other times as the Judge may direct. Contested trials of criminal matters shall be set by the judge presiding in the Criminal Pretrial Department and shall be placed on the Master Calendar for assignment for trial at 8:30 a.m. of the day it is set for trial. Hearings on all other matters arising in criminal cases shall be heard in the Criminal Pretrial Departments except as otherwise ordered by the Presiding Judge.
- (2) Effective January 1, 2013 hearings for misdemeanor cases formerly filed in the Concord/Mt Diablo or Walnut Creek branch courts shall be heard in Martinez in a Criminal Calendar or other Department as designated by the Presiding Judge.

Hearings for misdemeanor cases filed in the Richmond and Pittsburg branch courts shall continue to be heard as designated by the Supervising Judges in each location.

(Rule 9(a)(2) revised effective 1/1/13)

(b) Sentencing and Probation Hearing

Sentencing hearings will be heard in the trial department by the trial judge if there was a trial. Change of plea sentencing hearings will be heard by the judge taking the change of plea.

(Rule 9(b) revised effective 1/1/00)

(c) Violations of Probation

(1) The Probation Officer, in all cases of persons on probation, is required to promptly notify the appropriate Criminal Pretrial Department of every violation of law (other than minor traffic offenses) which he/she reasonably believes the probationer has committed.

(2) Probation violation hearings in felony cases shall be held in the Criminal Pretrial Department. Probation violation hearings of misdemeanor cases in Richmond and Pittsburg branch courts should be held before the Criminal Pretrial Judge assigned to the jurisdiction where the underlying case arose. Probation violation hearings of misdemeanor cases formerly heard in the Walnut Creek or Concord/Mt. Diablo branch courts shall be held in Martinez in a Criminal Calendar or other Department as designated by the Presiding Judge.

(Rule 9(c)(2) revised effective 1/1/13)

(d) Health and Safety Code Section 11470 Forfeiture Proceedings

"All pretrial proceedings in forfeiture cases filed pursuant to Health and Safety Code Section 11470 et seq shall be heard by the Criminal Pretrial Department or by a Department designated by the Presiding Judge. The trial of a forfeiture proceeding shall be set without the necessity of any interested party having to file an At Issue Memorandum. The trials shall be set in accordance with Health and Safety Code Section 11488.4. "All forfeiture hearings shall be exempt from Arbitration and Bench Bar Settlement procedures."

(Rule 9(d) revised effective 1/1/12)

(e) Certification and Correction of Record for Death Penalty Cases

The Superior Court adopts and incorporates Penal Code Section 190.8 and California Rules of Court, Rules 8.613 through 8.625.

(Rule 9(e) revised effective 7/1/05)

(f) Pre-trial Motions

- (1) Purpose and Effect of Rule:
 - (A) The purpose of this rule is to ensure the prompt and orderly disposition of pre-trial motions.
- (2) Motions that must 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 prior to entry of plea;
 - (B) Motion to dismiss complaint, indictment or information (e.g. Penal Code Section 995);
 - (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) Farreta 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.

(3) Time and Place for Notice and Hearing of Motions Under Part 2

- (A) Unless otherwise ordered, all motions and proofs of service shall be filed and served in accordance with the time limitations set forth in California Rule of Court 4.111 and Penal Code Section 1538.5 and shall be set for hearing in the Criminal Pretrial Department of the appropriate court. This subsection is not intended to preclude the parties with court approval from stipulating to the binding effect of pre-trial rulings or to preclude the filing of common law motions that the appellate courts have allowed to be made at trial.

- (B) All pleadings filed in connection with pretrial motions shall be filed in the courthouse in which the case is pending at the time the motion is filed. The party filing motions pleadings shall simultaneously serve 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 filing party shall serve the office of the opposing party closest to the courthouse in which the case is pending, or, if the case is being handled by a specialized unit, in the office of the unit assigned to the case.

In felony cases, any party filing a pleading in connection with a substantive pretrial motion shall simultaneously serve the Court's Research Attorneys. For motions pleadings filed in Martinez, a copy shall be delivered directly to the Research Attorneys or placed in their mail bin in the Clerk's Office, Room 103 of the Taylor Courthouse at 725 Court Street, Martinez. Pleadings and exhibits in connection with felony motions filed in Pittsburg and Richmond shall be served on the Research Attorneys by e-mail at the following address:
ratts@contracosta.courts.ca.gov.

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 e-mail 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 Rule of Court 4.111, or as otherwise required by law, counsel shall notify the Court's Research Attorneys by e-mail.

(Rule 9(f)(3)(B) revised effective 1/1/13)

- (C) 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.

(4) General Procedures for Motions Under Part 2

- (A) 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 notify opposing counsel at any time prior to the scheduled hearing and reporting the conflict.
- (B) A motion that has been duly filed may be dropped up to forty-eight (48) hours before the calendar appearance date by notifying opposing counsel and the Court. Within forty-eight (48) hours of the date set for hearing, the moving party must appear unless excused by the Court.
- (C) 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.
- (D) No memorandum of points and authorities exceeding fifteen (15) pages (excluding exhibits) and twenty-eight (28) lines per page, may be filed without leave of court first obtained. Except as otherwise ordered, if moving papers violate this rule, the matter will be dropped from the calendar. Except as otherwise ordered if opposing papers violate this rule, they will not be considered.

(Rule 9(f)(4)(D) revised effective 7/1/05)

- (E) Motions filed under this part, 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 shall not be accepted. If any authority is cited, a copy shall be attached, except for California cases, California statutes, and United States or California Constitutional provisions. Failure to supply a copy of the opinion may be excused if a well-known United States Supreme Court opinion is cited for a general, well-established proposition (e.g., *Miranda v. Arizona* requires an advisement and waiver of rights).

(5) Motions to be Heard by the Trial Judge

Except as otherwise ordered, motions not falling under Part 2 shall be heard by the Trial Judge. Counsel in cases pre-assigned to a trial department shall be prepared to present to the Trial Judge all such motions within three (3) court days prior to the date set for trial.

(6) Ex Parte Applications

- (A) All ex parte applications for orders shortening or extending time, or other kinds of orders sought in the Criminal Law and Motion Department, shall be presented in the Criminal Law and Motion Department to which pre-trial motions have or will be assigned with at least twenty-four (24) hours notice to the opposing party or counsel. Such applications must 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.
- (B) Except by order of the Court, upon a showing of good cause, all ex parte applications presented to the Court seeking to set a matter on shortened time must 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 prior to 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. Additionally, it must be stated on the caption page that the matter was brought on an order shortening time with specific identification of the date of the order and name of the signing judge.
- (C) Relief from operation of these rules must be on prior request to the Court and for good cause shown.

(7) Discovery

Discovery in criminal cases is governed by Penal Code Section 1054 et seq. The required disclosures provided for by Penal Code Sections 1054.1 and 1054.3 shall be made at least thirty (30) days prior to the trial date and, in any event, not later than the readiness conference. Requests for enforcement of disclosures required by Penal Code Section 1054 shall be done by noticed motion which shall be heard prior to the readiness conference. Any party asserting a work product and 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 prior to the readiness conference.

(8) Applications on Behalf of Inmates

Except as hereinafter indicated, 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.

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

Nothing in this rule shall diminish 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.

(9) Disposition of Cases Other than Trial or Hearing

In Superior Court, the disposition of cases other than by trial or hearing may be discussed only with the judge to whom the pre-trial and readiness conferences, or probation revocation matter has been assigned.

(10) Sanctions

(A) The failure to comply with any aspect of this rule 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, but 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.

(11) Relief from Forfeiture of Bail in Misdemeanor and Felony Cases

(A) The provisions of this subsection have been written specifically for situations involving the forfeiture of commercial bail bonds, but they will be adapted as necessary for cases in which cash bail has been deposited or secured undertakings given. Unless otherwise stated, all citations in this Rule are to the California Penal Code.

(B) Bench warrants upon Forfeiture of Bail

i. 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 will be ordered immediately forfeited and a bench warrant issued. The bench warrant will 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 such warrant will contain a notice to the following effect: "Do Not Cite Release -- Bail in Forfeiture".

ii. 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 will 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 will be ordered.

- iii. 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 will enter in the record any such finding, and the reason for making it, and may order a reasonable continuance without immediate forfeiture of bail.

(C) Setting Aside Forfeiture upon Appearance of Defendant

- i. An order of bail forfeiture will be vacated on the Court's motion if the defendant personally appears prior to 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. Examples of the latter category are case dismissals resulting from multi-case dispositions.
- ii. An appearance by a defendant on a new or separate matter will be treated as an "add-on" appearance on a bail forfeiture case in which a bench warrant remains outstanding, if the defendant or bail agent makes the Court aware of the forfeited bond. The Court does not assume responsibility for identifying a defendant's pending cases involving forfeiture or initiating service of such warrants.
- iii. 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) 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.
- iv. As an exception to the foregoing requirements of personal appearance or written motion, neither will normally be required when the People request dismissal of a case in which bail is in forfeiture, such as after receipt of a demand by an incarcerated defendant under Penal Code Section 1381. In such event, forfeiture relief and bail exoneration will normally be ordered on the Court's motion.

(D) Reinstatement and Continuance of Bail

- i. If, after forfeiture has been ordered, the defendant personally appears before Notice of Forfeiture has been mailed by the clerk, the Court will normally set aside the forfeiture and order the defendant continued on the bail previously posted. No cost assessment will normally be imposed in such cases of prompt appearance, nor will the bail or surety be notified.
- ii. After Notice of Forfeiture has been mailed, a defendant will be continued on a reinstated bond only with the consent of the bail agent. Such consent will usually be obtained through a telephone call to the bail agent by a member of the court's staff. Consent to reinstatement and continuation of a forfeited bond may also be given through personal appearance by the bail agent or in writing. The Clerk's Minute Order will identify the person giving consent to continuation of the bond, and the method of communicating it.

(E) Exoneration of Bail after Forfeiture

- i. When an order of bail forfeiture has been vacated on a bond that is not to be continued, the Court will normally order bail exoneration without the necessity of a motion or appearance by the bail agent.
- ii. An order of exoneration following dismissal of a felony matter will be effective fifteen (15) days after the dismissal, as provided in Penal Code Section 1303.

(F) Cost Assessment as Condition of Forfeiture Relief

- i. Any order setting aside a bail bond forfeiture will normally be conditioned on the timely payment by the bail agent or surety of an assessment of costs. Written notice of the cost assessment will be mailed by the clerk to the parties to whom the Notice of Forfeiture was sent, as required by Penal Code Section 1305.2.
- ii. For bail posted after the effective date of this Rule, the Court has established the following levels of cost assessment as "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.
- iii. For bail posted before the effective date of this Rule, cost assessments will be imposed in accordance with previously-established Court practice.

- iv. Larger assessments may be ordered, following notice, in cases where criminal justice agencies have incurred extraordinary expenses in returning a defendant to court jurisdiction.
- v. No assessment will normally be imposed 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.
- vi. The Court may grant exceptions to the imposition of cost assessments on a case-by-case basis in the interest of justice. A defendant or other party requesting relief from the imposition of cost assessment, or requesting a reduced assessment amount, must file a written motion, with notice to the County Counsel, within thirty (30) days after the mailing of the clerk's Notice of Assessment.

(Rule 9(f) revised effective 1/1/14)

(g) Post-trial Motions

No memorandum of points and authorities (including exhibits) exceeding fifteen (15) pages and twenty-eight (28) lines per page may be filed without leave of court first obtained. Except as otherwise ordered, if moving papers violate this rule, the matter will be dropped from the calendar. Except as otherwise ordered, if opposing papers violate this rule, they will not be considered.

