SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 220 W. BROADWAY

MAILING ADDRESS: P.O. BOX 122724

CITY AND ZIP CODE: SAN DIEGO, CA 92112

TELEPHONE: 619-531-3820

LOCAL RULES CERTIFICATE OF COMPLIANCE*

By electronically submitting these rules to you, I CERTIFY as follows:

1. The Judges of the Superior Court of California, County of *(name) San Diego* [our court] have adopted local rules of court effective *(date)*: July 1, 2006.
2. These rules are filed electronically with the Judicial Council and supersede local rules previously adopted by our court as follows:
   a. ☐ These rules supersede all local rules previously adopted.
   b. ☒ These rules supersede only one or more categories or sections (e.g., civil, family, criminal, etc.) of our previously adopted local rules *(specify category or section)*: DIVISION VIII MENTAL HEALTH COURT
   c. ☐ Other *(specify)*:
3. Our court has complied with all applicable provisions of the California Rules of Court, Rule 981.
4. Our court ☒ does ☐ does not post local rules on the court's Web site.
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Date: May 22,2006

_____MICHAEL RODDY_____

(TYPE OR PRINT NAME)

☐ Presiding Judge ☒ Court Executive Officer

7. The person who may be contacted by the AOC with questions, if any, about your court's local rules is *(specify name, telephone number, and e-mail address if available): DARLENE DORNAN (619) 531-3794; darlene.dornan@sdcourt.ca.gov*

*See also Local Rules Information Sheet of page 2 of this form.

LOCAL RULES INFORMATION SHEET

1. Filing Instructions

a. Thirty days before the effective date of January 1 or July 1, an electronic copy of the court's revised local rules must be filed with the Judicial Council together with a *Local Rules Certificate of Compliance* from the presiding judge or court executive officer. Send your rules to *localrules@jud.ca.gov*. We would prefer to receive an entire set or section of the court's local rules (see item 2 of the *Local Rules Certificate of Compliance* form), not just the rules that were amended.

b. The court may use the *Local Rules Certificate of Compliance* on page one of this Local Rules Information sheet. You may e-mail the *Local Rules Certificate of Compliance* to *localrules@jud.ca.gov* or fax it to

(415) 865-7664.

c. The local rules, including Table of Contents, List of Effective Dates, Appendix and any local forms must be compiled into *one* document only. If the document exceeds 1 megabyte (1000 KB), then the document should be sent as a compressed file.* To find the size of the document, right click on the document (unopened), left click on "properties," and left click on the "general" tab. This will give you the size of the document. We will convert your program (Microsoft Word, WordPerfect, etc.) into a PDF file after it arrives.

d. Administrative Office of the Courts staff will review your court's local rules for compliance with rule 981 format requirements. We will advise you by e-mail whether your local rules can be posted to your court's Web site or if further changes are needed.

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2. Format Instructions

a. If you would like to receive a local court rules format checklist, e-mail Cara Vonk at c*ara.vonk@jud.ca.gov.*

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Up-to-date local rules of every county in the state must be maintained by your court for public examination under rule 981 of the California Rules of Court. This may be accomplished in one of two ways.

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4. Questions

If you have questions about local rule format requirements, please contact Cara Vonk at (415) 865-7669, *cara.vonk@jud.ca.gov* or Linda Cobden at (415) 865-4227, *linda.cobden@jud.ca.gov.*

* If you have questions about transmitting your rules electronically by computer, please contact Harry Jacobs at (415) 865-7620, *harry.jacobs@jud.ca.gov.*

SAN DIEGO COUNTY SUPERIOR COURT RULES

Revised July 1, 2006

DAILY JOURNAL CORPORATION
915 East First Street, Los Angeles, California 90012
P.O. Box 54026, Los Angeles, California 90054
Telephone (213) 229-5300

San Diego Commerce
2652 4th Ave. 2nd Floor
San Diego, CA 92103
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SAN DIEGO COUNTY

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DIVISION I
GENERAL AND ADMINISTRATIVE RULES

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DIVISION I: GENERAL AND ADMINISTRATIVE RULES

These rules apply to all cases filed in or transferred to the courts of San Diego County.

GENERAL

1. Lawyers should honor their commitments.
2. Lawyers should uphold the integrity of our system of justice.
3. Lawyers should not compromise their integrity for the sake of a client, case, or cause.
4. Lawyers should conduct themselves in a professional manner.
5. Lawyers should be guided by a fundamental sense of fair play in all professional dealings.

DUTIES OWED IN PROCEEDINGS BEFORE THE COURT

1. Lawyers should be courteous and respectful to the Court.
2. Lawyers should be candid with the Court.
3. Lawyers and clients appearing in court should dress neatly and appropriately.
4. Lawyers should be on time.
5. Lawyers should be prepared for all court appearances.
6. Lawyers should attempt to resolve, by agreement, differences regarding procedural and discovery matters.
7. Lawyers should discourage and decline to participate in litigation that is without merit or is designed primarily to harass or drain the financial resources of the opposing party.
8. Lawyers should avoid any communications, direct or indirect, about a pending case with a judge unless the opposing party or lawyer is present or unless permitted by the court rules or otherwise authorized by law.
9. Lawyers should refrain from impugning the integrity of the judicial system, its proceedings, or its members.

DUTIES OWED TO MEMBERS OF THE BAR

1. Lawyers should remember that conflicts with opposing counsel are professional and not personal - vigorous advocacy is not inconsistent with professional courtesy.
2. Lawyers should treat adverse witnesses and litigants with fairness and due consideration.
3. Lawyers should not be influenced by ill feelings or anger between clients in their conduct, attitude, or demeanor toward opposing counsel.
4. Lawyers should conduct themselves in discovery proceedings in the same manner as they would if a judicial officer were present.
5. Lawyers should not use discovery to harass the opposition or for any improper purpose.
6. Lawyers should not intentionally make any misrepresentation to an opponent.
7. Lawyers should not arbitrarily or unreasonably withhold consent to a just and reasonable request for cooperation or accommodation.
8. Lawyers should not attribute to an opponent a position not clearly taken by the opponent.
9. Letters intended to make a record should be scrupulously accurate.
10. Lawyers should not propose stipulations in the presence of the trier of fact unless previously agreed to by the opponent.
11. Lawyers should ordinarily not interrupt an opponent's legal argument.
12. Lawyers in court should address opposing lawyers through the Court.
13. Lawyers should not seek sanctions against or disqualification of another lawyer to obtain a tactical advantage or for any other improper purpose.
14. Lawyers should conduct themselves so that they may conclude each case with a handshake with the opposing lawyer.

CHAPTER 1 SCOPE OF RULES

Rule 1.1.1
Citation and Effect of Rules

These rules are known and cited as the "San Diego Superior Court Rules" and are at all times supplementary to and subject to statutes, the California Rules of Court, and any rules adopted by the Judicial Council and are to be construed and applied so they do not conflict with such rules and statutes. These rules have no retroactive effect or application.
(Eff. 1/1/98, Rev. 1/1/2000; Rev. 1/1/2004; Renumbered 1/1/2006)

Rule 1.1.2
Construction and Application of Rules

These rules will be construed to secure the efficient administration of the business of the court and to promote and facilitate the administration of justice by the court. Division, section, rule, and paragraph headings do not affect the scope, meaning, or intent of the provisions of these rules.

If any part of a rule is held invalid, all valid parts that are severable from the invalid parts remain in effect. If a rule is held invalid in one or more of its applications, the rule remains in effect in all valid applications that are severable from the invalid applications.
(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 1/1/2006)

Rule 1.1.3
Definition of Words

The definitions set forth in the California Rules of Court for the trial courts apply to these rules with equal force and for all purposes, unless the context or the subject matter requires otherwise.

"Answer" includes response.

"Case management conference" includes what was formerly referred to as “status conference.”

"Complaint" includes cross-complaint and petition.

"County" means the County of San Diego, State of California.

"Court" means the Superior Court of the County of San Diego and includes any judge, commissioner, referee, and temporary judge currently serving on the bench of any division in the county.

"Day" means a calendar day, unless otherwise specified.

"Defendant" includes cross-defendant and respondent.

"Party," or other designation of a party, includes such party's attorney of record.

"Plaintiff" includes cross-complainant and petitioner.

"Rule" refers to a rule of the San Diego Superior Court, unless otherwise indicated.
(Eff. 1/1/98; Rev. 1/1/99, Rev. 1/1/2000; Rev. 1/1/2004; Renumbered 1/1/2006)

Rule 1.1.4
New, Amended, Repealed Rules

Any rule may be amended or repealed, and new rules may be added by majority vote of the judges of the San Diego Superior Court.
(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 1/1/2006)

CHAPTER 2
GENERAL RULES

Rule 1.2.1
Policy Against Bias

It is the policy of the court to provide an environment free of all types of bias, prejudice, any kind of discrimination, or unfair practice. All judges, commissioners, referees, court officers, and court attachés must perform their duties in a manner calculated to prevent any such conduct, either by court personnel or by those appearing in court in any capacity. This rule does not preclude legitimate comment or advocacy when race, gender, religion, national origin, disability, age, sexual orientation, social economy, or other similar factors are issues in court proceedings.

Any violation of this policy by any judge, commissioner, referee, court officer, or court attaché should be reported directly to the presiding judge or executive officer, or assistant executive officer of the division in which the alleged violation occurred. Any violation of this policy by persons appearing in court should be reported directly to the judicial officer before whom the proceedings were conducted.
(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 1.2.2
Departments, Divisions of the Court, and Venue

A. The court consists of all the departments and divisions wherever they may be located and whatever their function. These include all facilities located within the North County, East County, South County, and Central Divisions. The hours of operation are published in the professional and legal newspapers in the county and posted in each courthouse.

B. In addition to the trial departments of each division, there is a presiding or supervising department and other specialized departments as determined by the presiding judge. The supervising judge at each location is responsible for the administrative and calendar operations of the departments located there and for assignment of proceedings in those cases that are filed there.

C. Except as set forth otherwise below or elsewhere provided in these rules, venue for all cases will be according to the zip codes found in Appendix I-A.

D. The following matters must be filed in the Central Division:

1. Matters now heard on the mental health calendar of the court, including all proceedings under the Lanterman-Petris-Short Act, except permanent conservatorships;

2. Appeals to the appellate division;

3. The return and filing of indictments;

4. False claims actions; and

5. Construction defect cases. If a case primarily involves construction defect claims, the case must be filed in the Central Division (Hall of Justice), and will be assigned to a judge designated to hear construction defect cases.

E. Venue for CEQA Cases

Venue for CEQA (California Environmental Quality Act) cases is divided into two divisions, Central and North County. The East and South Divisions are included in the Central Division for purposes of CEQA cases only. Original petitions must show the proper venue and be filed in the appropriate court according to zip code as set forth in Appendix I-A and in accordance with this rule.

F. Venue for Criminal Cases

1. Generally: Except as otherwise set forth in these rules, the People must file all criminal cases in the division in which the crime is alleged to have occurred, in accordance with the zip codes found in Appendix I-A. The People may make written application to the Supervising Judge of the division in which the case would be filed in accordance with Appendix I-A setting forth good cause why that case should not be filed in accordance with this rule.

2. Death Penalty Cases: Death penalty cases must be filed in the Central, East County and North County Divisions in accordance with the zip codes found in Appendix I-A. The South County Division is included in the Central Division for purposes of venue in death penalty cases only.

3. City of Coronado and City of Del mar Cases: Cases arising in the City of Coronado must be filed in the South County Division, and cases arising in the City of Del Mar must be filed in the North County Division.

G. Venue for Adult Traffic/Minor Offense Cases

Except as set forth in Vehicle Code section 40502, subdivision (b), venue for traffic and minor offense cases charged against adults will be in accordance with the zip code list set forth in Appendix I-A, except that cases arising in the City of Coronado must be filed in the South County Division, and cases arising in the City of Del Mar must be filed in the North County Division.

H. Venue for Juvenile Traffic/Minor Offense Cases

Venue for traffic and minor offense violations charged against juveniles (under 18 years of age) will be in the Juvenile Court of the Central Division, except the following categories of citations will be accepted for filing in the Adult Traffic and Minor Offense Departments of the respective Court Divisions:

1. All Vehicle Code infraction citations issued to juveniles (under 18 years) that do not involve drugs or alcohol;

2. All Municipal Code and Local Ordinances that involve driving or operation of a motor vehicle;

3. All appeals of parking citations issued to juveniles (under 18 years) and minors (18-21 years);

4. All infractions citations issued to minors (18-21 years) for Business and Professions Code violations involving minors in possession and related alcohol and drug charges; and

5. Citations issued to minors (18-21 years) for Vehicle Code, section 23140(a) (person under 21 years, driving under the influence of alcohol). See exception noted below.

Exception: Citations issued to minors (18-21 years) for Vehicle Code, section 23140(a) in the Central Division will be accepted for filing in the Criminal Division downtown.

I. Venue for Juvenile Delinquency Cases

Venue for all delinquency cases initiated by petition will be in the Juvenile Court of the Central Division, except as otherwise set forth in these rules.

J. Venue for Juvenile Dependency Cases

Juvenile dependency cases must be filed in the Central, North County, South County and East County Divisions in accordance with the zip code list that is as agreed upon by the Juvenile Court, Child Welfare Services, and County Counsel (in contrast to Appendix I-A). The current list will be maintained by the Presiding Judge of the Juvenile Court.

K. Venue for Family, Domestic Violence and Child Support Cases

Venue in family law, domestic violence and child support cases will be governed by rules 5.1.2, 5.2.3 and 5.9.3 of Division 5 – Family Law, of these Local Rules.

L. Venue for Probate Cases

Venue in probate cases will be governed by rule 4.1.2 of Division 4, Probate of these rules.

M. Transfer of Actions

Any action or proceeding may, for good cause shown on motion of a party, and after hearing, be transferred to a different division. Motions and hearings on such transfer must be heard in the court where the action or proceeding is pending. In ruling on such a motion the judge presiding may, in his or her discretion, deny transfer of a case that has been filed in a court not authorized by subsection C above.

The presiding judge, supervising judge, or designee (including any judge assigned for all purposes to a case), may order a transfer at any time without motion or hearing in his or her discretion for reasons stated in the order to transfer. Although transfer will ordinarily be ordered in civil matters at the time of the case management conference or in criminal matters at the time of arraignment, such transfer may be ordered at any time at the discretion of any of the judges set forth above. If the order to

transfer is made without a hearing or at a time other than a hearing, any party will be entitled to be heard concerning such transfer if a request for hearing is made to the judge who ordered the transfer within 10 days after notice of transfer.

Whenever, in the discretion of the presiding judge or his or her designee, the criminal calendar in any division has become so congested so as to jeopardize the right of a party to a speedy trial or to interfere with the proper handling of the judicial business in that division, or for security or calendar management reasons, the judge may order those cases that are to be filed in that division be filed in a different division.

(Eff. 1/1/98; Rev. 1/1/99; Rev. 1/1/2001; Renumbered 7/1/2001; Rev. 1/1/2002; Rev. 1/1/2003; Rev. 1/1/2004; Renumbered and revised 1/1/2006)

CHAPTER 3
EXECUTIVE OFFICER OF THE COURT

Rule 1.3.1

Appointment, Powers, and Duties

A majority of the judges of the court may appoint a court executive officer pursuant to section 71620 of the Government Code who also acts as jury commissioner and clerk of the court. Any reference in these rules, the California Rules of Court, or statutes, to the executive officer, clerk of the court, or jury commissioner refers to the executive officer who functions in each of these capacities.

The powers, duties, and responsibilities transferred from the county clerk to the court executive officer pursuant to this rule include all of those performed by the county clerk with respect to court actions, proceedings, and records.

The county clerk is hereby relieved of any obligation imposed by law with respect to the above powers, duties, and responsibilities. This rule does not transfer from the county clerk to the court executive officer obligations in reference to the issuance of marriage licenses or the filing of fictitious business names.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 4
MISCELLANEOUS PROVISIONS

Rule 1.4.1

Records

Nothing on file in any court may be taken out of the clerk's office or the civil business office unless it is going to a courtroom or chambers of a judge.

(Eff. 1/1/98; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 1.4.2

Exhibits

Evidence admitted in any case before any court will be only those items required in the case and will be retained by the court for the minimum time required by law, unless good cause is shown to retain the evidence. No exhibit will be received by any court if the exhibit poses a security, storage, safety, or health problem.