(Rule 9(g) revised effective 1/1/01)

(h) Sensitive Exhibits

All controlled substances, guns, money, valuables shall be packaged and stored separately from other exhibits. Sharp objects such as knives, needles and glass should be specially wrapped and labeled for the handler's protection. (For instance, a syringe should be packaged by the police agency in a plastic tube. Be sure to notify the exhibits clerk or the courtroom clerk of these objects upon transfer.)

(Rule 9(h) revised effective 1/1/00)

(Rule 9 revised effective 1/1/14)

Rule 10. Juvenile Court

(a) Adoption, Construction and Amendment of Rules

- (1) These rules for the Juvenile Court may be cited as the "Local Rules for the Juvenile Court of Contra Costa County."
- (2) These 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.

- (3) These rules shall, on the date they become effective, supersede rules heretofore adopted by the Superior Court as they relate to the Juvenile Court.

(Rule 10(a) revised effective 1/1/00)

(b) Juvenile Judge

- (1) The Supervising Judge of the Juvenile Court shall be assisted by such judges and subordinate judicial officers (including commissioners, and temporary judges) as may, from time to time, be provided by the Judges of 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 10(b)(1) revised effective 7/1/05)

- (2) 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 10(b)(2) revised effective 1/1/13)

- (3) The Juvenile Court Supervising Judge and assigned judges shall hear fitness hearings, rehearings and other matters which he or she, by order, determines to hear. Matters to be heard by a Juvenile Court Judge shall be calendared directly by that judge's department.

- (4) 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 10(b)(4) revised effective 7/1/05)

- (5) 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 10(b)(5) revised effective 1/1/13)

- (6) 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 10(b)(6) revised effective 1/1/13)

- (7) The Juvenile Court Supervising Judge, in directing the judicial business of the Juvenile Court, may issue memoranda of policy and procedure as 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 10(b)(7) revised effective 7/1/05)

(c) Juvenile Court Commissioner

- (1) Appointment. 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.
- (2) General Authority. 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.
- (3) 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 or assigned actions, causes or proceedings, whether or not contested.
- (4) 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 10(c)(4) revised effective 7/1/05)

- (5) Subordinate judicial officers shall hear their cases as Commissioners and be so identified 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 10(c)(5) revised effective 7/1/08)

- (6) 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 10(c)(6) revised effective 1/1/08)

- (7) 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:
- (A) Court-appointed Temporary Judge
 - (B) The Juvenile Court Supervising Judge
 - (C) A Juvenile Court Judge or subordinate judicial officer as reassigned by the Juvenile Court Supervising Judge.

(Rule 10(c)(7)(C) revised effective 7/1/05)

(d) Motions

- (1) 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 judicial 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 10(d)(1) revised effective 9/1/04)

- (2) A motion to continue the jurisdiction hearing in any proceeding shall be made and heard no less than two (2) judicial days before the jurisdiction hearing, after service of notice on the opposing party at least five (5) judicial 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 10(d)(2) revised effective 1/1/13)

(e) Appointment of Counsel

- (1) 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 Legal Aid Society Dependency Program. Appointments for minors in Welfare and Institutions Code Section 602 delinquency cases are referred to the Public Defender's Office.

(Rule 10(e)(1) revised effective 1/1/09)

(f) Minute Order

- (1) A minute order shall be prepared by the clerk of the Juvenile Court at the conclusion of each court proceeding.
- (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 10(f) revised effective 7/1/05)

(g) 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 and the conditions thereof. The Judge shall make such findings as are required by the California Rules of Court as to the question of detention.

(Rule 10(g) revised effective 1/1/13)

(h) Public Hearings

- (1) 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 10(h)(1) revised effective 1/1/13)

- (2) 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 10(h)(2) revised effective 1/1/13)

(i) Release of Information (Welfare and Institutions Code Section 827)

- (1) 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).

- (2) Access to Probation Department and Department of Family and Children's Services Records by Court Appointed Special Advocate (CASA). For the purposes of implementing the Court Appointed Special Advocate 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 and information contained therein needed to carry out their responsibilities as court appointed advocates.

(Rule 10(i)(2) revised effective 7/1/05)

(j) Inter-Agency Exchange of Information

- (1) This rule addresses the exchange of information between Family Court Services staff and Probation Department Juvenile Division staff, the Department of Human Services staff, Case Management Council, Adult Probation Department and Probate Court Investigator's staff. The disclosure of information concerning children and their parents by any of these agencies 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:

- (A) Juvenile Delinquency
- (B) Custody Disputes
- (C) Juvenile Dependency
- (D) Probate investigation (Conservatorship and Guardianship)

(E) Criminal

The representatives of the above listed agencies who are investigating or supervising cases involving children may orally disclose information to each other and may exchange 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 10(j)(1) revised effective 7/1/05)

- (2) The Juvenile Court judge will entertain other applications for release of information on a case-by-case basis.
- (3) 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 10(j) revised effective 7/1/05)

(k) 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 10(k) revised effective 1/1/00)

(l) Experience, Training, Education

- (1) 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 10(l)(1) revised effective 9/1/04)

(m) Screening for Competency

- (1) All court-appointed attorneys appearing in juvenile dependency proceedings must meet the minimum standards of competence set forth in these rules.
- (2) Standards of Education and Training
 - (A) 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 Rule of Court 5.660).

- (B) 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.

(3) Standards of Representation

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

- (A) 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.
- (B) If the client is a child, the attorney or the attorney's agent should have contact with the client prior to 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.
- (C) If the client is not the child, the attorney or the attorney's agent shall interview the client at least once prior to the jurisdictional hearing unless that client is unavailable. Thereafter, the attorney or the attorney's agent shall contact the client at least once prior to the hearing unless the client is unavailable.

(Rule 10(m)(3)(C) revised effective 7/1/05)

(n) Mediation

- (1) Jurisdictional Hearings. Absent objection by any party or attorney and with court approval, 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 prior to contested hearing.

(Rule 10(n)(1) revised effective 7/1/05)

- (2) All other 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.

(o) Reciprocal Discovery

By Order of the Supervising Judge, the discovery provisions and rules of California Rule of Court 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 10(o) revised effective 7/1/05)

(p) Disclosure of Victim or Witness Contact Information

- (1) 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.)

- (2) 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 Rule of Court 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 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).

(Rule 10(p) revised effective 1/1/07)

(q) Final Order Determining Custody – Modifications in New Case Filings

- (1) Pursuant to California Rule of Court 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” (JV-200) and “Visitation Order – Juvenile” (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 10(q) revised effective 1/1/12)

(Rule 10 revised effective 1/1/13)

Rule 11. ADR Referrals (Not Applicable to Family Law Matters and Probate Matters)

Judges in the Contra Costa County Superior Court strongly encourage parties to consider alternatives to litigation, including judicial arbitration, mediation, neutral case evaluation, settlement mentor conferences, and temporary judge trials. The Court will refer general civil cases to an appropriate form of ADR unless otherwise exempt by law or there is good cause to dispense with ADR. Further information on ADR can be found in Appendix C of the Local Court Rules.

(Rule 11 revised effective 1/1/09)

Rule 12. Family Law Department

Unless otherwise noted, all references to “Rule_____” refer to the California Rules of Court.

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 12 revised effective 1/1/00)

Rule 12.1. Assignment Of Departments and Matters

(a) Assignment of Departments

- (1) The Court designates four or more full-time departments and additional part-time departments 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 12.1(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 § 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). Documents presented, mailed or deposited in drop boxes in a location other than where the case is assigned will not be accepted or processed. If a self-addressed stamped envelope is provided by the party, the documents will be mailed back to the addressee; otherwise the party/attorney will be contacted and asked to pick up the documents. If the party/attorney fails to pick up the documents within three weeks, the documents will be shredded/destroyed.

(Rule 12.1(a)(3) revised effective 1/1/14)

(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 12.2 (below).

(Rule 12.1(a)(5) revised effective 1/1/13)

(6) “Custody Order – Juvenile-Final Judgment” (JV-200) and “Visitation Order – Juvenile” (JV-205) containing custody and visitation orders will 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 10(Q), then any Request for Order to modify custody or visitation filed within one year of the Juvenile Court’s “Custody Order-Juvenile-Final Judgment/Visitation Order-Juvenile” shall be heard as provided in Local Rule 10(Q).

(Rule 12.1(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 12.1(b) revised effective 1/1/00)

Rule 12.2. Obtaining Temporary Restraining Orders, Ex Parte Orders, and Emergency 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 which the Supervising Judge of the Family Law Division will determine.

(Rule 12.2(a) revised effective 1/1/14)

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, 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 12.2(a) revised effective 1/1/14)

(b) Notice

Except as provided in Family Code Section 6300, unless notice of the application for an ex parte order (including 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 (Family Rules) Parties and attorneys may use Local Form FamLaw-107 (Declaration Re Notice Upon Ex Parte Application for Orders) which is available on the Court's website.

(Rule 12.2(b) revised effective 1/1/14)

(c) Requirements

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

(Rule 12.2(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 12.2(d) revised effective 1/1/14)

Rule 12.3. Orders Shortening Time

All applications for Orders Shortening Time (“OST”) for service or for hearing 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 which the Supervising Judge of the Family Law Division will determine.

All ex parte applications for an OST shall be submitted in conformance with the application and notice requirements for ex parte applications as set forth in Rule 12.2 above. Prior to submitting an application for an OST, the applicant shall contact the opposing counsel or party and request a list of dates said counsel or party is unavailable and include that information with his/her own unavailability on the declaration of notice.

(Rule 12.3 revised effective 1/1/13)

Rule 12.4. Calendaring and Hearings

(a) Initial Calendaring

All Requests for Orders (whether or not accompanied by a Temporary Restraining Order) including law and motion 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 12.4(a) revised effective 1/1/13)

(b) Transfer of a Matter in Which a Hearing Will Exceed 20 Minutes

(1) 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 calendar which is designed to accommodate long-cause hearings, trials and settlement conferences.

(Rule 12.4(b)(1) revised effective 1/1/13)

(c) 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 appropriate 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 one side is unrepresented, by that party. If both sides are unrepresented, their signatures must be notarized. Any request or stipulation to continue must contain facts showing good cause for the continuance.

(Rule 12.4(c)(3) revised effective 1/1/14)

- (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 motion/osc/trial in question.

(Rule 12.4(c)(4) revised effective 1/1/11)

(d) 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 (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 or other financial relief.

(Rule 12.4(d)(2) revised effective 1/1/14)

- (3) On a motion to modify a prior order, the moving party shall attach a copy of the prior order to the moving papers.
- (4) Moving and responsive pleadings shall be timely filed in compliance with the provisions of Code of Civil Procedure Section 1005.
- (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 14 calendar days prior to hearing.

(Rule 12.4(d)(5) revised effective 1/1/12)

(e) Motions to be Relieved as Counsel

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

(Rule 12.4(e) revised effective 1/1/00)

Rule 12.5. Collaborative Law

The Court recognizes the unique nature of family law disputes and the fact that family law issues are best resolved by the parties reaching agreement over critical matters as 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.

- (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 any Case Management Conference which had previously been set 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.
- (d)** As to any case designated as a collaborative law case:
 - (1)** The Court will consider collaborative law counsel to be advisory and not attorneys of record.
 - (2)** 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 upon stipulation or 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, order to show cause, motion 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 12.5 revised effective 1/1/11)

Rule 12.6. Procedures Upon Filing Petition

When a petition for dissolution, legal separation, nullity or paternity is filed, no trial will be set until a response is filed. Once a response is filed, either party may file an At Issue Memorandum. The At Issue Memorandum will not be accepted for filing until all parties have served their Preliminary Declarations of Disclosure and filed proof of service of same, or obtained a court order waiving this requirement per Family Code Section 2107. The court will then set a Case Management Conference. Parties who need assistance in finishing their divorce or other action can consult with the Family Law Facilitators, or attend a workshop.

(Rule 12.6 revised effective 1/1/14)

Rule 12.7. Case Management Conference (CMC)

(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 Statement” (Local Court form “FamLaw-12.7”).

(Rule 12.7(a) revised effective 1/1/14)

(b) Attendance at Conference

Parties shall be present at the Case Management Conference (CMC) unless represented by counsel, in which case, counsel shall appear. Appearance may be in person or by Court Call. The parties or the attorneys shall be fully prepared to discuss 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 12.7(a) revised effective 1/1/11)

(c) Orders

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 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.

- (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 and selection 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.
- (12) If the 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 12.8B 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 12.7(d) revised effective 1/1/00)

Rule 12.8. Mandatory Settlement Conference

(a) Calendaring

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

(Rule 12.8(a) revised effective 1/1/13)

(b) Filings Preparatory to the Mandatory Settlement Conference

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

(1) No later than fourteen (14) calendar days prior to the settlement conference, the parties shall:

(A) Exchange good faith settlement demands.

(B) Exchange Final Declarations of Disclosure (if not already done).

(C) File with the Court proof of service of those final Declarations of Disclosure, or alternatively, file a stipulation to waive service of final declarations of disclosure.

(D) If support or attorney's fees is at issue, the parties shall exchange and file updated Income and Expense Declarations. (Not required if there is an I&E that is no more than ninety (90) days old on file, unless there have been significant changes.)

(Rule 12.8(b)(1)(D) revised effective 1/1/14)

(E) 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 arrearages are claimed, an arrearage 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 12.8(b)(1)(E) revised effective 1/1/14)

(2) 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 Settlement Conference, including but not limited to issue sanctions and monetary sanctions.

(Rule 12.8(b)(2) revised effective 1/1/14)

(c) Trial Judge as Settlement Judge

The 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) days before the Settlement Conference so the Court can attempt to make alternate arrangements.

(Rule 12.8(c) revised effective 1/1/00)

(d) Meet and Confer Requirement

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

(Rule 12.8(d) revised effective 1/1/00)

Rule 12.9. Recommendation Conference

(a) Purpose

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. To that end, the parties and counsel are required to be present at the Recommendation Conference prepared to discuss the recommendations of the evaluator. 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. The failure of either party or their counsel to appear at the Recommendation Conference, except upon prior leave of court, may result in monetary or issue sanctions.

(Rule 12.9(a) revised effective 1/1/00)

(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 prior to 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 thereupon 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 12.9(b) revised effective 1/1/11)

Rule 12.10. Trials

(a) Long Cause Trials

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 12.10(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 or at a Settlement Conference.

(Rule 12.10(b)(1) revised effective 1/1/14)

- (2) If no hearings are scheduled, a party may initiate the trial setting process by filing an At Issue Memorandum. 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 proof of service of same, 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 12.10(b)(2) revised effective 1/1/14)

(c) Continuances

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

(Rule 12.10(c) revised effective 1/1/11)

(d) Case Management 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 12.10(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 valuations, business valuations, business cash flows (when relevant to support), real estate evaluations, 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.
- (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) 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 prior to 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 12.10(e) revised effective 1/1/00)

(f) Reporter's Fees

- (1) Effective January 1, 2013 Official court reporters employed by the court are unavailable in the Family Law Departments effective January 1, 2013 and continuing until further notice, as set forth in the Court's Notice of Availability of Court Reporting Services which is posted on the court's website. Consult the Notice of Availability on the court's website for the current status and any changes.
- (2) Any party who desires to have 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 pursuant to Government Code 70044 and CRC 2.956.
- (3) Parties electing to procure the services of an outside reporter must comply with Local Rule 24.
- (4) Pursuant to CRC 2.956(d), if a party arranges and pays for the attendance of an outside private 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) 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 12.10(f) revised effective 1/1/00)

Rule 12.11. Preparation and Presentation Of Orders

(a) Proposed Orders

The Court may consider signing, at the time of hearing, proposed orders attached to the moving or responsive papers. Parties are therefore encouraged to submit proposed orders with their moving or responsive papers.

(Rule 12.11(a) revised effective 1/1/00)

(b) Orders Submitted After Hearing

Except where an order is signed as set forth in subsection (A) above, or except where the Court prepares the order or judgment at the time of the hearing, unless otherwise directed by the Court, all orders after hearing shall be submitted in compliance with California Rules of Court. 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 a timely manner may result in the imposition of sanctions.

(Rule 12.11(b) revised effective 1/1/13)

(c) Stipulations

All agreements, stipulations, or agreed upon orders, reached prior to hearing shall be in writing, signed by all parties and counsel (where applicable) and submitted to the Court for signature prior to commencement of the hearing on the matter. Stipulations shall not be recited on the record, except at the discretion of the bench officer. In the case of stipulations, the signature of self-represented parties shall be notarized, unless the stipulation is signed or acknowledged before authorized court personnel. First class, postage prepaid, stamped envelopes, not exceeding the Court's actual cost, will be available for purchase at the Forms Window in the Family Law Building for return of conformed orders.

(Rule 12.11(c) revised effective 1/1/00)

Rule 12.12. Judgments

- (a)** Pursuant to 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)** Parties are directed to utilize form FL-182, JUDGMENT CHECKLIST – DISSOLUTION /LEGAL SEPARATION
- (c)** The signatures of self-represented parties to the Judgment and/or Marital Settlement Agreement must be notarized.
- (d)** The Department of Child Support Services must approve the child support provisions of the judgment if that department is providing services in the case.
- (e)** In a True Default, relief may not exceed that requested in the **operative** Petition.

(Rule 12.12 revised effective 1/1/14)

Rule 12.13. Confidentiality

(a) 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 13 below).

(Rule 12.13(a) revised effective 1/1/09)

(b) Alcohol Assessment Reports

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

(Rule 12.13(b) revised effective 1/1/09)

(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 prior to being filed with the Court or marked as an exhibit.

(Rule 12.13(c) revised effective 1/1/09)

Rule 12.14. Family Law Facilitator

(a) Basic Duties

In addition to the duties mandated by the Family Law Facilitator Act, Family Code Section 10000, et seq., the Family Law Facilitator may:

- (1) Meet with litigants to mediate family law issues (exclusive of custody/visitation) including but not limited to, child support, spousal support, maintenance of health insurance and payment of uninsured medical expenses, subject to Family Code Section 10012. Actions in which one or both of the parties are unrepresented by counsel shall have priority;
- (2) Draft stipulations to include all issues agreed to by the parties regarding family law matters;
- (3) If the parties are unable to resolve issues with the assistance of the Family Law Facilitator prior to or at the hearing, and, at the request of the Court, the Family Law Facilitator, or members of the Facilitator's Office, shall review the paperwork, examine the documents, prepare support schedules, identify contested issues and party positions and otherwise advise the judge whether the matter is ready to proceed;
- (4) Assist the Court and the clerk in preparing and maintaining records;
- (5) Prepare formal orders consistent with the Court's announced order for self-represented parties;
- (6) Serve as Special Master in proceedings and make findings to the Court unless he or she has served as a mediator in the case; and
- (7) Participate in the operation of the assistance clinic for those who are self-represented including, but not limited to, training and supervising legal technicians, clerks and volunteers.

(Rule 12.14(a) revised effective 1/1/14)

(b) Additional Duties

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

- (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 Bar 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 12.14(b) revised effective 1/1/09)

Rule 12.15. Temporary Spousal or Partner Support

The following discretionary guideline is adopted for temporary spousal support or partner support in marital and domestic partnership dissolution cases.

(a) Non-Child Support Cases

In cases where there is no child support, the guideline spousal or partner support is 40% of the net income of the payor or minus 50% of the net income of the payee.

(Rule 12.15(a) new effective 1/1/14)

(b) Child Support Cases

In cases where there is to be child support, the guideline spousal or partner support uses the components set forth in Family Code sections 4055 through 4069 in the following formula:

$SS = [HN - (HN) (M) (K) (1 + H\%)] [.35] -$

$[LN - (LN) (M) (K) (1 + H\%)] [.4]$

(If H% is greater than 50%, use 2-H% instead of 1+H%)

(M = Fam. Code §4055(b)(4) child multiplier.)

(Rule 12.15(b) new effective 1/1/14)

(c) 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 12.15(c) new effective 1/1/14)

(Rule 12 revised effective 1/1/14)

Rule 13. Child Custody and Visitation Disputes

Rule 13.1. Orientation and Child Custody Recommending Counseling (Formerly “Mediation”)

(a) Good Faith Effort to Reach Agreement

Except in those cases where family violence 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 Family Court Services and before the court hearing.

(Rule 13.1(a) revised effective 1/1/12)

(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 Family Court Services. 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 13.1(b) revised effective 1/1/12)

(c) Custody Counseling (formerly “Mediation”)

Upon the filing of the Order to Show Cause or Notice of Motion, or prior to a trial which will litigate a custody/visitation dispute, the parties shall 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 13.1(c) revised effective 1/1/12)

(d) Agreements

If the parties have already reached an agreement regarding custody and visitation, they need not contact Family Court Services unless they have already scheduled orientation or Custody Counseling appointments, in which case each party must contact Family Court Services to cancel existing appointments for orientation and/or Custody Counseling. Sanctions and/or fees may be imposed on any party that fails to so contact Family Court Services.

(Rule 13.1(d) revised effective 1/1/12)

(e) Conduct Custody Counseling and Recommendation

All Custody Counseling proceedings shall be held in private, and all communications from the parties to the child custody recommending counselor (hereafter “Custody Counselor”) 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. In the absence of a complete agreement between the parties, or in the event that the Custody Counselor opines that the parties’ proposed parenting plan is not in the child’s best interest, the Custody Counselor may submit to the Court, the parties and attorneys a Status Report and may make a recommendation to the Court as to the custody, visitation or other relevant issues including, if appropriate, a recommendation for an evaluation pursuant to Family Code Sections 3110-3113. Such a recommendation and testimony concerning the recommendation constitute a conditional exception to the above-mentioned confidentiality.

(Rule 13.1(e) revised effective 1/1/12)

(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 13.1(f) revised effective 1/1/12)

(g) Custody Counseling Complaint Process

Within ten (10) days from the date of Custody Counseling, 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, prior to the next hearing date. The responding party shall also provide a copy of the written response to the Manager of Family Court Services.

(Rule 13.1(g) revised effective 1/1/12)

(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 prior to 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 13.1(h) revised effective 1/1/12)

(i) Return Custody Counseling

- (1) Parties who return to Family Court Services 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 13.1(i) revised effective 1/1/12)

(j) Family Court Services Reports

Where the parties do not reach an agreement during Custody Counseling, the Custody Counselor shall prepare a written Status Report that sets forth 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 thereafter file the report in a confidential portion of the Court file and the report may not be disclosed except to the parties, their attorneys, federal or state law enforcement, judicial officers, court employees, the family law facilitator, minor's counsel, and any other person excepting upon order of the Court. The parties, their attorneys and all other persons noted herein who are entitled to disclosure of the report, shall preserve the confidentiality of the document, and shall not attach a copy of the report to any pleading in the pending proceeding or in any other litigation or proceeding. Use shall be limited to the pending litigation and no person who has access to the report shall make copies for dissemination or disclose its contents to any child who is the subject of the report or to anyone else not entitled to access. Substantial sanctions shall be imposed for inappropriate disclosure.