Exhibits which will not be received include but are not limited to:

1. Any type of explosive powder;

2. Explosive chemicals, toluene, ethane;

3. Explosive devices, such as grenades or pipe bombs;

4. Flammable liquids such as gasoline, kerosene, lighter fluid, paint thinner, ethyl-ether;

5. Canisters containing tear gas, mace;

6. Rags which have been soaked with flammable liquids;

7. Liquid drugs such as phencyclidine (PCP), methamphetamine, corrosive liquids, pyrrolidine, morpholine, or piperidine; and

8. Samples of any bodily fluids, liquid or dried.

No exhibits will be accepted by the exhibits custodian unless:

1. Containers with liquid substances are clearly marked and identified as to type and amount;

2. Containers of controlled substances are clearly marked, identified, weighed, and sealed;

3. Cash is specifically identified, whether individually or packaged, as to the total amount and number of each denomination;

4. Firearms are secured by a nylon tie or trigger guard; and

5. Hypodermic needles are placed in containers which will safeguard personnel.

Unless otherwise ordered, unidentified liquids, containers, controlled substances, or other suspect substances will be returned to the party offering them.

All exhibits must be individually tagged with the proper exhibit tag. Each exhibit tag must be properly completed and securely attached to the exhibit. Any exhibit improperly tagged, marked, weighed, or otherwise identified will not be accepted by any court. Original photographs must be substituted for any photographically enlarged exhibits. A court, in its discretion, may order a photograph substituted for large or bulky exhibits which might pose a storage problem. A court, in its discretion, may admit any exhibit in the interest of justice.

Prior to the final determination of an action or proceeding, as defined in Penal Code section

1417.1, only attorneys of record and court employees may view the exhibits. All other interested persons must obtain an order of the court. Viewing must take place in the presence of an exhibit custodian. Exhibits may not be altered or taken apart, except by court order. Special viewing equipment will not be permitted, except by court order.

Attorneys, investigators, law enforcement agencies, and other interested parties may seek temporary release of exhibits for copying or laboratory testing. A stipulation and court order is required in all instances, except a stipulation is not required in civil cases. The party seeking the release must present the original signed stipulation and order and a copy to the exhibit custodian. The order must include the case number, names of the parties, name and telephone number of the person to whom the exhibits are to be released, a description of the exhibits, and the date the exhibits are to be returned.

Exhibits in a criminal matter may be released for use in a civil action brought by the victim of the crime. To obtain such exhibits, the party in the civil action must submit a stipulation signed by the prosecutor and criminal defense counsel (including appellate counsel if applicable), a declaration, and an order signed by the judge. The stipulation shall bear the criminal case caption and number, and reference the civil case by name and number.

Unless specifically ordered by the court, all exhibits marked, identified and/or admitted into evidence in a civil case must be retrieved by the offering party at the conclusion of trial. The party introducing the exhibit is responsible for maintaining and preserving that exhibit pending any post verdict proceedings and appeals, until there is a final disposition of the action or proceeding. All exhibit tags and other identifying markings or information concerning each exhibit must remain in place and not be disturbed. Each exhibit must remain intact and in the same condition as during trial. In the event further proceedings of any court having jurisdiction of the matter require the presence of any exhibit, the party introducing the exhibit must promptly deliver the exhibit to the court, with notice to all parties.

(Eff. 1/1/98; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 1.4.3

Jury Lists

The jury master list for the Central Division will be comprised of those jurors residing in any of the filing districts as set forth in Appendix I-A.

The jury master list for the East, North and South County Division will be comprised of those jurors residing in the district as set forth in the venue column in Appendix I-A that corresponds with the division in which the juror lives.

Jurors will be allowed, in the sound discretion of the court, to transfer their service to any court location regardless of their residence if doing so would make it more convenient for the juror. In addition, jurors may appear for service up to two weeks prior to and two weeks after the date on the jury summons.

The jury master list will be drawn so that all persons have an equal chance of being selected regardless of their place of residence and so that all persons who have not served will be drawn before any who have completed service in the past 12 months.

(Eff. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

APPENDIX I-A
Filing Districts (Sorted by zip code)

ZIP CODE	NAME	VENUE	ZIP CODE	NAME	VENUE	ZIP CODE	NAME	VENUE
91901	ALPINE	EAST	92033	ESCN, (ESCONDIDO BL)	NORTH	92122	SD, UNIVERSITY	CENTRAL
91902	BONITA	SOUTH	92036	JULIAN	EAST	92123	SD, SERRA MESA	CENTRAL
91903	ALPINE	EAST	92037	SAN DIEGO, LA JOLLA	CENTRAL	92124	SD, TIERRASANTA	CENTRAL
91905	BOULEVARD	EAST	92038	LA JOLLA	CENTRAL	92126	SD, MIRA MESA	CENTRAL
91906	CAMPO	EAST	92040	LAKESIDE	EAST	92127	SD, RANCHO BERNARDO	CENTRAL
91908	BONITA	SOUTH	92045	ESCONDIDO	NORTH	92128	SD, RANCHO BERNARDO	CENTRAL
91909	CHULA VISTA	SOUTH	92051	OCEANSIDE-(BROOK ST)	NORTH	92129	SD, RANCHO PENASQUITOS	CENTRAL
91910	CHULA VISTA	SOUTH	92054	OCEANSIDE	NORTH	92130	SD, CARMEL VALLEY	CENTRAL
91911	CHULA VISTA	SOUTH	92055	CAMP PENDLETON	NORTH	92131	SD, SCRIPPS MIRAMAR	CENTRAL
91912	CHULA VISTA	SOUTH	92056	OCEANSIDE	NORTH	92133	SD, NAVAL TR. CTR.	CENTRAL
91913	CHULA VISTA	SOUTH	92057	OCEANSIDE	NORTH	92134	NAVAL MEDICAL CTR.	CENTRAL
91914	CHULA VISTA	SOUTH	92059	PALA	NORTH	92135	NAVAL AIR STA-32ND ST	CENTRAL
91915	CHULA VISTA	SOUTH	92060	PALOMAR MT.	NORTH	92136	32ND ST-NAVAL STATION	CENTRAL
91916	DESCANSO	EAST	92061	PAUMA VALLEY	NORTH	92137	SD, (MIDWAY)	CENTRAL
91917	DULZURA	EAST	92064	POWAY	CENTRAL	92138	SD, (MIDWAY)	CENTRAL
91921	CHULA VISTA	SOUTH	92065	RAMONA	EAST	92139	SD, PARADISE HILLS	CENTRAL
91931	GUATAY	EAST	92066	RANCHITA	NORTH	92140	SD, USMC RECRUIT DEPOT	CENTRAL
91932	IMPERIAL BEACH	SOUTH	92067	RANCHO SANTA FE	NORTH	92142	SD, (TIERRASANTA)	CENTRAL
91933	IMPERIAL BEACH	SOUTH	92068	SAN LUIS REY	NORTH	92143	SD, (SAN YSIDRO)	SOUTH
91934	JACUMBA	EAST	92069	SAN MARCOS	NORTH	92145	SD, MIRAMAR	CENTRAL
91935	JAMUL	EAST	92070	SANTA YSABEL	EAST	92147	COMMERCIAL ST	CENTRAL
91941	LA MESA	EAST	92071	SANTEE	EAST	92149	SD, (PARADISE HILLS)	CENTRAL
91942	LA MESA	EAST	92072	SANTEE	EAST	92153	SD, (NESTOR)	SOUTH
91943	LA MESA (STA A)	EAST	92074	POWAY	CENTRAL	92154	SD, OTAY MESA	SOUTH
91944	LA MESA	EAST	92075	SOLANA BEACH	NORTH	92155	NAVAL AMPHIBIOUS BASE	SOUTH
91945	LEMON GROVE	EAST	92078	SAN MARCOS	NORTH	92159	SD, (NAVAJO)	CENTRAL
91946	LEMON GROVE	EAST	92079	SAN MARCOS	NORTH	92160	SD, (GRANTVILLE)	CENTRAL
91947	NATC. (LINCOLN ACRES	SOUTH	92082	VALLEY CENTER	NORTH	92161	VETERANS ADM. HOSPITAL	CENTRAL
91948	MOUNT LAGUNA	EAST	92083	VISTA	NORTH	92162	SD, (GEORGE WASHINGTON)	CENTRAL
91950	NATIONAL CITY	SOUTH	92084	VISTA	NORTH	92163	SD, (HILLCREST)	CENTRAL
91951	NATIONAL CITY	SOUTH	92085	VISTA	NORTH	92164	SD, (NORTH PARK)	CENTRAL
91962	PINE VALLEY	EAST	92086	WARNER SPRINGS	NORTH	92165	SD, (CITY HEIGHTS)	CENTRAL
91963	POTRERO	EAST	92088	FALLBROOK	NORTH	92166	SD, (POINT LOMA)	CENTRAL
91976	SPRING VALLEY	EAST	92090	EL CAJON	EAST	92167	SD, (OCEAN BEACH)	CENTRAL
91977	SPRING VALLEY	EAST	92091	RANCHO SANTA FE	NORTH	92168	MISSION CNTR RD	CENTRAL
91978	SPRING VALLEY	EAST	92092	LA JOLLA	CENTRAL	92169	SD, (PACIFIC BEACH)	CENTRAL
91979	SPRING VALLEY	EAST	92093	LA JOLLA (UCSD)	CENTRAL	92170	SD, (SOUTHEASTERN)	SOUTH
91980	TECATE	EAST	92096	SAN MARCOS	NORTH	92171	SD, (LINDA VISTA)	CENTRAL
91987	TECATE	EAST	92101	SAN DIEGO, DOWNTOWN	CENTRAL	92172	SD, (RANCHO PENASQTS)	CENTRAL
91990	POTRERO	EAST	92102	SAN DIEGO	CENTRAL	92173	SAN DIEGO, SAN YSIDRO	SOUTH
92003	BONSALL	NORTH	92103	SD, HILLCREST	CENTRAL	92174	SD, (ENCANTO)	CENTRAL
92004	BORREGO SPRINGS	NORTH	92104	SD, NORTH PARK	CENTRAL	92175	EL CAJON BLVD	CENTRAL
92007	CARDIFF-BY-THE-SEA	NORTH	92105	SD, CITY HEIGHTS	CENTRAL	92176	SD, (JOHN ADAMS)	CENTRAL
92008	CARLSBAD	NORTH	92106	SD, POINT LOMA	CENTRAL	92177	SD, (WILLIAM H. TAFT)	CENTRAL
92009	CARLSBAD	NORTH	92107	SD, OCEAN BEACH	CENTRAL	92178	CORONADO	CENTRAL
92013	CARLSBAD	NORTH	92108	SD, MISSON VALLEY	CENTRAL	92182	SAN DIEGO (SDSU)	CENTRAL
92014	DEL MAR	CENTRAL	92109	SD, PACIFIC BEACH	CENTRAL	92190	SD, (GRANTVILLE)	CENTRAL
92018	CARLSBAD	NORTH	92110	SD, OLD TOWN	CENTRAL	92191	SD, (SORRENTO VALLEY)	CENTRAL
92019	EL CAJON	EAST	92111	SD, LINDA VISTA	CENTRAL	92192	SD, (UNIVERSITY CITY)	CENTRAL
92020	EL CAJON	EAST	92112	SD, (DOWNTOWN)	CENTRAL	92193	SD, (SERRA MESA)	CENTRAL
92021	EL CAJON	EAST	92113	SD, LOGAN HEIGHTS	CENTRAL	92195	SD, (ANDREW JACKSON)	CENTRAL
92022	EL CAJON, (MAIN)	EAST	92114	SD, ENCANTO	CENTRAL	92196	MIRA MESA BLVD	CENTRAL
92023	ENCINITAS	NORTH	92115	SD, COLLEGE GROVE	CENTRAL	92198	SD, (RANCHO BERNARDO	CENTRAL
92024	ENCINITAS	NORTH	92116	SD, NORMAL HEIGHTS	CENTRAL			

Filing Districts (Sorted by alphabetically by city)

ZIP CODE	NAME	VENUE	ZIP CODE	NAME	VENUE	ZIP CODE	NAME	VENUE
92025	ESCONDIDO	NORTH	92117	SD, WILLIAM H. TAFT	CENTRAL			
92026	ESCONDIDO	NORTH	92118	SD, CORONADO	CENTRAL			
92027	ESCONDIDO	NORTH	92119	SD, NAVAJO	CENTRAL			
92028	FALLBROOK	NORTH	92120	SD, GRANTVILLE	CENTRAL			
92029	ESCONDIDO	NORTH	92121	SD, SORRENTO VALLEY	CENTRAL			
92030	ESCN, (ORANGE GLEN)	NORTH						
92136	32ND ST-NAVAL STATION	CENTRAL	91950	NATIONAL CITY	SOUTH	92193	SD, (SERRA MESA)	CENTRAL
91901	ALPINE	EAST	91951	NATIONAL CITY	SOUTH	92191	SD, (SORRENTO VALLEY)	CENTRAL
91903	ALPINE	EAST	92135	NAVAL AIR STA-32ND ST	CENTRAL	92170	SD, (SOUTHEASTERN)	SOUTH
91902	BONITA	SOUTH	92155	NAVAL AMPHIBIOUS BASE	SOUTH	92142	SD, (TIERRASANTA)	CENTRAL
91908	BONITA	SOUTH	92134	NAVAL MEDICAL CTR.	CENTRAL	92192	SD, (UNIVERSITY CITY)	CENTRAL
92003	BONSALL	NORTH	92054	OCEANSIDE	NORTH	92177	SD, (WILLIAM H. TAFT)	CENTRAL
92004	BORREGO SPRINGS	NORTH	92056	OCEANSIDE	NORTH	92130	SD, CARMEL VALLEY	CENTRAL
91905	BOULEVARD	EAST	92057	OCEANSIDE	NORTH	92105	SD, CITY HEIGHTS	CENTRAL
92055	CAMP PENDLETON	NORTH	92051	OCEANSIDE-(BROOK ST)	NORTH	92115	SD, COLLEGE GROVE	CENTRAL
91906	CAMPO	EAST	92059	PALA	NORTH	92118	SD, CORONADO	CENTRAL
92007	CARDIFF-BY-THE-SEA	NORTH	92060	PALOMAR MOUNTAIN	NORTH	92178	SD, CORONADO	CENTRAL
92008	CARLSBAD	NORTH	92061	PAUMA VALLEY	NORTH	92114	SD, ENCANTO	CENTRAL
92009	CALRSBAD	NORTH	91962	PINE VALLEY	EAST	92120	SD, GRANTVILLE	CENTRAL
92013	CARLSBAD	NORTH	91963	POTRERO	EAST	92103	SD, HILLCREST	CENTRAL
92018	CARLSBAD	NORTH	91990	POTRERO	EAST	92037	SD, LA JOLLA	CENTRAL
91909	CHULA VISTA	SOUTH	92064	POWAY	CENTRAL	92038	SD, LA JOLLA	CENTRAL
91910	CHULA VISTA	SOUTH	92074	POWAY	CENTRAL	92092	SD, LA JOLLA	CENTRAL
91911	CHULA VISTA	SOUTH	92065	RAMONA	EAST	92111	SD. LINDA VISTA	CENTRAL
91912	CHULA VISTA	SOUTH	92066	RANCHITA	NORTH	92113	SD, LOGAN HEIGHTS	CENTRAL
91913	CHULA VISTA	SOUTH	92067	RANCHO SANTA FE	NORTH	92126	SD, MIRA MESA	CENTRAL
91914	CHULA VISTA	SOUTH	92091	RANCHO SANTA FE	NORTH	92196	SD, MIRA MESA	CENTRAL
91915	CHULA VISTA	SOUTH	92102	SAN DIEGO	CENTRAL	92145	SD, MIRAMAR	CENTRAL
91921	CHULA VISTA	SOUTH	92182	SAN DIEGO (SDSU)	CENTRAL	92108	SD, MISSION VALLEY	CENTRAL
92014	DEL MAR	CENTRAL	92101	SAN DIEGO, DOWNTOWN	CENTRAL	92119	SD, NAVAJO	CENTRAL
91916	DESCANSO	EAST	92173	SAN DIEGO, SAN YSIDRO	SOUTH	92133	SD, NAVAL TR. CTR.	CENTRAL
91917	DULZURA	EAST	92068	SAN LUIS REY	NORTH	92116	SD, NORMAL HEIGHTS	CENTRAL
92019	EL CAJON	EAST	92069	SAN MARCOS	NORTH	92104	SD, NORTH PARK	CENTRAL
92020	EL CAJON	EAST	92078	SAN MARCOS	NORTH	92107	SD, OCEAN BEACH	CENTRAL
92021	EL CAJON	EAST	92079	SAN MARCOS	NORTH	92110	SD, OLD TOWN	CENTRAL
92090	EL CAJON	EAST	92096	SAN MARCOS	NORTH	92154	SD, OTAY MESA	SOUTH
92022	EL CAJON, (MAIN)	EAST	92070	SANTA YSABEL	EAST	92109	SD, PACIFIC BEACH	CENTRAL
92023	ENCINITAS	NORTH	92071	SANTEE	EAST	92139	SD, PARADISE HILLS	CENTRAL
92024	ENCINITAS	NORTH	92072	SANTEE	EAST	92106	SD, POINT LOMA	CENTRAL
92033	ESCN, (ESCONDIDO BL)	NORTH	92195	SD, (ANDREW JACKSON)	CENTRAL	92127	SD, RANCHO BERNARDO	CENTRAL
92030	ESCN, (ORANGE GLEN)	NORTH	92165	SD, (CITY HEIGHTS)	CENTRAL	92128	SD, RANCHO BERNARDO	CENTRAL
92025	ESCONDIDO	NORTH	92147	SD, COMMERCIAL ST	CENTRAL	92129	SD, RANCHO PENASQUITOS	CENTRAL
92026	ESCONDIDO	NORTH	92112	SD, (DOWNTOWN)	CENTRAL	92131	SD, SCRIPPS MIRAMAR	CENTRAL
92027	ESCONDIDO	NORTH	92175	SD, EL CAJON BLVD	CENTRAL	92123	SD, SERRA MESA	CENTRAL
92029	ESCONDIDO	NORTH	92174	SD, (ENCANTO)	CENTRAL	92121	SD, SORRENTO VALLEY	CENTRAL
92045	ESCONDIDO	NORTH	92162	SD, (GEORGE WASHINGTON)	CENTRAL	92124	SD, TIERRASANTA	CENTRAL
92028	FALLBROOK	NORTH	92160	SD, (GRANTVILLE)	CENTRAL	92122	SD, UNIVERSITY	CENTRAL
92088	FALLBROOK	NORTH	92190	SD, (GRANTVILLE)	CENTRAL	92140	SD, USMC RECRUIT DEPOT	CENTRAL
91931	GUATAY	EAST	92163	SD, (HILLCREST)	CENTRAL	92117	SD, WILLIAM H. TAFT	CENTRAL
91932	IMPERIAL BEACH	SOUTH	92176	SD, (JOHN ADAMS)	CENTRAL	92075	SOLANA BEACH	NORTH
91933	IMPERIAL BEACH	SOUTH	92171	SD, (LINDA VISTA)	CENTRAL	91976	SPRING VALLEY	EAST
91934	JACUMBA	EAST	92137	SD, (MIDWAY)	CENTRAL	91977	SPRING VALLEY	EAST
91935	JAMUL	EAST	92138	SD, (MIDWAY)	CENTRAL	91978	SPRING VALLEY	EAST
92036	JULIAN	EAST	92168	SD, MISSION CTR RD	CENTRAL	91979	SPRING VALLEY	EAST
92093	LA JOLLA (UCSD)	CENTRAL	92159	SD, (NAVAJO)	CENTRAL	91980	TECATE	EAST
91941	LA MESA	EAST	92153	SD, (NESTOR)	SOUTH	91987	TECATE	EAST