(Rule 13.1(j) revised effective 1/1/12)

Rule 13.2. Child Custody Evaluations

(a) Court Ordered Evaluations

In all child custody and visitation evaluations ordered by the Court, evaluators will be appointed under Evidence Code Section 730.

(Rule 13.2(a) revised effective 1/1/01)

(b) Custody Evaluation Witness Lists/Documents

1. Witness Lists. Within fifteen (15) days of the appointment of an evaluator by court order, each party shall submit to the court-appointed evaluator and the other party, the name, address, and telephone number of each person that party requests be interviewed in connection with the evaluation, and a summary of the relevant information that person possesses. Upon the initial list being submitted, each party will have fifteen (15) days to submit an additional list to the evaluator and to the other party of additional witnesses it is requested that the evaluator interview under the same conditions outlined above.

The evaluator is not required to interview any such person, but may use his/her judgment in determining whom to interview, and whether to interview them in person, by telephone, or in writing. The Court may in its discretion prohibit a party from calling as a witness any person whose name, relevant information and expected testimony has not been given to the evaluator.

2. Documents. Prior to accepting or reviewing any written material provided by a party, the evaluator shall confirm that the other party has received a copy of said material.

(Rule 13.2(b) revised effective 1/1/01)

(c) Evaluator Selection

Where the parties are unable to agree on an evaluator to conduct the custody evaluation, the matter shall be referred to Family Court Services ("FCS") for selection of a private evaluator in accordance with a rotational selection system. The Court will issue a standard order that FCS shall designate an evaluator for the case. The Court will provide a copy of the order to the parties, attorneys and FCS. The Court's order will specify any areas of expertise required by the evaluator.

Where FCS is ordered to conduct the evaluation, the Director of FCS will select the evaluator from available FCS staff.

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 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 13.2(c) revised effective 1/1/01)

(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 13.2(d) revised effective 1/1/01)

(e) Challenge of the Evaluator

(California Rule of Court 5.220(d)(1)) 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.

(Rule 13.2(e) revised effective 1/1/01)

(f) Information from Children

(California Rules of Court, 5.220(d)(2)) The 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 prior to commencing the interview.

(Rule 13.2(f) revised effective 1/1/01)

(g) 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 13.2(g) revised effective 1/1/01)

(h) 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) days prior to 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) days prior to 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 13.2(h) revised effective 7/1/07)

(i) Expectation of Settlement

The evaluator, the parties and the attorneys should make a good faith attempt to settle the disputes prior to the Court hearing. Settlement efforts may include joint meet and confer conferences between the parties and counsel unless potential harm exists from this process.

(Rule 13.2(i) revised effective 1/1/01)

(j) Continuing Effort

The Court may ask the evaluator to continue to be available to the family to help resolve problems with the recommended and ordered plan.

(Rule 13.2(j) revised effective 1/1/01)

(k) 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 noticed motion regarding unpaid custody evaluator fee(s).

(Rule 13.2(k) revised effective 1/1/11)

(l) Recommendation Conference

The failure of either party or their counsel to appear at the Recommendation Conference, except upon prior leave of the Court, may result in monetary or issue sanctions. This Recommendation Conference is set based on the expectation that the evaluation will be prepared and submitted to the parties and counsel at least ten (10) calendar days prior to 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 thereupon notify the Court promptly, either in writing or by telephone conference call (the preferred method). Based on the evaluator's notice of inability to timely conclude the report, the Court will re-set the date of the Recommendation Conference and this order will apply to the new date for the Recommendation Conference.

(Rule 13.2(l) revised effective 1/1/11)

(m) 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 prior to 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 the parties 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 13.2(m) revised effective 1/1/07)

**Rule 13.3. Court Communication for Domestic Violence and Child Custody Orders
(Adopted Pursuant to California Rule of Court 5.450)**

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

- (1) Prior to 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.
- (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 also is before the Family, Juvenile, or Probate Court in proceedings concerning custody or visitation, a court-employed mediator 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 13.3(a) revised effective 1/1/09)

(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 then is 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 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 13.3(b) revised effective 1/1/09)

(Rule 13 revised effective 1/1/12)

Rule 14. Uncontested Calendars (Not Applicable to Family Law Matters and Probate Matters.)

(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 prior to the hearing.

(Rule 14(a) revised effective 1/1/06)

(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 requiring court entry of default, in which case the return of service must be filed before the request for hearing.

(Rule 14(b) revised effective 1/1/09)

(Rule 14 revised effective 1/1/09)

Rule 15. 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) days preceding the time set for hearings.

(Rule 15(a) revised effective 1/1/00)

(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 15(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 15(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 15(d) revised effective 1/1/00)

(Rule 15 revised effective 1/1/13)

Rule 16. 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) 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 16(a) revised effective 1/1/07)

(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 16(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 thereof, 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 such Judge be 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 16(c) revised effective 1/1/00)

(Rule 16 revised effective 1/1/07)

Rule 17. Receivers

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

(Rule 17 revised effective 1/1/00)

Rule 18. Identifying Information on Filed Documents

- (a) No pleading or paper shall be filed by the Clerk of the Court which does not comply with California Rule of Court 2.100 which requires the name, address and phone number of the attorney or party on the first page of any such pleading or paper.
- (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 18 revised effective 1/1/00)

Rule 19. 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 19 revised effective 1/1/00)

Rule 20. Attorney's Fees (and Appointment of Counsel)

(a) Attorney's Fee Schedule - Civil, Default

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 Civil Procedure Section 585, CCP 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 20(a) revised effective 1/1/12)

(b) Use of Schedule by Clerk

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 the schedule 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 prayed for.

(Rule 20(b) revised effective 1/1/12)

(c) Contested Case

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

(Rule 20(c) revised effective 1/1/12)

(d) Foreclosure of Mortgages, Etc

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 Section (C) of this rule, increased by ten (10) percent.

(Rule 20(d) revised effective 1/1/12)

(e) Itemization of Extraordinary Services Required

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 or to be rendered by any attorney for or in respect to whose service such application is made.

(Rule 20(e) revised effective 1/1/12)

(Rule 20 revised effective 1/1/12)

Rule 21. Jurors

(a) Manner of Selecting Prospects

Persons qualified to render 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 21(a) revised effective 1/1/13)

(b) Source of Names

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 pursuant to California Code of Civil Procedure Section 197(b).

(Rule 21(b) revised effective 1/1/00)

(c) Determining Qualifications and Excluding Prospective Jurors Not Competent

The Jury Commissioner shall determine the statutory qualifications of each prospective juror and the existence of any infirmity 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 21(c) revised effective 1/1/00)

(d) Excusing Qualified Persons

The Jury Commissioner may grant an excuse from jury service to such prospective jurors who qualify for excuse pursuant to statute and court rules. 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 21(d) revised effective 1/1/13)

(e) Jurors Shall Not Work

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 21(e) revised effective 1/1/00)

(f) Period of 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 21(f) revised effective 1/1/00)

(g) 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 21(g) revised effective 1/1/00)

(h) 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 21(h) revised effective 1/1/00)

(i) [REPEALED 7/1/13]

(j) Jury Fees

Jury fees shall be deposited and may be refunded as provided in Code of Civil Procedure Sections 631 and 631. 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 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 21(j) revised effective 1/1/00)

(Rule 21 revised effective 7/1/13)

Rule 22. Grand Jury

(a) Drawn and Impaneled Yearly

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

(Rule 22(a) revised effective 1/1/00)

(b) Solicitation for Applicants

(1) Grand Juries will be selected following a general solicitation for applicants. On or before the first court day in March, the Jury Commissioner shall begin a solicitation process utilizing the following methods:

- (A) Public notices in county newspapers;
 - (B) Solicitations from social, community and political groups; and
 - (C) Suggestions from Judges and former Grand Jurors.
- (2) All persons who make application are to receive a formal questionnaire. This questionnaire will be available to anyone upon request from the Superior Court Secretary's Office. Applications can also be found on the internet. The Grand Jury website is www.cc-courts.org/grandjury. Applicants can scroll down to related links to "About the Grand Jury" and double click on "Application for Grand Jurors." All questionnaires must be returned to that office by April 15.

(Rule 22(b) revised effective 1/1/07)

(c) Qualifications

All questionnaires will be reviewed by the Jury Commissioner for qualifications as specified under the provisions of Part 2, Title 4, Chapter 2, Articles 1 and 2 of the Penal Code, and the provisions of the Code of Civil Procedure referred to therein. The Jury Commissioner shall make such preliminary investigation of the applicants as may be directed by the Grand Jury Selection Committee.

(Rule 22(c) revised effective 1/1/00)

(d) Grand Jury Selection Committee

The Presiding Judge will appoint a Grand Jury Selection Committee of five (5) Judges. These Judges will have the following responsibilities:

- (1) They will oversee the screening of all applicants to a first list of sixty (60) names based on proportional representation from supervisorial districts and sociological group representation.
- (2) They will interview all sixty (60) applicants. Each Judge will interview twelve (12) applicants over a period of three (3) 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) Approval/Ratification. The list of thirty (30) names will be presented to the Superior Court Judges prior to 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.
- (4) Representation Panel. The Grand Jury shall be selected in accordance with the standards and requirements of law.

(Rule 22(d) revised effective 1/1/00)

(e) Additional Grand Jury

The Presiding Judge may order and direct the impanelment, at any time, of one additional grand jury pursuant to Penal Code Section 904.6.

(Rule 22(e) revised effective 1/1/00)

(f) Sealing of 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 22(f) revised effective 1/1/06)

(Rule 22 revised effective 1/1/07)

Rule 23. 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 23(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 23(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 Rule of Court 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 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 23(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 23(d) revised effective 7/1/08)

(e) Briefs

Briefs shall be prepared, served, and filed as provided by California Rule of Court Rule 8.88. Briefs shall comply with the provisions of California Rules of Court 8.883 and 8.884.

(Rule 23(e) revised effective 1/1/10)

(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 23(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 23(g) revised effective 1/1/00)

(Rule 23 revised effective 1/1/14)

Rule 24. Court Reporting Services

(a) Reported Matters

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 24(a) revised effective 1/1/13)

(b) Unavailability of Court Provided Court Reporters and Procurement of Outside Private Reporters

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

Unlimited and Limited Civil

Family Law

Probate

For matters where the court does not provide a court reporter due to unavailability, any party who desires to have 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 pursuant to Government Code 70044 and CRC 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 CRC 2.956(c)).

For contested matters, the parties must timely meet and confer as to the selection of a qualified court reporter and provide a written stipulation, on the court-provided form, in compliance with Government Code 70044. 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. Pursuant to CRC 2.950, 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.

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.

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 24(b) new effective 1/1/13)

(c) Transcript of Trial or Proceedings: Inquiry by Reporter

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

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

(Rule 24(c) revised effective 1/1/13)

(Rule 24 revised effective 1/1/13)

Rule 25. 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 25 revised effective 1/1/00)

Rule 26. Form of Documents Filed With the Court

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

(Rule 26 revised effective 7/1/06)

Rule 27. Facsimile Transmitted Documents

(a) Definition of Facsimile Document

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

(Rule 27(a) revised effective 1/1/00)

(b) Compliance with California Rules of Court

Facsimile produced documents submitted for filing with the Court shall comply with California Rule of Court 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 County Clerk.