Filing Districts (Sorted by alphabetically by city)

ZIP CODE	NAME	VENUE	ZIP CODE	NAME	VENUE	ZIP CODE	NAME	VENUE
91942	LA MESA	EAST	92164	SD, (NORTH PARK)	CENTRAL	92082	VALLEY CENTER	NORTH
91944	LA MESA	EAST	92167	SD, (OCEAN BEACH)	CENTRAL	92161	VETERANS ADM. HOSPITAL	CENTRAL
91943	LA MESA (STA A)	EAST	92169	SD, (PACIFIC BEACH)	CENTRAL	92083	VISTA	NORTH
92040	LAKESIDE	EAST	92149	SD, (PARADISE HILLS)	CENTRAL	92084	VISTA	NORTH
91945	LEMON GROVE	EAST	92166	SD, (POINT LOMA)	CENTRAL	92085	VISTA	NORTH
91946	LEMON GROVE	EAST	92198	SD, (RANCHO BERNARDO)	CENTRAL	92086	WARNER SPRINGS	NORTH
91948	MOUNT LAGUNA	EAST	92172	SD, (RANCHO PENASQTS)	CENTRAL			
91947	NATC. (LINCOLN ACRES)	SOUTH	92143	SD, (SAN YSIDRO)	SOUTH			

DIVISION II
CIVIL

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DIVISION II: CIVIL

CHAPTER 1 GENERAL POLICIES AND PROCEDURES

Rule 2.1.1

Policy

It is the policy of the courts to manage all cases in accordance with the Standards of Judicial Administration, Appendix to the California Rules of Court. Nothing in the Appendix prevents the courts from issuing an exception order based on a specific finding that the interests of justice require a modification of the routine processes as prescribed. However, no procedure or deadline established by these rules or order of the court may be modified, extended or avoided by stipulation or agreement of the parties, except as permitted by section 68616 of the Government Code, unless approved by the court in advance of the date sought to be altered.

(Eff. 1/1/98; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.2

Filing and Service of Papers

Unless specifically directed otherwise, all papers must be filed in the civil business office of the appropriate division.

A. Forms: Only the most recent version of a court form or Judicial Council form will be accepted for filing. Photocopies or computer generated duplicates of Judicial Council and court forms may be used only if the copies are clear, legible, easily readable, the same color as the original, and submitted on the same type of paper (e.g., NCR).

B. Conformed Copies: The court will conform only one copy of each original submitted for filing. If conformed copies are to be returned by mail or messenger, a stamped, self-addressed envelope or messenger slip must be included.

C. Proofs of Service: Proofs of service must be signed by the person who actually accomplished the service. Where forms of service involve more than one component, declarations must be signed by each person completing a component. For example, substituted service of summons is often accomplished by one person doing the substituted service in the field while another completes the service by mailing the copies to the named defendant. In that case, declarations must be signed by each.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.3

Case Assignment

At the time an action is filed, it will be assigned either to the master calendar or to a judge for all purposes. A Notice of Case Assignment, which includes the name, physical location, and department of the assigned judge, if any, and a Stipulation to Use of Alternative Dispute Resolution Process form may be generated at the time the case is filed. It is mandatory that the plaintiff or cross-complainant serve all defendants with a copy of the Notice of Case Assignment and other documents as set out in rule 2.1.5.

All construction defect cases in the county will be assigned to one of the designated construction defect departments in the Central Division. Any pre-litigation petition brought to the court pursuant to Civil Code §1375(n) will be assigned a case number and assigned to a designated construction defect department in the Central Division. Any construction defect complaint filed after completion of the pre-litigation requirements of Civil Code §1375, et seq. will be assigned the same case number as any pre-litigation case number existing for the action.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2004; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.4

Peremptory Challenges

This court strictly follows the timing requirements for peremptory challenges set forth in California Code of Civil Procedure section 170.6 and California Government Code §68616(i).

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; eff. 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.5

Service of Complaint

Within 60 days of the filing of the complaint, a Certificate of Service must be filed with the court, unless a Certificate of Progress has been filed indicating why service has not been effected on all parties and what is being done to effect service. A general appearance by, or entry of default against one or more defendants, does not dispense with plaintiff's obligation to file a Certificate of Service. Compliance with this rule may be reviewed at the initial case management conference.

To qualify for other than personal service of a complaint and summons under section 415.20 et seq. of the Code of Civil Procedure, personal service must be attempted on at least three different days at three different times of day. All attempts cannot be in the a.m. nor all in the p.m. At least one of the three attempts must be before 8 a.m. or after 5:30 p.m., and at least one of the three attempts

must be between the hours of 8 a.m. and 5:30 p.m. or on Saturday or Sunday at any time. If service is attempted at a business address, all three attempts may be made during the normal business hours of that business.

If service by publication or some other method of service requiring leave of court cannot be completed within 60 days of the filing of the complaint, the last paragraph of the proposed order permitting such service must contain a blank space for the court to specify the date by which a proof of service and/or a Certificate of Service must be filed. A Certificate of Progress does not need to be filed in this instance.

The following must be served with the complaint:

1. The Notice of Case Assignment (rule 2.1.3);

2. A notice of the amount of special and general damages if the complaint seeks to recover damages for personal injury or wrongful death;

3. A notice of the amount of punitive damages sought; and

4. ADR information materials.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003; Renumbered 1/1/2006)

Rule 2.1.6

Defendant's Appearance

Unless a special appearance is made, each defendant served must generally appear (as defined in section 1014 of the Code of Civil Procedure) within the time required by the Code of Civil Procedure, or within 15 days thereafter if the parties have stipulated to extend that time.

If a defendant is unable to make a timely general appearance, a Certificate of Inability to Respond must be filed and served stating why a responsive pleading could not be filed. The filing of a Certificate of Inability to Respond constitutes a general appearance for purposes of these rules.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2003; Rev 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.7

Request for Entry of Default

If a defendant does not make a general appearance within the time provided by statute, or makes an unsuccessful motion to quash, stay, or dismiss the action on the grounds of inconvenient forum or improper court, and thereafter fails to plead within the time provided by statute or in these rules, the plaintiff must request entry of default forthwith.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.8

Default Judgment

Applications for default judgment should be submitted on declarations pursuant to section 585, subdivision (d), of the Code of Civil Procedure. (See "Guidelines for Default Judgments" attached as Appendix A.) The court will notify the parties if an oral prove-up hearing or additional documentary evidence is required.

(See rule 2.5.11, Default Attorney Fee Schedule.)

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003; Renumbered 1/1/2006)

Rule 2.1.9

Case Management Conference

It is the policy of the court to expect the complaint and any cross-complaints will be served, all answers filed or defaults entered, and any challenges to the pleadings heard by the time of the initial case management conference.

A. Scheduling and Notice: Civil cases (excluding unlawful detainers) may, in the court's discretion, be set for a case management conference approximately 150 days after the complaint is filed. The court will give notice of the case management conference to all parties. Further, parties must serve by mail within 10 days of the date of the notice a copy of such notice on all parties who have been brought into the action who were not included in the court's proof of service. Proofs of such service must be filed simultaneously with the court and accompanied by a declaration stating the name of the party served; the name, address and phone number of the party's counsel of record, if any; and the nature and status of the party's involvement in the case.

Case management conferences will also be set by the court in all cases transferred from another court, reclassified pursuant to the Code of Civil Procedure, or stayed as provided in rule 2.1.13, and in unlawful detainer actions in which the defendant has filed an answer and the court has been notified that possession is no longer in issue.

It is the policy of the court to hold the case management conference on the date originally set. Continuances may be requested ex parte with a declaration showing good cause why the conference should be continued. However, if a disposition as to all parties has been filed with the court at least five court days prior to the hearing date, the case will be taken off calendar and no appearances will be required.

***This rule remains in effect after July 1, 2002, notwithstanding California Rules of Court, rule 981.1, by the authority granted in California Rules of Court, rule 212, to the effect that "[t]he court may provide by local rule for**

the time and manner of giving notice of the parties."

B. Preparation for Conference: The primary focus of the initial case management conference will be to determine the status of the case to ensure compliance with the policy as stated in rule 2.1.1 and to determine if alternative dispute resolution would be appropriate.

A Case Management Statement must be completed by each party and timely filed with the court. Parties will not be required to complete a Case Management Statement for subsequent conferences unless ordered to do so by the court.

Parties completely familiar with the case and possessing authority to enter into stipulations must be present at the case management conference and must be fully prepared to discuss any issues addressed by a Case Management Statement and all other matters specified in the notice of hearing provided by the court. Any attorney making a special appearance for counsel of record must have actual knowledge of the facts and procedural history of the case. If a party is not fully prepared, the court may continue the hearing and impose sanctions against the offending party. If the hearing proceeds as scheduled, the orders made will not be subject to reconsideration due to a party's unfamiliarity with the case at the time of the hearing.

(See rule 2.5.10, Requests to Appear by Telephone.)

(Eff. 1/1/98; Rev. 1/1/2001; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.10

Cases "At Issue"

Cases may be deemed "at issue" when all parties are before the court and challenges to pleadings are complete, or the deadlines set by the court for the completion of these events have passed. This is usually determined by the court at the initial case management conference. Parties wishing an earlier determination and/or who seek referral to alternative dispute resolution, and/or who seek preferential trial setting may do so by ex parte request. No new parties may be substituted by "Doe" designation or added by amendment of pleadings after the case is deemed at issue, without leave of court.

Unless the court orders otherwise, all amendments to pleadings allowed after the case is at issue will be deemed filed and served on the date leave to amend is granted. If the amendment adds a new party, the new party must be served within 30 days of the date leave to amend was granted and the proof of service on the new party must be filed with the court. Upon the appearance of a new party, the case will remain at issue, unless otherwise ordered. If the new party is not timely served with process, the new party may be dismissed by the court and/or other sanctions may be imposed.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Amended eff. 1/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.11

Expert Witnesses

The court will propose deadlines for the exchange of information concerning expert witnesses and their discoverable reports and writings in accordance with section 2034 of the Code of Civil Procedure at the case management conference. Although the demand requirement of that section may be dispensed with at this hearing, all other provisions of section 2034 of the Code of Civil Procedure will be strictly enforced by the court.

Excessive expert fees are limiting access to the court and undermining the quality of justice. It is the policy of the court that, in addition to the criteria required to be considered in deciding motions brought pursuant to section 2034, subdivision (i)(4), of the Code of Civil Procedure, the court will consider the ordinary and customary fees charged by similar experts for similar services within the relevant community. Based on the experience of the court, the following hourly rates appear to be representative of the ordinary and customary fees charged for expert testimony in this community:

$ 250	Physicians, osteopaths, surgeons, dentists & psychiatrists
$ 250	Attorneys
$ 200	Psychologists
$ 200	Economists
$ 200	Engineers, architects
$ 150	Chiropractors

Parties will be permitted to designate only those experts they in fact intend to call at trial. It is the policy of the court that parties are limited to one expert per field of expertise per side, pursuant to section 723 of the Evidence Code, absent a court order to the contrary. The court will determine which parties constitute "a side" at trial, if necessary.

Expert testimony must not be used simply to advocate a particular position, and must be limited in scope in accordance with section 801, subdivision (a), of the Evidence Code to opinions on subjects which are sufficiently beyond common experience that an expert's opinion will assist the trier of fact.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001, Renumbered 1/1/2006)

Rule 2.1.12

Jury Fees

When setting a case for trial, the court will follow C.C.P. § 631. The jury fee deposit must be accompanied by a Notice of Jury Fee Deposit. Failure to deposit fees pursuant to section 631 is a waiver of the right to jury trial and, unless promptly cured, will result in dismissal of the jury or no jury will be empaneled, whichever is appropriate. See *Adams v. Crawford* (1897) 116 Cal. 495; *Rose v. Subway Terminal Corp.* (1934) 139 Cal. App. 67.
(Eff. 1/1/98; Rev. 1/1/99; Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered and revised 1/1/2006)

Rule 2.1.13

Stays of Actions

If a party files a notice of stay in accordance with the California Rules of Court, the court may either stay the action or set the matter for hearing. At the time of that hearing, the court may propose dismissing the action without prejudice, and reserving jurisdiction to reinstate the case nunc pro tunc when the stay is no longer in effect. Alternatively, parties are encouraged to stipulate to the dismissal of such cases without prejudice, expressly reserving the court's jurisdiction to set aside the dismissal and reinstate the case nunc pro tunc when the stay is no longer in effect. If the court stays the an action without setting the matter for hearing, any party who claims to be exempt from the stay and who seeks to prosecute the action further must object by noticed motion in the stayed action.

Upon the expiration of the stay period, an action may be dismissed unless good cause has previously been shown, in writing, to the contrary. The stay may be extended for additional periods for good cause shown.
(Eff. 1/1/98; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.14

Structured/Conditional Settlements, Taking Matters Off Calendar

Upon conditional settlement of a case, parties must notify the court as follows:

A. The parties are required to give notice to the court whether the conditional settlement either 1) contains a stipulation to immediate dismissal with a reservation of jurisdiction to set aside the dismissal and enter judgment upon nonperformance or 2) does not contain such a stipulation and requires dismissal only after full performance of the settlement terms.