(Rule 27(b) revised effective 1/1/00)

(c) 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 27(c) revised effective 1/1/00)

(d) 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) 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 27(d) revised effective 1/1/00)

(e) 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 27(e) revised effective 1/1/00)

(f) 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 27(f) revised effective 1/1/00)

(g) Pilot Project -- Limited Facsimile Filings

(1) 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 this subsection (G) will be rejected and will not be accepted by the Clerk.

(A) A facsimile filing shall be accompanied by a Judicial Council Facsimile Filing cover sheet as specified in California Rule of Court 2.304(b).

(B) Each facsimile document shall contain the phrase "By fax" below the document's title.

(C) 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 Rule of Court 2.304(d).

- (2) 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.
- (A) Pursuant to 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.
- (B) Prior to 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.
- (C) 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.
- (D) 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.
- (E) 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.
- (F) 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 27(g)(2)(F) revised effective 1/1/13)

(Rule 27 revised effective 1/1/13)

Rule 28. 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 28 revised effective 1/1/00)

Rule 29. Court Appointed Special Advocate 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 29 revised effective 1/1/00)

Rule 30. Standards of Professional Courtesy

The Court acknowledges that the Contra Costa County Bar Association has adopted "Standards of Professional Courtesy," which are attached to these Local Court Rules as "APPENDIX B."

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 30 revised effective 1/1/10)

Rule 31. Committee on Bias

Pursuant to Title 10, Standard 10.20, Standards of Judicial Administration, 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 attached to the Local Rules of Court as "APPENDIX D."

(Rule 31 new effective 1/1/12)

Rule 32. 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 the courtroom consistent with California Rule of Court 1.150 and this 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.

(a) Requests for Coverage

Requests for any type of video, still photography, or audio coverage, including pool cameras, must be made in compliance with California Rule of Court 1.150(e)(1), and submitted to the judicial officer assigned to hear the case on Judicial Council form

MC-500, "Media Request to Photograph, Record, or Broadcast," accompanied by form MC-510, "Order on Media Request to Permit Coverage." For such requests that do not involve a courtroom, they must be submitted to the Presiding Judge on the same forms.

(Rule 32(a) revised effective 1/1/10)

(b) Limitation on Coverage

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

- (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 32(b) revised effective 1/1/10)

(c) Prohibited Coverage

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

1. A proceeding closed to the public (e.g. juvenile cases);
2. Jurors or spectators;
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 32(c) revised effective 1/1/10)

(d) Parking Limitations for Media Transmission Vehicles

No media vehicles may be parked in an unauthorized place in the courthouse environs except with permission of 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 32(d) revised effective 1/1/10)

(e) 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 so long as ingress or egress through the related doorways is not interfered with.
2. A. F. Bray Courthouse [1020 Ward Street, Martinez]. Front entryway and sidewalk area so long as ingress or egress to the exterior entrance to the courthouse is not interfered with.
3. A. F. Bray Courthouse - Court Annex [entrance southeast of entry to courthouse]. Exterior entry to courtrooms or jail so long as ingress or egress to the exterior entrance to the courthouse is not interfered with.
4. Peter Spinetta Family Law Center [751 Pine Street, Martinez]. Front plaza and outside stairs so long as ingress or egress to the exterior entrance to the courthouse is not interfered with.
5. Richard E. Arnason Justice Center [1000 Center Drive, Pittsburg]. Area outside front foyer so long as ingress or egress is not interfered with.
6. George D. Carroll Courthouse [100 37th Street, Richmond]. Courtyard in front of entrance to courthouse as long as entry/exit doors are not blocked in any way. [Access to adjacent County Health Building also may not be blocked or impacted in any way.]
7. Walnut Creek Superior Court [640 Ygnacio Valley Road, Walnut Creek]. Southside sidewalk area to the west of the entry doors.

As used herein “ingress and egress” availability shall mean that a person or persons entering or leaving the courthouse 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 32(e) revised effective 1/1/13)

- (f)** 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 32 revised effective 1/1/13)

Rule 33. 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 413, Martinez, CA 94553

(Rule 33 new effective 1/1/12)

Rule 34. 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 34 new effective 1/1/14)

APPENDIX A

PROBATE COURT GUIDELINES

SECTION ONE - PROBATE COURT PROCEEDINGS

101. Probate Calendar

- (a) Probate calendars are arranged to facilitate efficient and effective resolution of matters before the Court. It is the petitioner's responsibility to have a matter placed on the correct calendar. These arrangements may be changed from time to time.
- (b) Because of the limits on the number of matters which may be included on the calendar, parties who attempt to determine in advance the date on which a matter may be set do so at their own risk of the clerk determining that the matter cannot be calendared on that date. Parties who want exceptions to application of the calendar procedures as determined by the clerk may request the Probate Examiners to make accommodations to the calendaring, and may make verified application to the Probate Department.

(Appendix A, Sec. One, 101(b) revised effective 1/1/08)

102. Contested Matters

- (a) The Probate Department will manage probate matters until they are ready for trial, and will then schedule the matter for an issues conference in the Probate Department, as otherwise described in Rule 5(k), and trial.
- (b) The Alternative Dispute Resolution Programs of the Court are available for contested probate matters. The use of ADR, such as mediation, is encouraged by the Court.

(Appendix A, Sec. One, 102 revised effective 1/1/08)

103. Appearances

- (a) 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.

(Appendix A, Sec. One, 103(a)(2) revised effective 1/1/13)

- (3) If a matter on calendar has been continued previously unless advised otherwise by the tentative ruling, appearances by the proponent and all who have responded are required at all subsequent hearings, so the Court can make appropriate case management orders (e.g. discovery deadlines, or trial setting). Attorneys of record may appear for their clients.

(Appendix A, Sec. One, 103(a)(3) revised effective 1/1/12)

- (b) Failure to appear as required may result in sanctions pursuant to Code of Civil Procedure Section 177.5.

(Appendix A, Sec. One, 103 revised effective 1/1/13)

104. Verifications

- (a) The attorney who represents a ward or conservatee may verify pleadings filed on behalf of the ward or conservatee.
- (b) 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.
- (c) 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. (Rev./Eff. 1/1/03 per Code of Civil Procedure Section 2015 and California Rule of Court 7.103)

(Appendix A, Sec. One, 104 revised effective 1/1/03)

105. Submission of Proposed Order Before Date of Hearing

Except in the case of confirmations of sales, orders must be submitted to the Probate Department 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.

(Appendix A, Sec. One, 105 revised effective 1/1/13)

106. Tentative Rulings

Tentative rulings or calendar notes are available prior to the calendar hearings. Counsel and/or parties are advised to review the tentative rulings prior to the hearing. The schedule and procedure for announcement of tentative rulings are established by the probate department and are subject to change. 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 Examiner.

(Appendix A, Sec. One, 106 revised effective 1/1/11)

107. Continuances to Cure Defective Pleadings or Procedures

- (a) The first hearing on a matter may be continued to enable 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) After the first hearing, the matter may be dismissed unless petitioner shows good cause for a further continuance, by a filed declaration or an appearance at the hearing. Continuances following the first hearing may not be secured by requesting a continuance from the clerk.
- (c) All continuances will be for a minimum of three weeks.
- (d) A matter once dropped must be renoticed after it has been placed back on calendar. A matter dismissed must be refiled and renoticed.

(Appendix A, Sec. One, 107(d) revised effective 1/1/01)

108. Judicial Council Forms. [Repealed 1/1/03] (See California Rules of Court, Rule 7.101)

109. Discretion to Waive Guidelines

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

(Appendix A, Sec. One, 109 revised effective 1/1/13)

110. Fees

- (a) The probate department may, from time to time, publish fee guidelines for the assistance of counsel and others.
- (b) 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 Attachment 2 and are applicable to all probate department fee petitions.
- (c) Other considerations for evaluating fee petitions in more specific contexts are referenced in Local Guidelines 607 (probate administration), 826 (probate guardianships and

conservatorships, including LPS conservatorships), and 901 (trusts). Also, see Guidelines 112 and 116 for additional guidelines applying to all fee petitions.

(Appendix A, Sec. One, 110(c) revised effective 1/1/13)

111. Record Title

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

(Appendix A, Sec. One, 111 revised effective 1/1/03)

112. 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 limit payments from trusts or other parties who will not seek reimbursement from the estate. This requirement for prior court approval also includes 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. The Court is not bound by any attorney fee agreement in these situations which is executed without prior court approval. REPEALED IN PART (See California Rules of Court, 7.753, 7.754, 7.755)

(Appendix A, Sec. One, 112(a) revised effective 1/1/03)

113. Factual Allegations

Declarations which merely recite or incorporate reference to code sections do not thereby 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.

(Appendix A, Sec. One, 113 revised effective 1/1/03)

114. Guardian Ad Litem

- (a) A guardian ad litem must be an attorney or must be represented by an attorney.
- (b) A guardian ad litem may not waive or disclaim any substantive rights of the beneficiary without prior approval by the Court.

(Appendix A, Sec. One, 114 revised effective 1/1/03)

115. Special Notice to Attorneys and Clients

A request for special notice by an attorney, absent 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.

(Appendix A, Sec. One, 114 revised effective 1/1/03)

116. Coordination of Fee Petitions with Accountings

- (a) 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) A petition prior to an accounting may be filed to determine compensation so 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) 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 guideline.
- (d) This guideline does not apply to trust administrations where court-approved accountings are not required.

(Appendix A, Sec. One, 116(d) new effective 1/1/13)

SECTION TWO - PETITIONS, ORDERS AND NOTICES

201. Titles for Petitions and Orders [Repealed 1/1/03] (See California Rule of Court 7.102)

202. 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.

(Appendix A, Sec. Two, 202 revised effective 1/1/00)

203. Written Response

An objection or other written response to moving papers will be deemed a waiver of further notice as to those papers.

(Appendix A, Sec. Two, 203 revised effective 1/1/00)

204. Reserved. [Repealed 1/1/03]

205. Applications for Ex Parte Orders

- (a) 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.
- (b) 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 Rule of Court 7.55 & Probate Code 1202)

(Appendix A, Sec. Two, 205(b) revised effective 1/1/03)

206. Petitions for Family Allowance

- (a) A petition for family allowance under Probate Code Section 6540 et seq. must include a detailed statement of proposed recipient's income and expenses.
- (b) A petition for family allowance, if made before the filing of the inventory, 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 Department ahead of time to make a specific appointment with the Court.
- (c) 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) 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.

(Appendix A, Sec. Two, 206 revised effective 1/1/00)

207. 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.

(Appendix A, Sec. Two, 207 revised effective 1/1/00)

208. Nunc Pro Tunc Orders Correcting Clerical Errors

- (a) If, through inadvertence, the signed order, judgment or decree fails to state the ruling actually made by the Court, or through some scrivener'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) 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.

(Appendix A, Sec. Two, 208 revised effective 1/1/12)

209. 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.

(Appendix A, Sec. Two, 209 revised effective 1/1/00)

210. Additional Notice Requirements

- (a) All interested parties: Notice must be given to any person whose interests may be affected by the hearing.
- (b) In a decedent's estate proceeding involving a testamentary trust, until a trustee is appointed by the Court any notices regarding the trust must be given to all trust beneficiaries, subject to the limitations of Chapter 2 (commencing with Section 15800) of Part 3 of Division 9 of the Probate Code.

(Appendix A, Sec. Two, 210 revised effective 1/1/03)

211. 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.

(Appendix A, Sec. Two, 211 revised effective 1/1/00)

212. 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.

(Appendix A, Sec. Two, 212 revised effective 1/1/03)

213. Accounts and Reports

- (a) Accountings submitted for court approval shall comply with Probate Code Section 1060 et. seq.
- (b) 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) as to accounts for guardianships and conservatorships which have not terminated, a statement of the amount of any public benefits being received by or for the benefit of the ward or conservatee, including the identity of the person receiving the benefit.

(Appendix A, Sec. Two, 213 revised effective 1/1/03)

214. Petitions To Show Who Is Entitled To Notice

All petitions shall identify the names, addresses, and relationships of all persons entitled to notice.

(Appendix A, Sec. Two, 214 revised effective 1/1/03)

215. Identity or Whereabouts Unknown [Repealed 1/1/03] (See California Rule of Court 7.52)

216. Notice Regarding Interests of Deceased Persons [Repealed 1/1/03] (See California Rule of Court 7.51(E))

SECTION THREE - APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

301. 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 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 therefor.

(Appendix A, Sec. Three, 301 revised effective 1/1/03)

302. Petitions for Probate of Will and for Letters Testamentary; For Letters of Administration; or for Letters of Administration with Will Annexed

- (a) Petitions for probate of Will must have a photocopy of the Will and all Codicils attached at the time of filing.
- (b) 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.
- (c) 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.
- (d) The personal representative is not required to include the date of birth or the California driver's license number on the Duties and Liabilities of Personal Representative form.
- (e) If Attachment 8 includes a spouse or any other person who is deceased as of the date of the petition, the petition should state that person's date of death. The Court needs to know whether the person predeceased or survived the decedent.

(Appendix A, Sec. Three, 302 revised effective 1/1/03)

303. Notice

- (a) The following persons are entitled to NOTICE:

- (1) Heirs of the Decedent. Whether or not a decedent died testate, the petition must contain the names and relationships of all 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 decedent had a predeceased spouse) if the decedent died intestate;
- (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 codicil;
- (3) Deceased Heir or Beneficiary [REPEALED 1/1/03] (See California Rule of Court 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 decedent's estate;
- (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

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 legatee 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 Rule of Court 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.

(Appendix A, Sec. Three, 303 revised effective 1/1/03)

304. Requirements of Publication for Notice of Petition to Administer Estate

- (a) 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 Codicils 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) It is the responsibility of the petitioner to arrange for publication. The County Clerk does not have this responsibility.

(Appendix A, Sec. Three, 304 revised effective 1/1/03)

305. 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 dispensing with the bond of a nonresident personal representative. FORMER SUBDIVISION B REPEALED IN PART (See California Rule of Court 7.204)

(Appendix A, Sec. Three, 305 revised effective 1/1/03)

306. 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.

(Appendix A, Sec. Three, 306 revised effective 1/1/00)

307. 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 specified otherwise.

(Appendix A, Sec. Three, 307 revised effective 1/1/00)

SECTION FOUR - CREDITORS' CLAIMS

401. 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 Claims. Creditors' claims will be liberally construed in favor of their sufficiency.

(Appendix A, Sec. Four, 401 revised effective 1/1/03)

**402. Claims Filed with Clerk and Mailed to Personal Representative [Repealed 1/1/03]
(See California Rule of Court 7.401; Probate Code 9150)**

403. Claims of Personal Representatives and Attorneys

- (a) 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) Unless a claim by a personal representative or attorney for the personal representative appears obviously 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 notice thereof given to all persons entitled thereto, including all residuary beneficiaries, together with a copy of the claim, pursuant to Probate Code Section 1220.

(Appendix A, Sec. Four, 403 revised effective 1/1/03)

404. 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 Provision 403 above. Counsel is advised to review the case of Estate of Malgor, 77 CA2d 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.

(Appendix A, Sec. Four, 404 revised effective 1/1/12)

SECTION FIVE - SALES

PART I - SALES OF REAL PROPERTY NOT UNDER IAEA

501. Return of Private Sale

- (a) Cash Deposit. 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 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 Rule of Court 7.451)
(Appendix A, Sec. Five, 501(b) revised effective 1/1/03)
- (c) Second Deeds 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 of the parties involved shall be prepared with factual information that will aid the Court in making this determination.
- (e) REPEALED IN PART (See California Rule of Court 7.452)
(Appendix A, Sec. Five, 501(e) revised effective 1/1/03)

502. Broker's Commissions – Guideline

- (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.
(Appendix A, Sec. Five, 502 revised effective 1/1/13)

503. 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 attached hereto, marked "Attachment 1".

Appendix A, Sec. Five, 503 revised effective 1/1/00)

**504. Exclusive Listings for Sale of Property (Probate Code Section 10150(C)
[Repealed 1/1/03] (See California Rule of Court 7.453)**

505. 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.

Appendix A, Sec. Five, 505 revised effective 1/1/00)

506. 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.

Appendix A, Sec. Five, 506 revised effective 1/1/00)

PART II - SALES OF PERSONAL PROPERTY

507. 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 JC 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.

Appendix A, Sec. Five, 507 revised effective 1/1/00)

SECTION SIX - ACCOUNTS, FEES AND PETITION FOR DISTRIBUTION

601. Notice of Petition for Distribution

At least fifteen (15) 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, 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; and d) to those next entitled to succeed to the trust corpus upon the termination of all present interests as of the time that notice is required to be given.

(Appendix A, Sec. Six, 601 revised effective 1/1/00)

602. Property to be Distributed must be Listed

- (a) 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 incorporated in the petition by reference. This includes a statement of the amount of cash on hand. Description by reference to the inventory is not acceptable. See also requirements in Probate Code Section 1064.
- (b) 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.

(Appendix A, Sec. Six, 602(b) revised effective 1/1/03)

603. Form of Accounting

The general guidelines for accountings are now set forth in Probate Code Section 1060 et seq.

(Appendix A, Sec. Six, 603 revised effective 1/1/13)

604. Waiver of Account

- (a) 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 Rule of Court 7.550)
- (b) When property is being distributed in a testamentary trust, an account may be waived by the trustee and all 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.

(Appendix A, Sec. Six, 604 revised effective 1/1/03)

605. Statutory Fees and Allowable Costs [Repealed 1/1/03] (See California Rule of Court 7.705)

606. 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 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.

(Appendix A, Sec. Six, 606 revised effective 1/1/12)

607. Extraordinary Fees

Petitions for compensation for extraordinary services under Probate Code § 10811 shall be supported by a declaration, complying with the guidelines in Attachment 2, from each individual requesting approval of extraordinary fees. 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 7.702 and 7.703 for declaration content.

(Appendix A, Sec. Six, 607 new effective 1/1/13)

608. The Order

- (a) 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) 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) For orders establishing testamentary trusts, see California Rule of Court 7.650.

(Appendix A, Sec. Six, 608(c) revised effective 1/1/08)

609. 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.

(Appendix A, Sec. Six, 609 revised effective 1/1/00)

610. Creditor's Claims

- (a) The Petition for Final Distribution must show that all of decedent's creditors received a Notice to Creditors (Judicial Council Form DE-157) at least 75 days prior to the hearing, or were paid or that there were no known creditors of decedent. (Probate Code Section 10900)

(Appendix A, Sec. Six, 610(a) revised effective 1/1/01)

- (b) 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.

(Appendix A, Sec. Six, 610(b) revised effective 1/1/01)

- (c) 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.

(Appendix A, Sec. Six, 610(c) revised effective 1/1/01)

611. Federal Estate Taxes

- (a) 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) 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).

(Appendix A, Sec. Six, 611(b) revised effective 1/1/08)

612. 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.

(Appendix A, Sec. Six, 612 revised effective 1/1/03)

613. 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.

(Appendix A, Sec. Six, 613 revised effective 1/1/03)

614. Preliminary Distribution

- (a) 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) 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.

(Appendix A, Sec. Six, 614 revised effective 1/1/03)

615. 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) Special letters may be the proper vehicle for such actions. In appropriate circumstances, the Court may appoint the 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) 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 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) 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.)

(Appendix A, Sec. Six, 615 revised effective 1/1/00)

616. 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)

(Appendix A, Sec. Six, 616 revised effective 1/1/00)

617. Application for Final Discharge

All Ex Parte Petitions for Final Discharge (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 (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.

(Appendix A, Sec. Six, 617 revised effective 1/1/12)

618. Payment of Costs of Administration

A petition for final distribution or to terminate the proceeding must state that all charges for legal advertising, bond premiums, probate referee's services and costs of administration have been paid.

(Appendix A, Sec. Six, 618 new effective 1/1/13)

SECTION SEVEN - INVENTORY AND APPRAISAL

701. Preparation of Inventory and Appraisal

Provide complete descriptions of each asset in the estate. (See Probate Code Section 8850). The legal description as well as the street address (or a notation that the property is "unimproved") shall be shown for each parcel of real property. Promissory notes shall be described by showing the maker, payee, original face amount, present balance, interest rate, and a description of the security, if any. See I. California Decedent Estate Administration (CEB Rev 1996, Chapter 11, Section 1122); See also Legal Secretary's Handbook (California), Volume 2 (1989 Edition) published by the Rutter Group, form 14-28. Cal. Prac. Guide: Probate (The Rutter Group) Section 6:87 et seq.

(Appendix A, Sec. Seven, 701 revised effective 1/1/03)

702. Waiver of Appraisal by Probate Referee

- (a) 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) The Court may allow deferral of the Probate Referee's appraisal on a showing that (1) 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.

(Appendix A, Sec. Seven, 702 revised effective 1/1/03)

SECTION EIGHT - GUARDIANSHIPS AND CONSERVATORSHIPS

Part I - Guardianships: Commencing with Guideline 801.

Part II - Conservatorships: Commencing with Guideline 811.

Part III - Guidelines Common to Guardianships and Conservatorships: Commencing with Guidelines 819.

Part I – GUARDIANSHIPS

801. 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” (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” (form GC-21).

(Appendix A, Sec. Eight, Part I, 801 new effective 1/1/12)

802. 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.

(Appendix A, Sec. Eight, Part I, 802 revised effective 1/1/03)

803. 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.

(Appendix A, Sec. Eight, Part I, 803 revised effective 1/1/03)

804. 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). Juvenile Court retains jurisdiction to modify, revoke or terminate such guardianships. See Welfare and Institutions Code Sections 366.3 and 366.4.

(Appendix A, Sec. Eight, Part I, 804 revised effective 1/1/00)

805. 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 guideline in the best interest of the minor.

(Appendix A, Sec. Eight, Part I, 805 revised effective 1/1/13)

806. 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) days prior to 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) 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]).

(Appendix A, Sec. Eight, Part I, 806 revised effective 1/1/00)

807 – 810. Intentionally Omitted

Part II - CONSERVATORSHIPS

811. Appointment of Conservator

- (a) 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) The matter shall be set for hearing generally not sooner than 45 days after the filing date to allow time for the Court Investigator's Report (Probate Code Section 1894).
- (c) The Handbook as required by Probate Code Section 1835 is available for purchase from the Clerk's Office.

(Appendix A, Sec. Eight, Part II, revised effective 1/1/03)

812. Appointment of Temporary Conservators

Minimum notice to the conservatee and conservatee's spouse, if any, will be required unless the Judicial Council Form (GC-112), Ex Parte Application for Good Cause Exception to Notice of Hearing on Petition for Appointment of Temporary Conservator is approved by the Court.

(Appendix A, Sec. Eight, Part II, 812 revised effective 1/1/12)

813. Specific Medical Treatment and Placement

- (a) 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 egress by the conservatee. This guideline 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 prior to 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.
- (b) Psychotropic medication in conservatorships under 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 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.