B. Removal of pending matters from the court calendar may be effected by telephone, in the discretion of the court, if:

1. There are no unrepresented litigants; and

2. All unserved parties or parties not participating in the settlement will be dismissed.

Trials may be taken off calendar by telephone if all of the above conditions are met and the trial date is not more than 365 days after the date the original complaint was filed. Otherwise, the parties must appear ex parte.
(Eff. 1/1/98; Renumbered 7/1/2001; Rev. 1/1/2003; Renumbered and revised 1/1/2006)

Rule 2.1.15

Trial Readiness Conference

A trial readiness conference will generally be scheduled four weeks before the trial date. The parties must meet prior to the scheduled hearing and attempt to resolve the case, or, if that is not possible, limit issues for trial. If the case is not settled in its entirety, all parties must prepare and sign a joint trial readiness conference report in the format set forth in Appendix B. Separate reports will not be accepted. Failure to disclose and identify all trial exhibits and witnesses intended to be called at trial and all other items required by the report may, in the court's discretion, result in exclusion or restriction of use at trial. The completed report must be presented to the judge at the scheduled conference. No part of the joint trial readiness conference report must be received into evidence against any party in later proceedings.

Parties completely familiar with the case and possessing authority to enter into stipulations must be present at the scheduled hearing. Orders made will be binding on the parties and will not be subject to reconsideration due to an attorney's unfamiliarity with the case at the time of the hearing. The parties must be prepared to discuss any unusual evidentiary or legal issues anticipated during the trial and all remaining matters believed by any party to be appropriate for stipulation.

During the trial readiness conference, the court will review with counsel and sign or issue the advance trial review order setting forth specific trial preparation requirements of the trial department.
(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 2.1.16

Jury Instructions

On the scheduled trial date, the parties must submit the full text of proposed jury instructions to the court. Jury instructions must be gender neutral and double spaced on plain paper. They may include instruction numbers but the mere submission of a list of instruction numbers is not

acceptable. Authority may be included on copies of special instructions submitted to the court, but should not appear on the originals.
(Eff. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.17
Juror Questionnaire
If juror questionnaires are proposed by counsel, the questionnaires must be accompanied by a Juror Questionnaire Cover Sheet which must be provided by the court.
(Eff. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.18
Motions in Limine
Motions in limine must be limited in scope in accordance with *Clemens v. American Warranty Corp.* (1978) 193 Cal.App.3d 444, 451: e.g., evidentiary issues where attempts to "unring the bell" would be unduly prejudicial or futile. Unless otherwise directed by the court, counsel must file and serve motions in limine and opposition thereto five court days and two court days respectively prior to trial call. The following motions in limine will be deemed granted at the time of the trial readiness conference if applicable:
1. Motion excluding evidence of collateral source;
2. Motion excluding evidence of or mention of insurance coverage;
3. Motion excluding experts not designated pursuant to section 2034 of the Code of Civil Procedure; and
4. Motion excluding offers to settle and/or settlement discussions.
Written motions should not be submitted on the above issues.
(Eff. 1/1/2000; Renumbered 7/1/2001, Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.1.19
Tentative Ruling Policy
Any party, or attorney for a party, who desires to have any demurrer, motion, or order to show cause set for hearing must contact the calendar clerk for the judge assigned to the case to reserve a hearing date.
Prior to the hearing, any civil department may issue a tentative ruling in a law and motion matter, in the sole discretion of the assigned judge. The tentative ruling will be issued in conformance with the tentative ruling procedures set forth in California Rules of Court, rule 324. If a tentative ruling is issued the day before the date set for hearing, this court follows rule 324(a)(2) and no notice of intent to appear is required to appear for argument. The tentative ruling must be made available by no later than 4:00 p.m. on the court day prior to the scheduled hearing. The tentative ruling may direct the parties to appear for oral argument and may specify the issues on which the court wishes the parties to provide further argument. The tentative ruling may be obtained by calling the court tentative ruling number for the court branch the case is pending in, or by navigating to the court's website.
This rule does not preclude posting a tentative ruling the day of the hearing pursuant to rule 324(b), nor does it mandate a tentative ruling be issued on all law and motion matters.

The tentative ruling numbers are as follows:

Central:	619-531-3690
North:	760-806-6050
East:	619-441-4027
South:	619-691-4721

(Revised 7/1/2004; Renumbered 1/1/2006)

CHAPTER 2
SETTLEMENT CONFERENCE

Rule 2.2.1
Requesting a Settlement Conference
Settlement conferences may be requested if the parties certify that:
1. Settlement negotiations between the parties have been pursued, demands and offers have been tendered, and resolution has failed. If the court has ordered the parties to participate in a settlement conference, all parties must exchange demands and offers, and communicate responses thereto. This must be done in good faith and within a reasonable time to allow the opposing party to consider and respond to the offer or demand, but in no event will the first offer or demand be sent any later than five days before the settlement conference;
2. A judicially supervised settlement conference presents a substantial opportunity for settlement; and
3. The case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required.
When a matter has been accepted by the court for the purposes of conducting a settlement conference, all parties must comply with the provisions of rules 2.2.2, 2.2.3, and 2.2.4 unless otherwise ordered.
(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 2.2.2

Mandatory Appearance

The provisions of rules 2.2.2, 2.2.3, and 2.2.4 apply to all court-ordered settlement conferences unless otherwise ordered. All parties must be personally present. Claims adjusters for insured defendants, or right-of-way agents in condemnation proceedings, must be present with complete authority to settle the case.

Counsel appearing on behalf of their clients must be completely familiar with the case and possess complete authority to negotiate and settle. Counsel must have authority to make a specific demand and must be authorized to make an offer or counteroffer in a specific amount. If a participant is not fully prepared or fails to participate in good faith, the court may continue the hearing and/or impose sanctions against the offending party. If the hearing proceeds as scheduled, the orders made will not be subject to reconsideration due to counsel's unfamiliarity with the case at the time of the hearing.

For good cause shown, a party or agent may be excused from attendance at such conferences provided such party or agent will be available by telephone during the conference. Unless excused by the court, such requests must be submitted to the court in the form of a stipulation signed by all attorneys of record, or by ex parte appearance at least five court days prior to the settlement conference.

If the settlement conference is to be heard by a temporary judge, such stipulations and settlement conference briefs must be submitted to the court and ex parte requests must be made to the independent calendar department to which the case is assigned.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001, Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.2.3

Settlement Statements/Briefs

Written statements of the position of each party must be lodged with the settlement conference judge and served on other parties five court days prior to the settlement conference, unless otherwise ordered. If service is by mail, all papers must be mailed not less than ten days before the court date. Settlement conference statements do not become a part of the file and will be discarded. Confidential matters may be brought to the attention of the settlement judge during the settlement conference either orally or in writing.

Statements must not exceed five pages and must include the necessary information to concisely support issues of liability and damages, including a settlement demand and offer, as well as an itemization of special and general damages, if applicable. Mandatory settlement conferences are governed by the California Rules of Court.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001, Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.2.4

Notifications of Settlement or Continuances

A. Settlement: In accordance with the California Rules of Court, if a case is settled, the plaintiff must immediately give the court written notice. The plaintiff must also immediately notify the court by phone or in person if a hearing, conference, or trial date is imminent. The only time a hearing set by the court may be taken off calendar is when the plaintiff advises the court that the case has been settled. In that event, a show cause hearing regarding dismissal will be conducted in 45 days. The show cause hearing will be taken off calendar if a dismissal of all complaints and cross-complaints, or a judgment as to all complaints and cross-complaints, is filed with the court no later than five court days prior to the hearing. If such documentation has not been received by the date set for the show cause hearing, the court will immediately order appropriate sanctions and/or dismiss the entire action.

Failure to advise the court at least five court days before the settlement conference that it will not proceed as scheduled, for any reason other than the settlement of the case in its entirety within the five court day period, may be deemed by the court to be a violation of an order of the court, punishable by monetary sanctions payable to the county under section 177.5 of the Code of Civil Procedure, as well as any other sanction provided by law. In addition to monetary sanctions, any party or attorney who fails to attend a settlement conference risks having their complaint dismissed or their answer stricken and default entered.

B. Continuances: Any party requesting a continuance must appear ex parte and show good cause why the settlement conference should be continued. At the ex parte hearing, a stipulation may be presented to the court, signed by all parties, accompanied by a declaration showing good cause.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 3
ALTERNATIVE DISPUTE RESOLUTION (ADR)

ADR Policy Statement: It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management

intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation and arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

Rule 2.3.1

Judicial Arbitration

A. Submission to Arbitration: The court elects to come within the provisions of section 1141.11 et seq. of the Code of Civil Procedure regarding judicial arbitration of all at-issue civil actions which are not exempt. All actions submitted to arbitration pursuant to these sections will be subject to the provisions contained therein, as well as rules of procedure set forth in the California Rules of Court, rule 1600 et seq., and in these rules.

B. Policy: It is the policy of the court to discourage any unnecessary delay in civil actions. Continuances are discouraged and timely resolution of all actions, including matters submitted to any form of ADR, is encouraged.

After a case is "at issue," the court may order it to judicial arbitration. Counsel must be prepared to discuss whether the arbitration will be binding or non-binding, and to select an arbitrator. Dismissal of all unserved, non-appearing, and fictitiously named parties will also be addressed. The court will propose dates to exchange information concerning expert witnesses and their discoverable reports and writings in accordance with rule 2.3.3. Although the demand requirement under section 2034 of the Code of Civil Procedure may be dispensed with at this hearing, all other provisions of section 2034 and rule 2.3.3 will be strictly enforced.

C. Exemption from Arbitration: Matters which are exempt from judicial arbitration are set forth in the California Rules of Court, rule 1600.5, and section 1141.11 of the Code of Civil Procedure.

Unless otherwise ordered by the court, the following categories of actions are also exempt from arbitration, as provided by the California Rules of Court, rule 1600.5(g), and will be set directly for trial:

1. Civil actions in which no jury trial is demanded and the estimated time for trial is one day or less;

2. Civil actions in which any party is not represented by counsel; and

3. Collection actions (i.e., actions primarily seeking money on an assigned claim).

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Revised 7/1/2003; Rev. 1/1/2004; Renumbered 1/1/2006)

Rule 2.3.2

Arbitration Procedures

Arbitration rules of procedure are set forth in the California Rules of Court, rule 1600 et seq., and in these rules.

A. Appointment of Arbitrator: At the case management conference, the parties must stipulate to the appointment of any arbitrator on the list of superior court arbitrators. If the parties do not stipulate, the judge who ordered the case to judicial arbitration will appoint the arbitrator. The appointment of an arbitrator will be effective immediately and will extend for 90 days. Before any person may be appointed as an arbitrator, that person must provide a statement on a form provided by the court that they have read and will comply with the provisions of rule 2.3.1, subdivision A.

B. Continuances: The court discourages continuances. Rules regarding continuances of arbitration hearings are set forth in the California Rules of Court. Rules regarding the completion of cases within 90 days and the reappointment of an arbitrator for good cause are set forth in the California Rules of Court. If a continuance is denied or 90 days have elapsed from the time of appointment, it is mandatory that all parties appear before the judge who ordered the case to judicial arbitration. If it appears to the court that a request for continuance is not made with good cause, the court may impose monetary sanctions upon the requesting party.

C. Conduct of the Arbitration Hearing: The arbitration hearing must be conducted as follows:

1. The arbitrator must administer the oath;

2. Counsel and the arbitrator are to be formally addressed as Mr., Mrs., Miss, or Ms. during the hearing;

3. At the time of the arbitration hearing, or at any other time designated by the arbitrator, each attorney must submit to the arbitrator (not the court) the following, unless excused from doing so by the arbitrator:

a. Copies of any offered pleading, arranged chronologically and appropriately highlighted;

b. Copies of any offered deposition transcript or record appropriately highlighted;

c. An arbitration brief consisting of:

(1) A concise statement of facts;

(2) Legal and factual contentions of each party;

(3) A statement of damages sought to be awarded including the amount claimed, medical expenses, and property damage;

(4) Copies of medical reports and bills;

(5) Copies of appraisals/repair estimates; and

(6) Copies of repair bills.

d. If the arbitration award is not filed within 10 days after the arbitration hearing, or an extension of 20 days is not granted pursuant to the California Rules of Court, rule 1615(b), either party may notify the arbitration department. The arbitrator will then be requested to submit the award or appear before the judge who ordered the case to judicial arbitration to show cause why rule 1615(b) of the California Rules of Court was not satisfied.
(Eff. 1/1/98; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 2.3.3
Exchange of Experts After Arbitration

Failure to comply with this rule may result in a party's inability to call one or more expert witnesses at trial, or subject the noncomplying party to monetary sanctions.

Pursuant to the stipulation of the parties at the case management conference, exchange of experts after arbitration must be made according to the following schedule:

A. Initial Exchange: Within 15 days of the date of any method of service of a trial de novo request, pursuant to section 2034 of the Code of Civil Procedure each party must personally serve on all other parties a designation of expert witnesses who will be relied upon at the trial de novo, along with all discoverable reports and writings, if any, of those experts. However, service by mail of the above designation is permitted if made within 10 days of service of the trial de novo request. Parties will be permitted to designate only those experts they in fact intend to call at trial. It is the policy of the courts that parties are limited to one expert per side per field of expertise, pursuant to section 723 of the Evidence Code and rule 2.1.11, absent a court order to the contrary.

B. Supplemental Exchange: Any supplemental designation of experts must be personally served within 5 days of any personal service of the opponent's initial list, or within 10 days of any mail service of the opponent's initial list.
(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.3.4
Request for Trial De Novo

A request for trial de novo must be filed in the civil business office pursuant to section 1141.20 of the Code of Civil Procedure and the case will be set for trial.

Withdrawal of Trial de Novo Requests: If a party has requested trial de novo, the request may be withdrawn by a written stipulation, signed by counsel for all parties appearing in the case, that the award may be ordered as a judgment.
(Eff. 1/1/98; Rev. 1/1/2001; Renumbered 7/1/2001; Rev. 1/1/2003; Renumbered 1/1/2006)

Rule 2.3.5
Prohibition Against Post Arbitration Discovery

Stipulations for post arbitration discovery pursuant to section 1141.24 of the Code of Civil Procedure will be recognized by the court, provided that no such stipulation modifies, extends, or avoids any procedure or deadline established by these rules or order of the court. Expert discovery is not within the prohibition of post arbitration discovery codified under section 1141.24 of the Code of Civil Procedure, but is subject to the applicable rules and orders of the court.
(Eff. 1/1/98; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 2.3.6
Monetary Sanctions

In addition to the provisions of the California Rules of Court, rule 1618, regarding notification of settlement, failure of the parties to notify the arbitrator and the court of a continuance or their inability to proceed at least two court days prior to the time set for the arbitration hearing may, upon written notice given by the court, result in an order to show cause why the parties should not pay $150 or other sanctions.
(Eff. 1/1/98; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 2.3.7
Civil Mediation Program

All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the Civil Mediation Program. Limited civil collection cases are not eligible at this time.

A. Stipulation to Mediation: If all parties have appeared in the case, they may agree to stipulate to mediation at any time prior to the Case Management Conference. The stipulation must include the name, address and phone number of the mediator and one alternate mediator, the date the mediation is scheduled and whether or not the parties request that DOES be dismissed in the matter. If the stipulation is granted, Appointment of Mediator notices will be issued.

B. **Case Management Conference**: If parties do not stipulate to mediation prior to the Case Management Conference, the judge will strongly encourage all parties to consider mediation or other ADR options. If it is determined that the case will

be mediated, parties will be asked to stipulate to mediation which will be reflected on the Case Management Conference's Minute Order.

C. Panel of Mediators: Parties may select any mediator to mediate their matter. The court maintains a panel of court-approved mediators who have satisfied training and experience requirements established by the court and who must adhere to minimum standards of practice pursuant to California Rules of Court 1622 et seq., and other program policies and procedures.

D. Payment of Mediators: Mediators must be compensated directly by the parties. The fees and expenses of mediators must be shared equally between the parties, unless otherwise agreed.

Mediators on the court's approved panel have agreed to charge $150.00 per hour for each of the first two hours and their individual rate per hour thereafter for court-referred mediation.

Mediators on the court's approved panel may not charge parties for preparation or administrative time, but may require that fees be deposited in advance of the mediation session and may have cancellation fees and policies.

Parties may also utilize the services of mediators who are not on the court's approved panel. They will be charged the mediator's individual per hour rate and any other fees in accordance with their policies.

The court will establish a pro bono/modest means procedure that will be available to qualified parties.

E. Selection of Mediators: Parties are encouraged to make their selection at the time of the Case Management Conference. If they are unable to make a selection, the case will be referred back to the court for the setting of a future hearing. If parties agree on a mediator and alternate and notify the court before the hearing, the hearing will be vacated.

F. Timing of Mediation and Trial Dates: Cases will be referred to mediation for up to 90 days. At the time of the Case Management Conference, tentative trial dates will also be given. If the mediation has ended in non-agreement, the court will confirm the trial dates given. If parties request an extension of time for mediation, they must file a stipulation indicating the date of the future mediation session. Alternatively, they may contact the mediator to request an extension in 30-day increments which will be subject to approval by the court. In all cases, a Reappointment of Mediator notice will be generated if the extension is approved.

G. Attendance at Mediation: All parties, their counsel and persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause. If any consent to settle is required for any reason, the party with the consent authority must be personally present at the mediation.

H. Evaluation: All mediators on the court's approved panel are required to distribute a post mediation survey to all parties, counsel and participants who appeared at the mediation session if requested to do so by the court. All mediation participants are requested to complete these surveys in a timely manner to assist the court with program evaluation.

(Eff. 2/28/2000; Rev. eff. 1/1/2001; Renumbered 7/1/2001; Rev. 1/1/2003; Rev. eff. 7/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 4
SPECIAL CASE CATEGORIES

Rule 2.4.1

Judgment Debtor Examination Proceedings

A. Setting Hearings: Judgment debtor examination dates are obtained by submitting the appropriate fees, an original and two copies of the order for appearance of judgment debtor, and a stamped, self-addressed envelope or messenger service return slip to the appropriate civil business office. Conformed copies with the appearance date, time, and place will be returned to the judgment creditor for service.

B. Proof of Service: Proof of service must be filed no later than five days before the date of the hearing. However, if the person ordered to appear does appear and is ready to proceed, the examination may be conducted, with or without proof of service having been timely filed, at the discretion of the court.

C. Appearance at Examination: Upon the call of the calendar, if the parties appear the examination must proceed at once, unless a continuance is ordered by the court. If the person ordered to appear does appear and the moving party fails to appear, the proceedings may, at the discretion of the court, be continued to another day or be dismissed without cost and with such additional orders as are appropriate. Appropriate orders may include an order that no future order will issue as to the person who did appear except upon a showing of new facts and a satisfactory explanation being made to the court for the moving party's failure to appear. If such future order is granted, it will be made on such terms and conditions as the court deems just and appropriate.

If the moving party does not appear and the court deems it appropriate to continue the examination to a future date, and on that day the moving party does not appear, the proceedings must be dismissed without costs being awarded to the party who secured the order.

D. Nonappearance of Party to be Examined: If the party to be examined fails to appear at the time and place set for examination, a bench warrant may issue requiring attendance forthwith, provided

the moving party complies with subdivision "E" of this rule within 30 days after the examination date.

A warrant will not be issued for the arrest of a person who failed to appear in court as directed in such order if the order with the return of service thereon has not been filed with the clerk of the court within the time specified herein, unless so ordered.

E. Bench Warrants of Attachment: If a judgment debtor fails to appear for hearing as ordered, the judgment creditor requests a bench warrant of attachment, and the court orders a bench warrant of attachment, the judgment creditor must file with the civil business office the following items before the bench warrant of attachment will issue:

1. Sheriff's instructions, fully completed, stating the location where the defendant may be served (forms available in sheriff's office, original only required);

2. Check made payable to the "Sheriff of San Diego" for service fees; and

3. A bench warrant of attachment form.

The above documents must be filed within 30 days of the order directing or granting the issuance of the bench warrant of attachment. If the documents are not filed within 30 days following the order for issuance of the bench warrant of attachment, the moving party must apply to the court for an order for appearance of judgment debtor.

F. Continuances: One or more continuances of a judgment debtor examination may be allowed upon stipulation of all parties or their attorneys joined in by the person or entity ordered to appear and approved by the court, or upon good cause shown.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003; Renumbered 1/1/2006)

Rule 2.4.2

Unlawful Detainer Proceedings

A. Order to Show Cause regarding Dismissal: Consistent with the policy set forth under rule 2.1.1, a show cause hearing regarding dismissal will be set when the complaint is filed and will be held approximately 45 days after the filing of the complaint unless:

1. The case has been set for trial;

2. The case has been designated as a general civil matter because possession is no longer in issue (section 1952.3 of the Civil Code) and the case is not entitled to precedence (section 1179a of the Code of Civil Procedure);

3. A disposition has been entered (a dismissal, judgment, notice of settlement, or transfer terminates or disposes of the case as to all defendants named in the action); or

4. A conditional settlement has been filed.

There will be no case management conferences in unlawful detainer cases, unless specifically set by order of the court.

B. Trial Setting: In unlimited unlawful detainer cases, it is the responsibility of the parties to notify the court that they are entitled to an expedited trial. In limited unlawful detainer cases, written request must be filed requesting that the case be set for trial. The request must contain the following items of information:

1. the title and number of the case;

2. the nature of the case;

3. a statement that all essential parties have been served with process or have appeared and that the case is at issue as to those parties;

4. whether a jury trial is demanded;

5. the time estimated for trial;

6. the names, addresses, and telephone numbers of the attorneys for the parties or of parties appearing without counsel;

7. whether or not possession is still at issue.

Any counter request must be filed within 5 days of the filing of the trial request.

C. Judgment for Money Damages after Judgment for Possession of the Premises: When the plaintiff obtains a default judgment for possession of the premises, the case may be calendared for further hearing. In the alternative, a plaintiff may file the necessary declarations for a default judgment or dismissal without prejudice as to the money damages, including attorney fees and costs. Failure to file a dismissal may result in the court barring the plaintiff from obtaining a money judgment or the court calendaring a hearing for the plaintiff to show cause why the case should not be dismissed.

D. Redesignation of Case when Possession is No Longer in Issue (Section 1952.3 of the Civil Code): The plaintiff must immediately notify the court when possession is no longer in issue and request the matter be redesignated as an unlimited or limited civil matter. The case will be monitored as follows:

1. If the defendant has not filed an answer, the case will be monitored for timely entry of default; or

2. If the defendant has filed an answer, the case will be set for a case management conference.

(Eff. 1/1/98; Former Para. A. deleted effective 1/1/2001 (see California Rule of Court 981.1); Rev. 1/1/2001; Renumbered 7/1/2001; Former Para B deleted effective 1/1/2003; Rev. 1/1/2003; Rev. 1/1/2004; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.4.3

Uninsured/Underinsured Motorist Actions

If a complaint includes an uninsured/underinsured motorist claim as defined under section 68609.5 of the Government Code and section 11580.2 of the Insurance Code, plaintiff must file a declaration stating the case is an uninsured/underinsured motorist case, the name of insurance carrier, and amount of coverage. The court will suspend the time requirements and the action will be stayed for a period of 180 days. Any party who claims to be exempt from the stay and who desires to further prosecute the action must object by noticed motion in the stayed action. Upon the expiration of the 180-day stay period, the action will be dismissed unless, upon noticed motion, good cause is shown to the contrary. If such motion is granted, the stay may be extended, but such an extension will not exceed 180 days.

In addition to the above, if a complaint includes an uninsured/underinsured motorist claim as defined under section 68609.5 of the Government Code and section 11580.2 of the Insurance Code, plaintiff must file a Certificate of Progress so advising the court within 60 calendar days of the filing of the complaint. The certificate must indicate whether a stay of the action or a portion of the action is requested in accordance with rule 2.1.13, and/or whether the case will proceed against all other appearing defendants.

(Eff. 1/1/98; Rev. 1/1/99; Rev. 1/1/2000; Rev. 1/1/2001; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.4.4

Small Claims

To facilitate compliance with the Standards of Judicial Administration relating to case disposition time standards and delay reduction, a notice will be given to the plaintiff by the clerk at the time of filing a small claims case advising the following:

1. Failure to appear at the scheduled hearing may result in the case being dismissed.

2. If the defendant(s) is (are) not served by the date of trial and the plaintiff elects not to reset the matter, the case will be dismissed without prejudice when the case is called. Requests for resetting may be made at the time of trial or before. If the case is dismissed on the date of trial for lack of service and resetting, and the plaintiff wishes to further litigate the matter, the case must be refiled and a new filing fee paid.

A. Filings

East County Division: All filings pertaining to small claims actions must be filed at 250 E. Main Street, El Cajon, CA 92020, or in the Ramona Branch, 1428 Montecito Road, Ramona, CA 92065.

North County Division: All filings pertaining to small claims actions must be filed at the North County Regional Center, 325 S. Melrose Drive, Suite 390, Vista, CA 92083.

Central Division: All filings pertaining to small claims actions must be filed at the Kearny Mesa Facility, 8950 Clairemont Mesa Boulevard, San Diego, CA 92123. Small claims trials are heard at this facility.

South County Division: All filings pertaining to small claims actions must be filed at 500 Third Avenue, Chula Vista, CA 91910.

B. Reassignment: If the parties do not stipulate to one commissioner or temporary judge, the matter will be set for hearing before another commissioner, temporary judge, or judge. If an alternate temporary judge, commissioner, or judge is unavailable in the small claims department at any given session, the matter may be continued by the clerk.

C. Proof of Service: Proof of service must be filed not later than five days before the date set for hearing. Failure to timely file proof of service may cause the court to remove the hearing from the calendar, or dismiss the case without prejudice.

D. Appeal Procedures: In addition to the requirements of the Code of Civil Procedure and the California Rules of Court, the following procedure applies in small claims appeals:

Parties are not required to file trial briefs in small claims appeals. However, if a party feels a brief is necessary, it must be filed at least five court days prior to the hearing and must not exceed five pages in length.

(Eff. 1/1/98; Rev. 1/1/99; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. eff. 7/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.4.5

Eminent Domain

A. Case Management Conference: Absent the granting of a motion to treat an eminent domain proceeding as a complex case or a motion to enlarge time, it will be set for a case management conference approximately 180 days after the filing of the complaint. By the date of this case management conference, all parties must either have appeared, been defaulted, disclaimed any interest in the subject property, or been dismissed, and the case must be ready to be placed on the civil active list. A Case Management Statement must be completed by all parties and filed with the court at the time of this case management conference. The parties may stipulate to ADR or a temporary judge at that time. A trial date will be set not sooner than 120 days after the case is "at issue."

B. Settlement Conference: A settlement conference on the issue of compensation will be set

15 days before the trial date if the parties have complied with the settlement conference rules. The plaintiff must attend the conference with its negotiating agent, and all defendants who claim compensation must be present except lienholders, if any.

C. Trial Readiness Conference: A trial readiness conference on the issue of compensation will be set 10 days before the trial date. The plaintiff and other parties presenting valuation testimony at the trial must meet prior to the scheduled conference and complete, sign, and file a joint trial readiness conference statement in the form provided by the court. The completed statement must be presented to the judge at the scheduled conference.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.4.6

Minors/Incompetents/Conservatees

A. Guardians ad Litem: As provided in the Code of Civil Procedure, a guardian ad litem must be appointed for a minor, incompetent person, or a person for whom a conservator has been appointed. Due to potential conflicts of interest, parents asserting individual claims or defenses may not serve as guardians ad litem for their minor children, absent a court order to the contrary. Petitions for appointment of a guardian ad litem must be filed at the same time as the underlying complaint is filed.

B. Petitions to Compromise the Claim of a Minor: A petition to compromise claims on behalf of minors may be filed in a limited civil case only if an action is already pending in that case. Otherwise, it must be filed as an unlimited civil case. The petition must be filed and set for hearing in the department designated by the presiding or supervising department unless the case has been assigned to a judge or independent calendar department, in which case the petition must be filed and heard in that department. The person compromising the claim on behalf of the minor and the minor must be in attendance at the hearing of the petition, unless the court orders otherwise.

At the time of the hearing, the court will determine the amount of costs, expenses, and attorney's fees to be allowed from the proceeds of the settlement. Absent extraordinary circumstances, attorney's fees will not exceed 25% of the gross proceeds of the settlement.

The funds must be disbursed in accordance with the order approving the settlement. It is the duty of the attorney to ensure that the minor's funds are deposited in accordance with the court order referenced above. Attorney's fees are not due or payable unless and until the money is deposited in the blocked account and a receipt executed by the depository is returned to the court.

C. Trusts: In all cases where settlement of any civil proceeding contemplates the creation of a trust with proceeds from a settlement, including trusts for the benefit of minors and incompetent parties or special needs trusts, as authorized by Probate Code section 3600 et seq., the following provisions apply:

1. After the approval of the settlement by the judge in the civil proceeding and the hearing thereon as provided in Code of Civil Procedure section 664.6, if necessary, but prior to the payment or transmittal of the proceeds of the settlement agreement to plaintiff's representatives, counsel for plaintiff must submit a copy of the proposed trust agreement to the trial court judge before whom the settlement agreement was presented and approved. The trial judge will transmit the proposed trust agreement to the probate court for review and approval.

2. Following review of the trust agreement, the probate judge will advise the trial court judge in writing, specifying the required changes, if any, in the proposed trust agreement, together with the amount of trustee's bond to be posted, if any, and whether or not the trust should thereafter be subject to supervision by the probate court as provided in Probate Code section 17200 et seq. When the required changes have been made to the proposed trust agreement, the trial judge will sign an appropriate order directing the trustee to post the indicated bond before authorizing the payment or transmittal of the settlement proceeds to the trustee to fund the trust, and order the trustee, where necessary, to file a petition in the probate court as described in subdivision 3 below. The trial judge will forward a file stamped copy of this order and the bond to the probate court.

3. If the order of the trial court provides that the trust will be subject to the supervision of the probate court, the trustee must file a petition in the probate court subjecting the trust to the jurisdiction of the probate court as authorized by Probate Code section 17000, entitled "Petition for Review of Compliance with Order pursuant to Probate Code section 3602 or 3604," and cause that petition to be set for noticed hearing. Such petition must be the first petition in a new probate proceeding and a full "first petition" filing fee will be paid.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2004; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.4.7

"Other" Civil Actions

Civil actions classified as "other," including but not limited to petitions for extraordinary relief and

small claims appeals, will be noticed for dismissal 180 days after the filing of the first document conferring court jurisdiction, unless the parties appear ex parte in the appropriate department and obtain an extension of time. The court, on its own motion, may at any time reclassify such cases as "unlimited civil." Cases designated as "eminent domain" must follow the procedures under rule 2.4.5.
(Eff. 1/1/98; Renumbered 7/1/2001; Rev. 1/1/2004; Renumbered 1/1/2006)

Rule 2.4.8

Extraordinary Writs

A. In seeking mandamus or prohibition relief, it is not necessary to obtain an alternative writ (section 1088 of the Code of Civil Procedure). The noticed motion procedure should be used whenever possible.

B. If an alternative writ is sought in the first instance, the petition must be filed in the civil business office and the petitioner must appear ex parte to seek issuance of an order to show cause.

C. Petitions for extraordinary writs in limited civil, misdemeanor and infraction cases that name the Superior Court as the respondent are governed by Division VII rules (Appellate).

D. Petitions for extraordinary writs arising out of all other criminal cases are governed by Division III rules (Criminal).
(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 2.4.9

EADACPA Proceedings

A. When a civil action has been filed which cites the "Elder Abuse and Dependent Adult Civil Protection Act" (EADACPA), pursuant to Welfare & Institution Code section 15600 et seq., that action will be transferred to the Probate Court for litigation if the following apply:

1. A conservator of the person and/or estate has been appointed for the plaintiff and has qualified prior to the initiation of the action for abuse. Welf. & Ins. Code § 15657.3(a).)

2. No good cause is shown to retain the action in the Civil Court. Welf.e & Ins. Code § 15657.3(b). The action will remain as a civil case file and civil Rules of Court and procedures will apply.

B. Where a conservator of the person and/or estate has been appointed, any EADACPA action can also be filed by petition or complaint in the Probate Court and will be part of the conservatorshiip case file. It will be processed like a civil action, with the requirements of a summons and responsive pleadings.