(Appendix A, Sec. Eight, Part II, 813 revised effective 1/1/13)

814. 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 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.)

(Appendix A, Sec. Eight, Part II, 814 revised effective 1/1/03)

815. 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.

(Appendix A, Sec. Eight, Part II, 815 revised effective 1/1/00)

816. 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 Court. If a course is completed the course completion form should be filed.

(Appendix A, Sec. Eight, Part II, 816 revised effective 1/1/13)

817 – 818. Intentionally Omitted

Part III - Guidelines Common to Guardianships and Conservatorships

819. Warning on Order [Repealed 1/1/03]

820. Copies for Court Investigator

- (a) 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 thereto shall be given to the legal process clerk at the time of filing, 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.
- (b) If the Court requires a report from the Court Investigator after a pleading is filed, or if the extra copy required hereunder was inadvertently not given to the legal process clerk, then copies of all related pleadings, including the petition, accounting, orders, letters, inventory and appraisals, etc., shall be furnished by the petitioner by delivery or transmission to the Court Investigator's office.

(Appendix A, Sec. Eight, Part III, 820(b) revised effective 1/1/13)

821. Intentionally Omitted and Reserved [Repealed 1/1/13]

822. 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.

(Appendix A, Sec. Eight, Part III, 822 revised effective 1/1/00)

823. Instructions Regarding General Duties and Conflicts of Guardian or Conservator

Before Letters are issued, each guardian or conservator must complete, sign and file a form 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.

(Appendix A, Sec. Eight, Part III, 823 revised effective 1/1/00)

824. 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).

(Appendix A, Sec. Eight, Part III, 824 revised effective 1/1/03)

825. Accounts

- (a) 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 date of appointment of the general conservator and shall also include any period of temporary appointment of the person as conservator or guardian.
- (b) 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.
- (c) The ending date of an account, except an account ending upon the death of a conservatee, shall not be more than three months prior to 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.

(Appendix A, Sec. Eight, Part III, 825(c) revised effective 1/1/03)

- (d) 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.

(Appendix A, Sec. Eight, Part III, 825(d) revised effective 1/1/13)

826. Conservator and Guardian Compensation and Attorney's Fees

- (a) Petitions for compensation of guardians and conservators and their attorneys shall be supported by a declaration, complying with the guidelines in Attachment 2, from each individual requesting approval of fees. 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 7.751(b) and 7.756 for declaration content.
- (b) Petitions for compensation of attorneys not representing fiduciaries may incorporate the explanation and justification into the petition, without a separate declaration.

(Appendix A, Sec. Eight, Part III, 826(b) revised effective 1/1/13)

827. Independent Exercise of Powers

- (a) 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) 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

guideline. 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.

(Appendix A, Sec. Eight, Part III, 827(b) revised effective 1/1/13)

828. Investments by Guardian or Conservator (Probate Code Section 2570 Et Seq.)

- (a) 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) Purchase of life insurance on the minor ward's life will not be authorized.
- (c) 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 that notice be dispensed with. A declaration justifying the dispensing with notice shall accompany or be incorporated in the petition.

(Appendix A, Sec. Eight, Part III, 828 revised effective 1/1/00)

829. Account Statements with Accountings)

Any account statement submitted pursuant to Probate Code Section 2620 which are required by that section to be confidential shall be filed as a separate document complying with California Rule of Court 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.

(Appendix A, Sec. Eight, Part III, 829 revised effective 1/1/03)

SECTION NINE – TRUSTS

901. 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 Rule of Court 7.776 to the extent warranted by the circumstances of the case. No separate declaration is required. See Probate Code §§ 16243 and 16247.

(Appendix A, Sec. Nine, 901 revised effective 1/1/13)

902. Establishment of a Trust

- (a) 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) Investment limitations.
- (4) Gifts, hypothecation 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

(Appendix A, Sec. Nine, 902(a)(8) new effective 1/1/13)

- (b) The formal order shall provide that the trustee may not receive assets or otherwise act until filing of a bond in the amount set by court.

(Appendix A, Sec. Nine, 902 revised effective 1/1/13)

903. Establishment of Special Needs Trust from Inheritance by Court Order

To the extent that a person with special needs has not received 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 Guideline 902 [currently Guideline 1002], that Guideline 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.

(Appendix A, Sec. Nine, 903 new effective 1/1/13)

SECTION TEN - PROTECTIVE PROCEEDINGS

1001. Proceeding for Spousal Property Transaction

As to petitions pursuant to Probate Code Section 3100 et seq.:

- (a) 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.).
- (b) Counsel will be appointed for the non-petitioning spouse if the petition proposes a substantial transfer to the petitioner.
- (c) 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.
- (d) 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.
- (e) The Court will not issue general support orders in petitions under Probate Code Section 3100 et seq.

(Appendix A, Sec. Ten, 1001 revised effective 1/1/03)

1002. Establishment of a Trust [Repealed 1/1/13]

**ATTACHMENT 1 - THE ABCS OF DIVIDING THE COMMISSION PIE IN
PROBATE SALES**

LLOYD W. HOMER, ESQ.

CAMPBELL

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.

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%

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

	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)

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.

(Appendix A, Attachment 1, revised effective 7/1/06)

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.

(Appendix A, 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.

(Appendix A, 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.

(Appendix A, Attachment 2, Fees (c) revised effective 1/1/11)

(d) Higher Rates:

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.

(Appendix A, 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.

(Appendix A, 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 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.).

(Appendix A, 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, discrete 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 \$1,000 maximum for approval 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 generally approve a maximum annual fiduciary fee of \$1,000 without requiring a declaration.
- (5) See Fee Declaration Template below for example of how narrative description and explanation might be presented.

(Appendix A, Attachment 2, Fees (f) revised effective 1/1/13)

(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 fiduciary are sufficient for this purpose. Notwithstanding, the

foregoing, the Court will generally approve a minimum annual fiduciary fee of \$1000.00 without requiring a declaration.

(Appendix A, Attachment 2, Fees (g) revised effective 1/1/13)

COSTS AND EXPENSES

- (a) Reasonable court costs will be allowed.
- (b) 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, e-mail 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).

(Appendix A, Attachment 2, Costs (b)(2) revised effective 1/1/13)

ATTACHMENT 3 – FEE DECLARATION TEMPLATE

[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 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]:
 - 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.]

5. Time spent on each type of service is summarized 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 Rule of Court 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]

(Appendix A, Attachment 3, new effective. 1/1/13)

ATTACHMENT 4 - PROBATE DEPARTMENT OPERATIONS

(a) CALENDARS

The probate calendars are as follows:

Tuesdays at 11:00 a.m. – all probate cases involving the Public Guardian.

Tuesdays at 11:10 a.m. – all probate cases (e.g. LPS Conservatorships) governed by the Welfare & Institutions Code.

Thursday at 11:00 a.m. – all matters involving the Public Administrator.

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.

(Appendix A, Attachment 4(a), revised effective. 1/1/13)

(b) EX PARTE APPLICATIONS

All requests for ex parte orders shall be submitted to the Probate Examiners for review between 1:30 p.m. and 3:00 p.m. Monday through Friday, 725 Court Street, Room 210, Martinez, CA.

(Appendix A, Attachment 4(b), revised effective. 1/1/13)

(c) TENTATIVE RULINGS

Tentative rulings are generally available three (3) court days prior to the hearing on the Tentative Rulings Website at www.cc-courts.org. If the website is down, or for some reason cannot be accessed, the number to call between 9:00 a.m. and Noon any time after the ruling is posted, is (925) 957-5781.

Tentative rulings are not posted for matters on the Tuesday, 11:10 a.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 9:00 a.m. and noon at (925) 957-5781.

(Appendix A, Attachment 4(c), revised effective. 1/1/13)

(Appendix A, revised effective. 1/1/13)

APPENDIX B - STANDARD OF PROFESSIONAL COURTESY PREAMBLE

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.

These standards have been codified to make the level of professionalism reflected in them the standard for practice within Contra Costa County, and with the hope that their dissemination will educate new attorneys and others who may be unfamiliar with the customary local practices. They 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 the Contra Costa County Superior Court Rules, Rule 30.

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.

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.

I - SCHEDULING:

- (a) (1) Attorneys should communicate with opposing counsel prior to 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 endeavoring to provide opposing counsel, parties, witnesses and other affected persons, sufficient notice thereof.
- (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) In all cases an attorney should endeavor to reserve sufficient time for the completion of the proceeding to permit a complete presentation by counsel for all parties.
- (c) 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) 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) 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) 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) 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), 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.

II - DISCOVERY:

- (a) 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) 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) 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) 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 should avoid, through objections or otherwise, improper coaching of the deponent or suggesting answers.
- (e) 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).

III - CONDUCT TOWARDS OTHER ATTORNEYS, THE COURT AND PARTICIPANTS:

- (a) 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) An attorney should never use the mode, timing or place of serving papers primarily to embarrass a party or witness.
- (c) 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) Attorneys should refrain from disparaging or denigrating the Court, opposing counsel, parties or witnesses before their clients, the public or the media.
- (e) 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) 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 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) 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) Attorneys should draft agreements and other documents promptly and so as to fairly reflect the true intent of the parties.
- (i) 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.

IV - CANDOR TO THE COURT AND OPPOSING COUNSEL:

- (a) 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) 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 prior to the hearing.
- (c) 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 preparing the proposed order so that good faith discussions can be had concerning the language of the proposed order.
- (d) Attorneys should respect and abide by the spirit and letter of all rulings of the Court.
- (e) 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.

V - EFFICIENT ADMINISTRATION:

- (a) Attorneys should refrain from actions which cause unnecessary expense, or delay the efficient and cost effective resolution of a dispute.
- (b) Attorneys should, whenever appropriate, stipulate to all facts and legal authority not reasonably in dispute.
- (c) Attorneys should encourage principled negotiations and efficient resolution of disputes on their merits.
- (d) Attorneys should be punctual in communications with others, and punctual and prepared for all scheduled appearances.
- (e) 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 controversy more expeditiously and economically disposed of by settlement, arbitration, mediation or other form of alternative dispute resolution.
- (f) 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.
- (g) 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.

(Appendix B, revised effective 1/1/10)

APPENDIX C - ALTERNATIVE DISPUTE RESOLUTION

SECTION ONE - ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

- 101. 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 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.
- 102. Application of These Rules.** These rules apply to all court-administered ADR programs except mediation 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.
- 103. 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:
- (A) CV-655b – Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days (Unlimited Jurisdiction Civil Cases)
 - (B) CV-659d – Stipulation to Attend ADR and Delay First Case Management Conference 90 Days (Limited Jurisdiction Civil Cases)
- 104. 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:
- (A) (For limited jurisdiction cases) - a Stipulation to Attend ADR and Delay First Case Management Conference 90 Days, or
 - (B) (For unlimited jurisdiction cases) – a Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days.

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

- 105. 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.

- 106. 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 14 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.

- 107. 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:

- (A) All parties notify both the Judicial and ADR Department as soon as is practicable of their intent to change processes,
- (B) All 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.

- 108. 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.

- 109. 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 (Local Court Rules – Appendix C.)

- 110. 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 Rule of Court 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,

- (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.

111. No Requirement to Refer Matters to a Particular Panel Member, and No Employment Relationship. 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.

112. 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.

(Appendix C, Sec. One revised effective 1/1/10)

SECTION TWO - MEDIATION

201. 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.

202. 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) 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.