1. The title of the case must be a dual title "In the Matter of the Conservatorship of (name)" and below that title the civil title, "(Name of conservatee) Through (name of conservator), Conservator of (Person or Estate) v. (name(s)) (of) Defendant(s)".

2. Although a civil summons will be issued, the petition or complaint will be set for hearing at least 40 days away, on a regular probate calendar, and that first hearing will be handled as a review hearing.

a. A Certificate of Service of summons or Certificate of Progress showing inability to serve must be filed prior to the hearing.

b. Proof of service of probate notices pursuant to applicable statutes must be filed prior to the review hearing.

3. The petition or complaint will thereafter be handled pursuant to probate "fast track" rules for contested matters pursuant to Probate Rules, Division IV, Chapter 22.

4. If a jury trial is demanded, or if the time estimate exceeds what Probate Court has the ability to hear, and the matter does not settle, at the Joint Disposition conference, the litigants will be instructed to contact the independent calendar clerk for assignment to a civil court.

5. If the conservatee dies while an action is pending in the Probate Court, the Probate Court will retain jurisdiction of the action in the conservatorship case file. (Prob. Code § 2630.)

a. A personal representative or processor in interest to the conservatee must substitute in as plaintiff. (Welf. & Ins. Code § 15657.3.)

b. A first appearance fee for the substituted party will be required.
(Renumbered 7/1/2001; Renumbered 1/1/2006)

CHAPTER 5
MISCELLANEOUS PROVISIONS

Rule 2.5.1

Servicemembers Civil Relief Act

A. When it is determined a defendant is in the military service so as to be entitled to the benefits of the Servicemembers Civil Relief Act (50 U.S.C. Appen. section 501-596), counsel for the plaintiff must determine the defendant's ability to appear and defend the action. No later than the time of the initial case management conference, the plaintiff must advise the court of the defendant's ability to proceed, and, if necessary, the court must issue one of the orders under subdivision "C" or "F" of this rule.

B. When a noticed defendant or a cross-defendant other than the plaintiff communicates to the court that he or she is in the military service and

claims the benefits of the Servicemembers Civil Relief Act, the court will order the matter set for a hearing, to determine how to proceed, no sooner than 60 days after the defendant's notification to the court, unless the court orders otherwise. The court will notify the plaintiff of the defendant's communication by serving a copy upon plaintiff. Plaintiff must then serve upon defendant notice of the hearing (subdivision "D" of this rule). At the hearing, the court will make the findings required under subdivision "E" of this rule based upon the evidence presented.

C. At the hearing to determine how to proceed on an unnoticed defendant requesting a stay under the Servicemembers Civil Relief Act, the court may make one or more of the following orders:

1. If, by the hearing, there is no evidence that the defendant has received actual notice, counsel may be appointed to represent the defendant.

2. If the court intends to enter a judgment against an unnoticed defendant, counsel will be appointed to represent the defendant.

3. If the court determines there may be a defense to the action and a defense cannot be presented without the presence of the defendant; or after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists, the court will grant a stay of proceedings for a minimum of 90 days.

4. If the court determines the defendant is not entitled to the benefits of the Servicemembers Civil Relief Act, the court may order the action to go forward in the defendant's absence.

5. Any order necessary to further the delay reduction policies set forth in sections 2.1 and 2.3 of the Standards of Judicial Administration appended to the California Rules of Court.

D. Any notice given pursuant to subdivision "B" of this rule must be served on the defendant by the plaintiff in any manner provided in the Code of Civil Procedure for service of summons. Such notice must include a statement that if the defendant is unable to appear personally and is requesting a stay of the action because he or she is unable to appear and defend the action at that time, the defendant must serve upon the plaintiff and the court prior to the next scheduled hearing, proper notice as defined under the Servicemembers Civil Relief Act. Proper notice must be described as a letter or other communication that sets forth facts explaining why current military duty materially affects the defendant's ability to appear, a date when the defendant will be able to appear, and a letter or other communication from the commanding officer stating that the defendant's current military duty precludes appearance and that leave is not authorized at the time of the hearing. The notice to the defendant must clearly state that if the defendant fails to provide proper notice, it will be construed by the court as an admission that the defendant is not entitled to the benefits of a stay under the Servicemembers Civil Relief Act and the action will go forward in the defendant's absence.

E. At the hearing to determine how to proceed on a notice defendant requesting a stay under the Servicemembers Civil Relief Act, the court will make specific findings on the record as to the following issues:

1. The defendant is entitled to the benefits of the Servicemembers Civil Relief Act because he or she is in the military; is a reservist ordered to report to military service; is a person ordered to report for induction; or is a United States citizen in military service with the forces of a nation allied with the United States in the prosecution of a war or military action; and

2. A letter or other communication was received by the court that sets forth facts explaining why current military duty materially affects the defendant's ability to appear; and

3. The defendant provided a date when he or she will be able to appear; and

4. A letter or other communication was received by the court from the commanding officer stating that the defendant's current military duty precludes appearance and that leave is not authorized at the time of the hearing.

F. If the court makes a finding that the noticed defendant is able to appear and defend, the court will order the action to proceed in due course. If a stay is requested by the noticed defendant, and the evidence supports the specific findings in subdivision "E", the action will be stayed for a minimum of 90 days. The defendant may request additional stays, if proper notice requirements are satisfied for each new request. If the court denies a request for an additional stay, it will appoint an attorney to represent the noticed defendant. An application for a stay does not constitute a waiver of any substitute or procedural defense.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.5.2

Public Inspection of Files

A. File Review in the Civil Business Office: Civil files may be reviewed in the civil business office of each division in accordance with the California Rules of Court and the following:

1. Any person requesting to view a file may be required to submit a valid California driver's license or other photo identification card;

2. Cases must be requested by case number;

3. If requested in nonsequential order, a maximum of 10 cases per day will be pulled by the clerk;

4. If requested in sequential order, a maximum of 50 cases per day will be pulled by the clerk;

5. Unlawful detainer case files may be requested by case number no sooner than 60 days following the date the complaint is filed pursuant to section 1161.2 of the Code of Civil Procedure; and

6. No random searches will be accommodated.

B. Access to the Civil Business Office for File Review: Any person who desires access to the secured area of the civil business office to review case files must comply with the following:

1. Submit an Application for Access into the Clerk's Office to Research Court Records;

2. Submit a valid California driver's license or photo identification card and, if applicable, a copy of a valid business license;

3. Pass a background check.

Access will be denied if the applicant has any outstanding warrants, is a party to a pending civil or small claims action, has an open misdemeanor or felony case, is currently on probation for a misdemeanor or felony conviction, or upon order of the court.

Notification of approval or denial of access will be mailed to the applicant at the address shown in the application within 30 days. Applicants who are denied access will be permitted to inspect cases in the same manner as set forth under subdivision "A" of this rule. (Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2004; Renumbered 1/1/2006)

Rule 2.5.3

Fax Filings

A. Agency Fax Filings: The court will accept for filing all documents submitted by fax filing agencies, except those specified in the California Rules of Court.

B. Direct Fax Filings - Limited Civil Cases: Any document not required to be accompanied by a fee may be filed directly by fax. Direct fax filing numbers may be obtained by contacting the appropriate business office.

The business office will not provide conformed copies unless a request is submitted to the court with a self-addressed, stamped envelope, and $.50 per page of the faxed document.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.5.4

Procedure Upon Death of Plaintiff

Within 10 calendar days of receiving notice of the death of a plaintiff, counsel for the plaintiff must file with the court and serve upon all other parties in the action, a Notice of Death of the Plaintiff.

Upon receipt of a Notice of Death of the Plaintiff, the court will suspend future consideration of the case for 90 calendar days. The case will be placed on a dismissal calendar to be heard 90 days after the notice is filed unless:

1. The original case is consolidated with a new wrongful death action;,

2. Good cause is shown upon written noticed motion to extend the time for dismissal; or

3. Plaintiff's counsel moves to have the original action restored to active status.

(Eff. 1/1/98; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.5.5

Receivers

The court may appoint a receiver pursuant to statute or in conformance with equity practice. Appointment of a receiver may be made either by order after a show cause hearing, by order after a noticed motion for appointment of a receiver, or by ex parte order for appointment of a receiver.

Ex parte appointment of a receiver is a drastic remedy used only with extreme caution in cases of great emergency when it is shown that the party seeking appointment of a receiver will suffer irreparable harm before a noticed hearing can be held and that no less drastic remedy, such as a temporary restraining order, will prevent the threatened harm. Appointment of a receiver ex parte is contingent upon the filing of an applicant's bond (section 566 of the Code of Civil Procedure) and a receiver's bond (section 567 of the Code of Civil Procedure). The receiver's bond will be fixed in an amount sufficient to cover the value of transferable personal property and cash which the receiver may possess at any time during the expected period of the receivership. Confirmation of the ex parte appointment of a receiver must be done in conformance with the provisions of the California Rules of Court.

The proposed order appointing a receiver must set forth the powers of the receiver and shall designate as precisely as possible what real and personal property will be subject to the receivership estate. The powers of the receiver are limited to those designated by statute and set out in the appointing order. If there is any doubt as to the receiver's authority to take certain action, he or she should petition the court for instructions. The

proposed order will also specify the rate of compensation of the receiver.

Employment of counsel by the receiver requires the approval of the court. In this regard, the application must comply with the provisions of the California Rules of Court, rule 353(b). In addition, the application and the proposed order must set forth the attorney's hourly rate and a good faith estimate of the number of hours the attorney will expend on behalf of the receivership estate.

If the receiver intends to employ a property management company, the proposed order must specify its rate of compensation. If the proposed property management company is affiliated with the receiver, full disclosure of the affiliation must be made to the parties and the court.

Any money collected by the receiver and not expended pursuant to the receiver's duties must be held in the receivership estate until court approval of the receiver's final report and discharge of the receiver, except as otherwise ordered by the court.

The receiver is an agent of the court, not of any party to the litigation. The receiver is neutral, acts for the benefit of all who may have an interest in the receivership property, and holds assets for the court, not the plaintiff.

Accountings filed in receivership proceedings must set forth the beginning and ending dates of the accounting period and contain a summary of income, expenses, and capital outlays on a month-by-month basis. Receiver's fees and administrative expenses, including fees and costs of property managers, accountants and/or attorneys previously authorized by the court must be included in the summary, but separately stated. The summary must be supported by appropriate itemized schedules and evidentiary foundation.

This rule is not an exhaustive treatment of receivership law and procedure. For applicable law, also see sections 564-570 of the Code of Civil Procedure and the California Rules of Court, rules 349-353.

(Eff. 1/1/98; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.5.6

Confidentiality Agreements, Protective Orders, Sealed Documents

It is the policy of the court that confidentiality agreements and protective orders are disfavored and should be recognized and approved by the court only when there is a genuine trade secret or privilege to be protected.

A. Requests to approve a confidentiality agreement that involves documents submitted to or filed with the court, such requests must be made pursuant to rules 243.1 – 243.4 of the California Rules of Court.

B. To the extent any request to seal court records falls outside the scope of rules 243.1 – 243.4 of the California Rules of Court and is not covered by a specific statute, rules 243.1 – 243.4 must be followed as closely as is practicable.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered and revised 1/1/2006;)

Rule 2.5.7

Daily Transcripts of Proceedings

A party in a civil action may request a daily transcript of the proceedings. The court may grant the request if such will not disrupt the regular assignment of court reporters. If the request is granted, the requesting party must deposit with the clerk of the court each day a sum equal to the daily cost of the salary and benefits for court reporters in this county under existing law, to compensate the requisite additional reporter. Current information regarding such cost will be available in the office of the executive officer or assistant executive officer of each division.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.5.8

Depositions

No deposition may be noticed for taking before the court, or in any room or quarters under the control of the court, without the express approval in writing of the presiding judge.

Any deposition transcript returned to the court may be opened by the clerk at the request of either party, and the clerk will note thereon at whose request it was opened, and file the deposition transcript on the day it was received by the clerk.

(Eff. 1/1/98; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 2.5.9

Bankruptcy

All parties to an action must promptly make it known in writing to the court if during the litigation they become debtors in bankruptcy or if, to their knowledge, other parties to the litigation become debtors in bankruptcy.

(Eff. 1/1/98; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.5.10

Request to Appear by Telephone

A party may be permitted to appear by telephone in any nonevidentiary law and motion hearing or conference. Requests to appear telephonically must be made in accordance with the California Rules of Court, rule 298. Emergency requests will also be considered on a case by case basis. The court may deny such a request if it determines that personal appearance would

materially assist in a determination of the proceeding or in settlement of the case, or where it otherwise appears there is good cause to do so.
(Eff. 1/1/98; Rev. 1/1/99; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003; Renumbered 1/1/2006)

Rule 2.5.11
Default Attorney Fee Schedule

Whenever the obligation sued upon provides for the recovery of a reasonable attorney fee, the fee in each default case may be fixed pursuant to the following schedule:

PRINCIPAL AMOUNT ALLOWED	FEES
$-0- to $300	$ 100
301 to 400	125
401 to 500	150
501 to 700	175
701 to 900	200
901 to 1,000	250
1,001 to 1,500	300
1,501 to 2,000	375
2,001 to 2,500	450
2,501 to 3,000	525
3,001 to 3,500	600
3,501 to 4,000	675
4,001 to 4,500	750
4,501 to 5,000	825
5,001 to 6,000	900
6,001 to 7,000	1,000
7,001 to 8,000	1,100
8,001 to 9,000	1,200
9,001 to 10,000	1,300
10,001 to 12,500	1,400
12,501 to 15,000	1,500
15,001 to 17,500	1,600
17,501 to 20,000	1,700
20,001 to 22,500	1,800
22,501 to 25,000	1,900
Over 25,000	Add 2% of the next 25,000
Over 50,000	Add 1% of the next 50,000
Over 100,000	Add .5%

In any case where an attorney claims he or she is entitled to a fee in excess of any of the above amounts, the attorney may apply to the court therefor and present proof to support the claim. The court will determine the reasonable fee amount according to proof.

In contested matters, the court will determine the reasonable attorney fees as proved by the prevailing party after trial in accordance with section 1021 et seq. of the Code of Civil Procedure, sections 1717 and 1717.5 of the Civil Code, and the California Rules of Court, rule 870.2.
(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.5.12
Elisors

Where one of the parties will not or cannot execute a document necessary to carry out a court order, the clerk of the court, or his or her authorized representative or designee may be appointed as an elisor to sign the document. An application for appointment of an elisor may be made ex parte. When applying for an appointment of an elisor, the application and proposed order must designate "The clerk of the Court or His/Her Designee" as the elisor and indicate for whom the elisor is being appointed. The application must not set forth a specific court employee. The declaration supporting the application must include specific facts establishing the necessity for the appointment of the elisor. If the elisor is signing documents requiring notarization, the applicant must arrange for a notary public to be present when the elisor signs the document(s).
(Eff. 1/1/1999; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 2.5.13
Sanctions

A. If any counsel, a party represented by counsel, or a party in pro per, fails to comply with any of the requirements of Division II of the San Diego Superior Court Rules, the court, on motion of a party or on its own motion, may strike all or any part of any pleadings of that party; or dismiss the action or proceeding or any part thereof; or enter a judgment by default against that party; or impose other penalties of a lesser nature or otherwise provided by law; and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees.

B. If a failure to comply with the rules in Division II is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto.
(Added eff. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

APPENDIX A

GUIDELINES FOR DEFAULT JUDGMENTS

After you obtain entry of default you must obtain a default judgment within 45 days, unless other defendants named in the complaint have answered. A default judgment may be obtained from the clerk without a hearing or judicial review if the action is one arising from a contract or judgment and seeks recovery of money damages only if a fixed or determinable amount and the defendant was not served by publication (Code Civ. Proc. § 585, (a).) Applications for default judgment by clerk should be submitted to the civil business office of the appropriate court.

If, in the sole determination of the court, the case is not amenable to default judgment by clerk pursuant to Code of Civil Procedure § 585(a), the court encourages the submission of applications for default judgment by court by declaration or affidavit in accordance with Code of Civil Procedure section 585(d). Such applications should be submitted to the Civil Business Office of the appropriate court.

Entry of judgment against defaulted defendants will generally be deferred until resolution of the entire action. If you believe a several judgment resolution against a defaulted defendant is proper prior to the resolution of the entire action, you should support your application with applicable factual and legal authority (see, Code Civ. Proc. § 579).

Where the original creditor on an open book account is a bank, a saving association, a federal association, a state or federal credit union, or a subsidiary, affiliate, or holding company of any of those entities, or an authorized industrial loan company, a licensed consumer finance lender or a licensed commercial finance lender, attorney fees will not be awarded under Code of Civil Procedure section 1717.5. An assignee has no greater rights than an assignor. Brienza v. Tepper (1995) 35 Cal.App.4th 1839.

The court retains discretion to require oral prove-up hearings in appropriate cases following its review of the papers submitted. Prove-up hearings are often triggered by the following:

1. Credibility of parties/claims at issue;
2. Punitive damages claims;
3. Fraud claims;
4. Personal injury/wrongful death claims;
5. Quiet title actions; and/or
6. Claims for injunctive relief.

COURT JUDGMENT
The following must be submitted:
____ A proposed judgment not exceeding the amount of the prayer.
____ In personal injury and wrongful death actions, a judgment not exceeding the total on the statement described in Code of Civil Procedure section 425.11 (Request for Statement of Damages) and Code of Civil Procedure section 425.115 (Reservation of Right to Seek Punitive Damages).
____ A declaration setting forth facts showing that the defendant is not in military service. This declaration must be no older than six months. (Servicemembers Civil Relief Act, 50 USC Appen. § 520).
____ A Memorandum of Costs. (See, California Rule of Court, rule 879; Judicial Council Form 982(a)(6)).
____ The original written contract, if any, giving rise to the action, or a declaration regarding lost document. California Rules of Court, rule 234.
____ If the action is upon an open book account, an affidavit or declaration that no written contract exists. (See, Cal. Civil Procedure Before Trial (Cont.Ed.Bar) § 56.41)
____ A computation of any interest, including the date of accrual and the rate of interest.
____ A copy of any notice sent to Defendant in accordance with Code of Civil Procedure section 1033(b)(2), if applicable.
____ A dismissal of all unnamed defendants, including DOES.
____ The ledger or most recent invoice showing amounts due.

CLERK'S JUDGMENT
The following must be submitted:
____ A proposed judgment not exceeding the amount of the prayer.
____ A declaration setting forth facts showing that the defendant is not in military service. This declaration must be no older than six months. (Servicemembers Civil Relief Act, 50 USC Appen. § 520).
____ A Memorandum of Costs. (See, California Rules of Court, rule 879; Judicial Council Form 982(a)(6)).

____ The original written contract, if any, giving rise to the action, or a declaration regarding lost document. California Rules of Court, rule 234.
____ A computation of any interest, including the date of accrual and the rate of interest.
____ A copy of any notice sent to Defendant in accordance with Code of Civil Procedure section 1033(b)(2), if applicable.
____ A dismissal without prejudice or a written waiver of any causes of action other than those on which a clerk can enter judgment pursuant to Code of Civil Procedure section 585(a).
____ A dismissal of all unnamed defendant, including DOES.
____ If the action is upon an open book account, an affidavit or declaration that no written contract exists. (See, Cal. Civil Procedure Before Trial (Cont.Ed.Bar) § 56.41)
____ On an open book account, plaintiff may obtain a clerk's entry of judgment provided that plaintiff submits one of the following:

1) A verified complaint; or,
2) A declaration setting forth figures from which the clerk may perform a simple computation to obtain the amount of the judgment; or,
3) the ledger or most recent invoice showing amounts due, from which the clerk can perform a simple calculation to compute judgment.

Absent pursuit of at least one of these three alternatives, it is the policy of the San Diego Superior Court that such claims must be presented for entry of judgment by the court.

(Eff. 1/1/98; Rev. 7/1/2001; Rev.7/1/2003; Rev. 1/1/2006)

APPENDIX B

JOINT TRIAL READINESS CONFERENCE REPORT FORMAT

The Joint Trial Readiness Conference Report must be prepared on pleading paper in accordance with rule 201 of the California Rules of Court. Information in the format indicated below must be provided for filing at the Trial Readiness Conference. Failure to file the Joint Trial Readiness Conference Report **OR** to appear at the Trial Readiness Conference may result in imposition of monetary sanctions dismissal of the case or entry of a default judgment. Failure to **fully** disclose all required items in the report may result in exclusion or restriction of evidence at trial. This is a JOINT REPORT. Separate reports will not be accepted.

Plaintiff(s) vs. Defendant(s)	CASE NUMBER JOINT TRIAL READINESS CONFERENCE REPORT Trial Readiness Conference: (date/time/dept) Trial Date: Trial time estimate: Jury Requested: (Y/N) Jury fee deposited: (Y/N) Court Reporter Requested: (Y/N)

A. The parties to the above case, by their attorneys: [list parties and attorneys] met at [address] on [date] but could not settle the case. They are prepared for trial.

B. Nature of case: (provide a joint, brief, non argumentative description of the case, suitable for reading to a jury panel).

C. Legal issues which **are not** in dispute: (If a motion for summary adjudication has been granted in this case, specify the cause(s) of action, affirmative defense(s), claim for damage(s) or issue(s) of duty so adjudicated.)

D. Legal issues which **are** in dispute:

E. Exhibits: (Counsel must prepare a joint numerical index of all exhibits.) Each exhibit must be separately listed. There must be no sub-parts to an exhibit. The index must be prepared in the format provided below and must indicate: (1) exhibit number; (2) by whom **submitted**; (3) a description of each exhibit sufficient for identification; (4) whether the parties have stipulated to admissibility, and if not, the legal ground(s) for objection(s). Effect Serves to clarify that an exhibit is identified on a particular date and not submitted on a particular date.

EXHIBIT INDEX

EXH. NO.	SUBMITTED BY	DESCRIPTION	LEGAL GR. FOR OBJECT.	DATE SUB'D
				(Leave this blank)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

GROUNDS FOR OBJECTION

1. No Objection; Admissibility Stipulated
2. Irrelevant (§ 210)
3. Hearsay (§ 1200)
4. Best Evidence (§ 1500)
5. Inadmissible Opinion (§ 800)
6. Insufficient Foundation (§ 403)
7. Unduly Time Consuming, Prejudicial, Confusing, or Misleading (§ 352)
8. Subsequent Repair (§ 1151)
9. Other (Specify)

(Relevancy, Personal Knowledge, Authenticity) (§ 1400, Identity)

(continued on next page)

JOINT TRIAL READINESS CONFERENCE REPORT FORMAT
JOINT TRIAL READINESS CONFERENCE REPORT FORMAT (Continued)

F. List standard jury instructions, requested by Plaintiff(s), citing each instruction by number and Special Instructions by title. **Copies** of proposed Special Instructions must be presented to the Court, at the conference, for review. THEY MUST NOT BE FILED WITH THE REPORT.

G. List standard jury instructions, requested by Defendant(s), citing each instruction by number and Special Instructions by title. **Copies** of proposed Special Instructions shall be presented to the Court, at the conference, for review. THEY MUST NOT BE FILED WITH THE REPORT.

H. If a Special Verdict form will be proposed, attach to the report.

I. List the names of all witnesses, including experts, as follows: (Note: Previously exchanged expert witness designation documents must be attached to the report. Witnesses used solely for impeachment need not be listed):

PLAINTIFF

NAME OF WITNESS (Expert/percipient)	**TYPE OF WITNESS**

DEFENDANT

NAME OF WITNESS (Expert/percipient)	**TYPE OF WITNESS**

The attorneys noted below certify that they have met and conferred jointly, made a good faith settlement demand or offer, but have been unable to settle the case. All deadlines, set by the court for exchange of experts have been met and all discovery is complete. The parties are prepared for trial. (Here, explain any variance from the above recital).

I certify under penalty of perjury under the laws of the State of California that the forgoing is true and correct:

Dated: _____ Dated: _____

Signature: _____ Signature: _____

Type Name: _____ Type Name: _____

Attorney For: _____ Attorney For: _____

Dated: _____ Dated: _____

Signature: _____ Signature: _____

Type Name: _____ Type Name: _____

Attorney For: _____ Attorney For: _____

(Eff. January 1, 1998; Revised eff. January 1, 2006)

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CRIMINAL

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DIVISION III: CRIMINAL

CHAPTER 1 GENERAL

Rule 3.1.1

Police Reports Containing Confidential Personal Information

In accordance with Penal Code section 964 and the public policy set forth therein, prosecutors and law enforcement agencies should not submit police reports, arrest reports or investigative reports containing "confidential personal information" (as defined in subdivision (b) of Penal Code section 964) of victims or witnesses to the court in support of a criminal complaint, indictment, or information; or in support of a search or arrest warrant. Rather, prosecutors and law enforcement agencies should present the court with written declarations from law enforcement officers that are devoid of this confidential personal information.

In the alternative to providing declarations to the court, the parties may submit copies of police reports, arrest reports or investigative reports that are redacted of all "confidential personal information" of victims and/or witnesses. The redacted copies of these reports provided to the court must be attached to a declaration attesting to the fact that all "confidential personal information" of victims and/or witnesses has been effectively redacted from the reports.

All agencies should bear in mind that the court will not undertake the task of redacting any confidential personal information of victims or witnesses from documents submitted for the court's consideration. Rather, the burden to ensure that this information is not included within any documents presented falls squarely on the agencies preparing and presenting them to the court. In this respect, the court may exercise its discretion to accept or reject a police, arrest or investigative report containing confidential personal information that is submitted in support of a criminal complaint, indictment, or information; or in support of a search or arrest warrant.

(Effective 1/1/2006)

Rule 3.1.2

Arraignment Options on Misdemeanors and Infractions

Attorneys appearing in propria persona or who are retained to represent defendants who are not in custody and who are charged with misdemeanors or infractions may, in lieu of a court appearance, arraign matters informally if the attorney, as authorized by the defendant, enters a plea of not guilty and waives time for trial. The clerk will assign settlement conference, trial readiness conference, and trial dates as directed by the court.

A. Counter Arraignments: The attorney must personally appear in the clerk's office.

B. Fax Arraignments: Forms and rules governing this procedure may be obtained from the clerk's office or the court's website.

D. Exceptions: These arraignment options are not available for defendants charged with child abuse or domestic violence countywide or cases prosecuted by consumer fraud and code enforcement divisions of the San Diego City Attorney's Office.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Revised 7/1/2002; Renumbered and revised 1/1/2006)

Rule 3.1.3

Failure to Appear in Misdemeanor "Notify Letter" Cases

If a defendant fails to appear in court for arraignment after a notify letter has been issued by the prosecutor in a misdemeanor case, the court will set a date 90 days in the future by which time the prosecutor will decide if he or she will file an Affidavit In Support of Arrest Warrant. If the prosecutor files an affidavit within this 90-day period, the case will be referred to the designated criminal department for issuance of a warrant. If no affidavit is filed within 90 days, the case will be dismissed for lack of prosecution unless the prosecutor petitions the court within this 90-day period and shows good cause for an extension of time to either send a notify letter or to file an Affidavit in Support of Arrest Warrant.

This rule does not apply to domestic violence, drug court and Penal Code section 1210, et seq., cases.

(Effective 1/1/2006)

Rule 3.1.4

A. Bail Reductions Or Increases

When bail has been set by a judge, all requests for an increase or reduction of said bail must be made to that judge, except that any judge to whom a criminal matter is assigned for any stage of the proceedings may, in his or her discretion, on the court's own motion, or on the motion of any party, modify the amount of bail set.

B. Confidentiality of Pretrial Services Records and Information

Information supplied by a defendant to a representative of the San Diego Superior Court Pretrial Services Department during the defendant's initial interview or subsequent contacts, or information obtained by Pretrial Services as a result of the interview or subsequent contacts, will be deemed confidential and will not be subject to

subpoena or to disclosure, and will not subject any employee or attaché of the Pretrial Services Department to subpoena, with the following exceptions:

(a) information relevant to the imposition of conditions of release must be presented to the court, the prosecutor, the defendant, and the defendant's attorney, on a standardized form when the court is considering what conditions of release to impose, and if the information given is false or misleading, it may be used for prosecution or impeachment;

(b) information concerning compliance with any conditions of release imposed by the court must be furnished to the court, the prosecutor, the defendant and the defendant's attorney, for prosecution, impeachment, or for consideration of modification of conditions of release;

(c) as otherwise ordered by the court in the interest of justice, upon noticed motion of the party seeking disclosure and a showing of good cause.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 3.1.5

Trial by Declaration

A defendant may elect to have a trial by written declaration as provided under Vehicle Code section 40902 on an alleged infraction, unless the offense involves an accident, or alcohol or drugs pursuant to Article 2, Chapter 12, Division 11 of the Vehicle Code.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 3.1.6

Juror Questionnaires

If juror questionnaires are proposed by counsel, they must be accompanied by a Juror Questionnaire Cover Sheet which will be provided by the court.

(Eff. 1/1/99; Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 3.1.7

Prohibition Against Ex Parte Contacts

The court will not entertain or engage in any ex parte communications with any party or a party's attorney regarding the merits of a pending criminal case, a motion, a petition for writ of habeas corpus, or an extraordinary writ. However, a party or a party's attorney and the court's staff attorney may discuss procedural matters ex parte.

(Renumbered and revised 1/1/2006)

CHAPTER 2
MOTIONS

Rule 3.2.1

General Requirements

A. Notice of Motion: All notices of motion and notices of opposition thereto must be in writing and must prominently display on the first page the trial readiness conference and trial dates, a time estimate for the motion hearing, and the number of witnesses to be called at the hearing, if any.

B. Time for Service (except for motions to suppress heard at the preliminary examination):

1. All moving papers must be served on the opposing party at least 15 court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least 5 court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least 2 court days before the time appointed for the hearing.

4. Proofs of service of the moving papers must be filed no later than 5 calendar days before the time appointed for hearing.

C. Points and Authorities:

1. A memorandum of points and authorities must include a statement of the case and a statement of facts setting forth all procedural and factual matters relevant to the issue presented.

2. The memorandum must clearly specify the factual and legal issues raised and the specific legal authority relied upon for the motion.

3. Only the factual and legal issues set forth in the memorandum will be considered in the ruling on the motion unless it is established that the new issues were not reasonably discoverable before the motion was filed.

4. Failure of the moving party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is without merit.

5. Except as to motions to suppress heard at the preliminary examination, failure of the responding party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is meritorious.

D. Abandonment of Motions: Any party intending to abandon a motion already filed must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard, and must also notify the clerk immediately if the case is disposed of by plea prior to the hearing or if the proceedings are suspended pursuant to Penal Code section 1368.

E. Concession That Motion is Meritorious: If the responding party elects not to oppose the

motion, respondent must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard.

F. Trial Department Motions: No party may file in any law and motion department a motion which must be decided by the trial judge. Such motions include, but are not limited to, motions to suppress based on confessions or admissions which are not a product of alleged Fourth Amendment violations (e.g., alleged violations of the Fifth and Sixth Amendments, such as Miranda violations, involuntary confessions, or denial of counsel), Trombetta/Youngblood motions, and severance motions resting on evidentiary considerations.

G. Setting of Motions: The clerk in the department where the pretrial motion is filed will set a date for hearing of the motion at least 15 court days after the motion is filed.

H. Length of Points and Authorities: No opening or responding memorandum of points and authorities exceeding 15 pages will be filed, absent an order from the judge of the court in which the motion is calendared. Such an order will be granted only upon a written application including a declaration setting forth good cause for the order.

(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 3.2.2

Additional Requirements - Special Motions

A. Motions to Dismiss or Strike (Penal Code section 995) **and Demurrers:**

1. Defendant must attach a copy of the current complaint, information, or indictment to the motion.

2. The notice of motion must clearly state whether the defendant seeks to dismiss, strike or demur to the entire complaint, information or indictment. If the defendant does not challenge the entire charging document, the notice of motion must set forth the counts, enhancements, allegations, special circumstances, or other aspects of the charging document that are being challenged.

B. Discovery Motions: In accordance with Penal Code section 1054 et seq., discovery motions must include a declaration by counsel, under penalty of perjury, setting forth the previous oral and written efforts to obtain discovery by cooperative and informal means, and showing how the opposing party has failed to comply with Penal Code section 1054.1 or 1054.3. The motion must be limited to the disputed items, or class of items, listed in the declaration.

C. Suppression Motions (Penal Code section 1538.5)**:**

1. Defendant must attach a copy of the current complaint, information, or indictment to the motion.

2. If relevant to the motion, the defendant must attach to the motion legible copies of the search warrant, affidavit in support of the warrant, and receipt and inventory of property.