203. 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 (1)(a) and (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 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.
- (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 Rule of Court 3.850 et. seq. and comply with the competence standards established by California Rule of Court 3.856.

- 204. 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.
- 205. 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.
- 206. 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.
- 207. 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 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;
 - (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.

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

209. 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.

(Appendix C, Sec. Two revised effective 1/1/12)

SECTION THREE - JUDICIAL ARBITRATION

301. 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 10 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 60 days or another time limit set by the judge.

302. Arbitrator Selection. All parties must agree on an arbitrator and complete a Selection of ADR Panel Member (local court form ADR-201) fourteen (14) 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".

303. Arbitrator Qualifications. Arbitrators must be licensed California attorneys with 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.

- 304. 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.
- 305. 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.
- 306. 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 local court form (ADR-404) or write this information on their own paper. This form is available online at www.cc-courts.org/adrforms. 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.
- 307. 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.

(Appendix C, Sec. Three revised effective 1/1/14)

SECTION FOUR - SETTLEMENT MENTORS

- 401. 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.

- 402. 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.
- 403. Settlement Mentor Qualifications.** Settlement mentors are attorneys who have background experience in the issues involved in the case.
- 404. 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.
- 405. 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.
- 406. 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 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 so as to help the parties reach an agreement.

- 407. Blending or Changing 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.

(Appendix C, Sec. Four revised effective 1/1/10)

SECTION FIVE - NEUTRAL CASE EVALUATION

- 501. 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.

- 502. 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) 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.
- 503. Neutral Case Evaluator Qualifications.** Evaluators are attorneys who have significant litigation experience and background in the issues involved in the case.
- 504. 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. 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.
- 505. 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.
- 506. 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.
- 507. 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 local court form ADR-504 or write this information on their own paper. This form is available online at www.cc-courts.org/adrforms. 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.
- 508. 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 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.

(Appendix C, Sec. Five revised effective 1/1/10)

SECTION SIX - TEMPORARY JUDGE TRIAL- CIVIL DIVISION

Applicable to Civil Cases

(not including juvenile or family law cases)

601. 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 all 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 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.

602. Qualification of Temporary Judges. Consistent with California Rule of Court 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 prior to their service as a temporary judge.

(Appendix C, Sec. Six revised effective 1/1/09)

SECTION SEVEN - ETHICAL AND PRACTICE STANDARDS FOR ADR PANEL MEMBERS

701. General Responsibilities. People serving on the Court's ADR Panel must be familiar with and follow all state or federal laws, local court rules, California Rules of Court, 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.

702. 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.

703. 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.

704. Conflict of Interest – Duty to Disclose. Per California Rule of Court 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.

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

- 706. 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.
- 707. 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.
- 708. 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.
- 709. 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.
- 710. Knowledge of 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.
- 711. 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.
 - (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.

- 712. 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.
- 713. 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.

(Appendix C, Sec. Seven revised effective 1/1/09)

(Appendix C, revised effective 1/1/14)

APPENDIX D

COMMITTEE ON BIAS

Pursuant to Standard 10.20, Standards of Judicial Administration, 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.

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

Pursuant to this procedure, 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.

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.

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.

Any investigation conducted shall be undertaken, with the utmost care not to violate the confidentiality of the complainant.

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.

After the Presiding Judge informs the Committee 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.

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.

With respect to those incidents that, if substantiated, would warrant discipline, the Committee will advise the complainant of the appropriate disciplinary authority.

The Committee on Bias is to be composed of representative members of the court community, including but not limited to judges, lawyers, court administrators, and representatives and individuals from minority, women's and gay and lesbian bar associations and from organizations that represent persons with disabilities.

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.

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.

(Appendix D, revised effective 1/1/12)

APPENDIX E

DISCOVERY FACILITATOR PROGRAM

In an attempt to avoid protracted, costly and unnecessary discovery disputes, effective February 11, 2013, the following Departments are requiring parties to participate in the Discovery Facilitator Program prior to filing all motions in Court to compel discovery, unless the judge specifically orders otherwise. This includes motions pursuant to CCP Section 1987.1.

Civil

Department 9 – Hon. Judith Craddick

Department 31 – Hon. Laurel S. Brady

Department 33 – Hon. Steven K. Austin

Department 34 – Hon. George V. Spanos

Probate

Department 14 – Hon. John H. Sugiyama

Department 15 – Hon. Susanne Fenstermacher

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.

DISCOVERY MOTIONS AND THE DISCOVERY FACILITATOR PROGRAM

(a) Mandatory Referral to Discovery Facilitator Program

- (1) Unless otherwise ordered by the trial judge assigned for all purposes, any party wishing to file a discovery motion, including a motion to quash a third party subpoena, must first serve a Request for Assignment of Discovery Facilitator by fax or email on The ADR office of the Contra Costa County Superior Court (“ADR Office”), Fax No. 925-957-5689; 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.

The Request for Assignment of Discovery Facilitator shall provide the name and the fax number and e-mail 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 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 45 days of service of the discovery responses.

(b) Discovery Facilitators

- (1) The ADR 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 ADR Office shall contact the proposed Discovery Facilitator to confirm availability and willingness to serve.
- (3) Within 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 ADR 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 ADR Office shall serve a Notice of Assignment of Discovery Facilitator within 10 calendar days of receipt of a Request for Assignment of Discovery Facilitator.

- (2) Rejection of Assigned Discovery Facilitator.
- (A) The party who filed the Request for Assignment of Discovery Facilitator shall have 5 court days after service of Notice of Assignment to serve on the ADR Office and the parties in the action a Rejection of Assigned Discovery Facilitator.
- (B) If the party who filed the Request for Assignment of Discovery Facilitator does not file a Rejection of Assigned Discovery Facilitator, the party against whom the discovery motion is filed shall have 5 additional court days to serve a Rejection of Assigned Discovery Facilitator.

If no Rejection of Assigned Discovery Facilitator is served within 10 court days of service of the original Notice of Assignment of Discovery Facilitator, the Notice of Assignment of Discovery Facilitator is confirmed.

- (C) If the first Discovery Facilitator declines to serve or if either party serves a Rejection of the first Discovery Facilitator who is assigned, the ADR Office shall serve a Notice of Assignment of Second Discovery Facilitator within 5 calendar days of receipt of a Rejection of the first Discovery Facilitator. The party who has not yet served a Rejection may, within 5 court days of service of the Notice of Assignment of Second Discovery Facilitator, serve a Rejection of the second Discovery Facilitator who is assigned. If that party does serve a challenge, then the ADR Office shall serve a Notice of Assignment of Third Discovery Facilitator, who shall be confirmed upon service of the notice. If the party who still has a right to reject the Second Discovery Facilitator fails to exercise it on time, the Second Discovery Facilitator is confirmed 5 court days after notice of his or her assignment was served.

(d) Hearing of Discovery Dispute

- (1) The Discovery Facilitator shall hold a hearing on the discovery dispute no later than 30 days after confirmation of the assignment of the Discovery Facilitator.
- (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.
- (3) If the Discovery Facilitator determines that the hearing cannot be scheduled or completed within 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 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 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 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." 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 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 formal discovery motion papers. Those moving papers shall include a declaration that the parties have completed the Discovery Facilitator Program and shall attach the Recommendations of Discovery Facilitator as an 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 40 days from the completion of the discovery hearing to file formal discovery motion papers regarding the discovery dispute, which

papers shall include 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 shorten all time frames set forth in this Rule 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, to grant them the courtesy and respect that they would grant to a judicial officer, and to 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.

Forms

Request For Assignment of Discovery Facilitator

Local Court Form (ADR-610)

Notice of Assignment of Discovery Facilitator

Local Court Form (ADR-611)

Notice of Assignment of Second Discovery Facilitator After First Rejection

Local Court Form (ADR-612)

Notice of Assignment of Third Discovery Facilitator After Second Rejection

Local Court Form (ADR-613)

(Appendix E, new effective 1/1/14)

APPENDIX F

LIST OF FORMS MENTIONED IN LOCAL COURT RULES

LOCAL COURT FORMS:

ADR-201	Panel Member Selection (<i>Mandatory Use</i>)
ADR-304	Mediation Statement (<i>Mandatory Use</i>)
ADR-305	Mediator's Report (<i>Mandatory Use</i>)
ADR-404	Arbitration Statement (<i>Optional Use</i>)
ADR-504	Neutral Case Evaluator Statement (<i>Optional Use</i>)
ADR-610	Request For Assignment of Discovery Facilitator (<i>Mandatory Use</i>)
ADR-611	Notice of Assignment of Discovery Facilitator (<i>Mandatory Use</i>)
ADR-612	Notice of Assignment of Second Discovery Facilitator After First Rejection (<i>Mandatory Use</i>)
ADR-613	Notice of Assignment of Third Discovery Facilitator After Second Rejection (<i>Mandatory Use</i>)
CV-655b	ADR Case Management Stipulation and Order (Unlimited Civil) (<i>Optional Use</i>)
CV-655d	Notice to Defendants (<i>Informational</i>)
CV-659d	ADR Case Management Stipulation (Limited Civil) (<i>Mandatory Use</i>)
FamLaw-107	Declaration Re Notice Upon Ex Parte Application for Orders (<i>Mandatory Use</i>)
FamLaw-12.7	Case Management Conference Questionnaire (<i>Mandatory Use</i>)
GC-20	Proposed Guardian(s) Information (<i>Mandatory Use</i>)
GC-21	Termination of Guardianship Information (<i>Mandatory Use</i>)

JUDICIAL COUNCIL FORMS:

APP-103	Appellant's Notice Designating Record on Appeal (<i>Optional Use</i>)
CM-110	Case Management Statement (<i>Mandatory Use</i>)
DE-157	Notice of Administration to Creditors (<i>Mandatory Use</i>)
DE-275	Ex Parte Petition for Approval of Sale of Personal Property and Order (<i>Mandatory Use</i>)
DE-295	Ex Parte Petition for Final Discharge and Order (<i>Mandatory Use</i>)

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

- FL-141 Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration (*Mandatory Use*)
- FL-182 Judgment Checklist-Dissolution/Legal Separation (*Optional Use*)
- GC-112 Ex Parte Application for Good Cause Exception to Notice of Hearing on Petition for Appointment of Temporary Conservator (*Optional Use*)
- JV-200 Custody Order – Juvenile-Final Judgment (*Mandatory Use*)
- JV-205 Visitation Order – Juvenile (*Mandatory Use*)
- JV-570 Request for Disclosure of Juvenile Case File (*Mandatory Use*)
- JV-575 Petition to Obtain Report of Law Enforcement Agency (*Mandatory Use*)
- MC-051 Notice of Motion and Motion to Be Relieved As Counsel-Civil (*Mandatory Use*)
- MC-052 Declaration In Support of Attorney's Motion to Be Relieved As Counsel-Civil (*Mandatory Use*)
- MC-053 Order Granting Attorney's Motion to Be Relieved As Counsel-Civil (*Mandatory Use*)
- MC-356 Receipt and Acknowledgment of Order for The Deposit of Money Into Blocked Account (*Mandatory Use*)
- MC-500 Media Request to Photograph, Record, or Broadcast (*Mandatory Use*)
- MC-510 Order On Media Request to Permit Coverage (*Mandatory Use*)
- NC-100 Petition for Change of Name (*Mandatory Use*)
- NC-120 Order to Show Cause for Change of Name (Change of Name) (*Mandatory Use*)

For local court forms, visit: www.cc-courts.org/forms

For Judicial Council forms, visit: www.courtinfo.ca.gov/forms

(Appendix F, revised effective 1/1/14)

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