3. The motion must include a list of specific items to be suppressed. A general request to suppress "all items seized" is not sufficient and may be deemed an abandonment of the motion. Only listed items will be considered by the court for suppression or return, unless any newly identified item could not reasonably be specified prior to the hearing.

4. Motions Made at Felony Preliminary Examination.

Motions made at a felony preliminary examination must comply with Penal Code section 1538.5(f). Defendant may, but is not required to, file a reply brief. Proofs of service must be filed by the date of the hearing.

5. Motions Made in All Other Cases.

a. Defendant must specify the precise grounds for suppression of the evidence, including the inadequacy of any justification for the search and seizure. If defendant's motion alleges the lack of a warrant as the sole basis for suppression, any opposition filed by the People should specify the justification for the warrantless search. The defendant should then file a reply specifying the inadequacies of the justification. However, absent a reply, the prosecution retains the burden of proof to establish its justification. The reply brief must be filed and personally served at least two court days prior to the hearing. The raising of new issues in the reply may constitute good cause for continuance to permit the prosecution to prepare for the hearing.

b. A motion brought following a felony preliminary examination must state whether the party stipulates to the preliminary examination transcript, whether the motion was raised at the preliminary examination, and, if so, must specify what factual findings and legal conclusions were made by the magistrate. Failure to indicate whether or not the party stipulates to the preliminary examination transcript will be deemed a stipulation to the admission of the transcript.

(Eff. 1/1/2000; Renumbered 7/1/2001; Revised 7/1/2002; Rev. 1/1/2003; Renumbered and revised 1/1/2006)

Rule 3.2.3

Additional Requirements - Felonies

A. At the post-bindover arraignment on the information or arraignment on an indictment, the judge will set a filing deadline for all pretrial motions which will be 21 calendar days after the arraignment or such other date as the judge may, for good cause, assign.

B. All such motions, including motions to join in motions, must be filed no later than the close of business on the assigned date.

C. No moving papers will be accepted thereafter for filing except by order of the supervising criminal judge extending time or granting relief from default.
(Eff. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 3.2.4
Motions Settings - Misdemeanors and Infractions

Except where there is an order setting a hearing date, the moving party may request a date for the hearing. Dates are subject to confirmation by the clerk's office and mandatory time provisions of statutes, the California Rules of Court, and these rules.
(Eff. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

CHAPTER 3
HABEAS CORPUS, ERROR CORAM NOBIS, AND REPLEVIN PETITIONS

Rule 3.3.1
Application

This chapter does not apply to extraordinary writs in misdemeanor or infraction cases in which the San Diego Superior Court is named as respondent. Such writs are governed by Division VII rules (Appellate).
(Eff. 1/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 3.3.2
Place for Filing

A. Habeas Corpus Petitions:

1. A petition for writ of habeas corpus should be filed in the criminal records division of the court that serves the area in which the underlying criminal case was or is pending.

2. A petition for writ of habeas corpus filed by or on behalf of an inmate at the R.J. Donovan Correctional Facility concerning a condition of confinement should be filed at the South County Division. Petitions challenging a parole eligibility finding should be filed in the criminal records division of the court that serves the area in which the underlying criminal case was adjudicated.

B. Other Petitions: A petition for writ of error coram nobis or replevin must be filed in the department of the supervising criminal judge of the division in which the underlying criminal case was or is pending.

C. Subsequent Pleadings: Unless otherwise ordered, any pleadings filed by any party after the original petition must be filed at the same location as the original petition, not in the department to which the petition has been assigned.
(Eff. 1/1/98; Rev. 1/1/99, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003; Renumbered 1/1/2006)

Rule 3.3.3
Service of Petition

A. Except as provided in sections B and C of this rule, a petition will not be accepted by the clerk for filing unless it is accompanied by a proof of personal service upon the respondent.

B. When a petitioner is a defendant who is not represented by counsel, the clerk will accept the petition for filing if it is accompanied by a proof of personal service or service by mail upon the respondent.

C. When a petitioner is an incarcerated prisoner, the clerk will accept the petition for filing without requiring a proof of service.
(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 3.3.4
Supporting Documents

A. A petition for any of the writs included in this chapter must be accompanied by the following:

1. A copy of the order or judgment from which relief is sought;

2. Any declarations, relevant records, transcripts, or any other documents supporting a claim;

3. Documentation to show that a petitioner has exhausted any administrative remedies prior to filing the petition, if required, or a declaration under penalty of perjury explaining why administrative remedies have not been sought.

B. If a petitioner does not submit the required documents or does not provide facts sufficient to excuse the failure to submit the required documents, the court may summarily deny the petition.
(Eff. 1/1/98; Rev. 1/1/99; Rev. 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 3.3.5
Disposition of Petition

A. Habeas Corpus Petitions: The parties must follow the procedures set forth in the California Rules of Court, rules 4.550-4.552.

B. Other Writ Petitions:

1. Within 15 days after the filing of the petition, the court will either summarily deny the petition or issue an order to respondent and any real party in interest to show cause why the relief requested in the petition should not be granted.

2. If such an order is issued, the court will allow at least 5 days after its issuance for the respondent and any real party in interest to file a responsive pleading, except as herein provided.

3. Within 15 days after any responsive pleading is filed, the court may either (a) deny the petition; (b) issue an order to show cause why the requested relief should not be granted; (c) issue an alternative writ; or (d) upon proper notice, issue a peremptory writ in the first instance.

4. On motion of any party or on the court's own motion, for good cause shown, the court may shorten or extend time for doing any act under this rule.

(Eff. 1/1/98; Rev. 1/1/99; Rev. 1/1/2001; Renumbered 7/1/2001; Revised 7/1/2002; Renumbered and revised 1/1/2006)

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DIVISION IV SECTION TWO: LANTERMAN-PETRIS-SHORT ACT
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See DIVISION VIII - MENTAL HEALTH

DIVISION IV

PROBATE

CHAPTER 1
DEPARTMENTAL ADMINISTRATION AND ORGANIZATION

Rule 4.1.1
Address, Phone and Hours for Probate Examining Division

San Diego Central Division:
Madge Bradley Building
1409 4th Avenue, 3rd Floor
San Diego, CA 92101

Probate Examiners:
Monday through Friday
1:30 to 2:30 p.m. by phone
2:30 to 3:30 p.m. in person
(619) 687-2000

Probate Business Office
Court Investigators
Monday through Friday
8:30 a.m. to 4:30 p.m.
(619) 687-2000

Vista (North County Division):
325 South Melrose Drive, Ste. 1200
Vista, CA 92081

Probate Examiners
Monday through Friday
1:30 to 2:30 p.m. by phone
2:30 to 3:30 p.m. in person
(760) 806-6150

Probate Business Office
Court Investigators
Monday through Friday
8:30 a.m. to 4:30 p.m.
(760) 806-6150

In these rules, the Central Division and the North County Division will sometimes be referred to as "The Probate Court."
(Eff. 1/1/90; Amended 1/1/91; 7/1/95, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Revised eff. 7/1/2003; Renumbered 1/1/2006)

Rule 4.1.2
Venue for Probate

Venue for probate cases is divided into two divisions, Central and North County (Vista). The East and South Divisions are included in the Central Division for purposes of this rule. Original petitions must show the proper venue and be filed in the appropriate court, according to zip code, as defined in Appendix I-A of these rules.
(Eff. 1/1/90; Rev. 1/1/2000, Renumbered 7/1/2001; Revised 1/1/2002; Renumbered 1/1/2006)

Rule 4.1.3
Change of Venue

Requests for change of venue must be directed to the presiding probate judge of the court having original venue. The ex parte request must take the form of a declaration and be accompanied by the proposed order for the judge's signature.
(Adopted Eff. 1/1/90; Amended 7/1/95; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

CHAPTER 2
PLEADINGS: FORM AND FILING

Rule 4.2.1
Backing on Papers Filed

All wills and other testamentary documents submitted for filing must be attached to a blueback, the right side margin of which contains the document's caption (title) which must be fully visible.
(Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.2.2
Consolidation with the Lowest Number

A. Whenever it appears that two or more petitions with different numbers have been filed with reference to the same decedent, conservatee or minor, the court will, on its own motion, consolidate all of the matters with the matter bearing the lowest number.

B. Where a complete consolidation of proceedings under the Probate Code is ordered, the clerk, unless otherwise ordered by the court, must file such consolidated proceeding and all subsequent papers relating thereto under the number assigned to the case which was filed first and therefore has the lowest number.
(Adopted, Eff. 1/1/90; Renumbered and revised & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

CHAPTER 3
PLEADINGS: FORM OF PAPERS PRESENTED FOR FILING

Rule 4.3.1
Caption of Petitions

A. If a fee is not required pursuant to the Government Code or Probate Code, it must be so indicated below the caption by stating "No fee

pursuant to Probate Code Section 10501 and Government Code Section 26826".

B. The probate filing clerk is not required to read the body of the petition or the prayer to determine notice requirements.

C. The Probate alpha-numerical designation (1A, etc., or such similar system used by the Probate Court) will be assigned at the time the petition is set for hearing. The designation must be stated directly below the case number in the caption of all subsequently filed pleadings related to that petition. The party giving notice of the hearing on the petition must include the designation in the notice.

(Eff. 1/1/90; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003; Renumbered and revised 1/1/2006)

Rule 4.3.2

Filing Documents for Calendared Matters

A. The hearing date, time and department are required on documents filed in connection with matters already set for hearing, and must appear on the first page of the document, below the caption.

B. Petitions, Applications, and Accountings. In order to be considered at the calendared hearing, documents filed after the calendared petition must be filed directly with Probate Services no later than 4:30 p.m. three court days prior to the hearing. Any document filed after the deadline will be considered late and will not be reviewed by Probate Examining for the calendared hearing.

C. Motions. Filing and service of Motions are governed by Code of Civil Procedure section 1005. Section 4.5.1 subdivision B, herein, does not apply to Law and Motion Practice. Law and Motion Practice is subject to California Rules of Court Division II.

D. Form and Lodging of Exhibits. The foundation for exhibits submitted for the court's consideration must be set forth in appropriate declarations which must be filed with the court. However, if the exhibits accompanying a motion exceed ten pages cumulatively, they must be lodged with the court in accordance with F. below, rather than attached to the pleadings which will remain in the court file. Such exhibits must be lodged at the same time as the corresponding papers are filed with the court. Exhibits written in a foreign language must be accompanied by a translation certified by a qualified interpreter.

E. Accounting Format. Accounting schedules must be filed with the court and not lodged or attached as exhibits.

F. Lodged Documents. The provisions of rule 319 of the California Rules of Court regarding lodged material will be followed by this court. In the alternative, an attorney service pick-up slip may be submitted with the lodged materials. If the lodged material is not accompanied by either a stamped, self-addressed envelope or an attorney service pick-up slip, the clerk is authorized to refuse to accept lodged material. If the clerk is persuaded to accept the material despite non-compliance with the above, the risk of loss is on counsel and it is solely the responsibility of counsel to arrange for retrieval of the material at counsel's expense within five court days of the date of the hearing. Papers not retrieved within five court days may be disposed of without further notice to counsel.

G. Lodgments. A Notice of Lodgment listing all of the items lodged must be filed and served on all appearing parties at the time any matter is lodged with the court. The documents lodged with the court must also be tabbed or paginated to correlate to the Notice of Lodgment. The Notice of Lodgment and the extra copy of the Notice will be filed stamped by the court. Following the return of the lodged documents by the court, the party lodging them must retain them until the applicable appeal period has expired.

H. Fax Filing. A document may be filed by fax in accordance with California Rules of Court rules 2001-2009.

(Eff. 1/1/90; Amended 1/1/96; eff. 7/1/96; Rev. 1/1/2000; Rev. and Renumbered 7/1/2003; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

Rule 4.3.3

Use of Judicial Council Forms

A. The latest version of applicable printed forms of petitions, orders and other documents approved by the Judicial Council must be used in all cases, unless otherwise permitted or directed by the court. If a form is inadequate for a given circumstance, an addendum may be attached to the form. When no applicable form has been so approved, counsel must draft their own documents following requirements for pleading format.

B. Appendix I shows a list of certain forms approved by the Judicial Council. Additional forms may have been approved since the date of printing the appendix and inquiry should be made if a desired form is not shown on the list.

C. When printed forms are reproduced on the front and back of a single sheet, the back sheet must be inverted ("tumbled") so that it can be read when clipped at the top in a file folder.

D. Counsel are cautioned that printed forms prepared by banks or others may not be acceptable for filing.

(Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.3.4

Affidavits and Declarations Under Penalty of Perjury

A. A declaration must meet all of the requirements of Code of Civil Procedure, section 2015.5 to be acceptable in lieu of an affidavit and may contain the following language, whether executed within or without California:

"I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date].

_____
[signature of fiduciary]

_____
[name of fiduciary]"

B. If such declaration is executed within California, it may take either the above form or the following form:

"I declare [or certify] under penalty of perjury that the foregoing is true and correct and that this Declaration is executed on [date] at [city], California.

_____
[signature of fiduciary]

_____
[name of fiduciary]"

C. Where a corporation is the fiduciary, the verification must be made by an officer on its behalf and should take the following form:

"I am [title of officer] of the petitioner in the above-entitled matter, and I am authorized to make this verification on its behalf. I have read the foregoing petition and know its contents, which are true of my own knowledge, except as to the matters that are stated on my information and belief, and as to those matters, I believe it to be true. I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on [date] at [city] California.

_____
[signature of officer]

_____
[name of officer]"

(Eff. 1/1/90; Renumbered 7/1/2003; Renumbered 1/1/2006)

Rule 4.3.5

Complete Address in Petition or Report

Where a petition or report is required to include an address, a full and complete number, street, city, state and zip code for the person's place of business or place of residence must be set forth. Where the mailing address is a different address, it must also be included.

(Adopted 1/1/90; Renumbered & revised 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.3.6

Multiple Minors and Conservatees

A. Where several minors share the same mother, a Petition for Guardianship may be filed under one case number and include all the minors.

B. Where a husband and wife are to be conserved, a separate Petition for Conservatorship for each may be filed under the same case number if the assets of the estate are community property. In all other cases, the conserved husband and wife must have separate case numbers.

(Eff. 1/1/90; Renumbered & revised 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

CHAPTER 4
SETTINGS, ASSIGNMENTS AND CONTINUANCES

Rule 4.4.1

Calendar Settings of Probate Matters

A. All petitions in probate matters which require a hearing will, upon being filed with the court, be set by the clerk on the normal calendar day.

B. Any request for early setting must be approved by the Probate Examining Department and will be granted only for good cause.

C. Calendar times in Central and North County Probate may be obtained by calling the Business Office at each location.

D. Calendar times are subject to change at the direction of the presiding probate judge. (Cross Reference: Contested Matters, Chapter 22.)

E. All petitions for appointment of a Personal Representative, Conservator or Guardian must be filed along with a completed "Duties and Liabilities" form.

(Eff. 1/1/90; Amended 7/1/95; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Revised 7/1/2002; Renumbered 1/1/2006)

Rule 4.4.2

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, either by means of a new petition, an amended petition, or by a new notice.

(Adopted eff. 1/1/90, Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.4.3

Continuances

A. Any request for a continuance before the time of the hearing, must be made by or with the permission of petitioning counsel or a petitioner acting without an attorney. Continuances may not be granted on the date of the hearing, unless requested and granted through Telecourt as stated at Rule 4.6.2 or by the court when the matter is called for hearing.

B. A one-week continuance will only be granted for good cause.

C. A first and second continuance of two weeks or more may be obtained by calling the Probate Examiner.

After several continuances have been granted an appearance by counsel in court will be required.

D. Continuance policy is subject to change at the direction of the presiding probate judge.

E. A preapproved matter will be continued if an objection is made at time of call and counsel for the preapproved matter is not present. Counsel will be notified of the continuance.

F. Probate examiners have authority to continue the hearing date on petitions or other pleadings filed with the court. However, where responses or objections have been filed or where counsel asking for a continuance has reason to know another party or counsel may attend the hearing, such counsel must advise all such parties and counsel of the continuance at the earliest possible date so as to avoid unnecessary appearances, inconvenience and expense. (Eff. 1/1/90; Amended 1/1/96; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.4.4

Setting Matters Already on File

A. When a petition is on file but not set for hearing, it will be set by the probate examiner upon request. The request must be in writing and a notice of hearing must accompany the request. A petition which has become out-of-date will be denied a new setting date and a new petition will be required to be filed.

B. If the matter was previously set and taken off calendar because of defects, the material necessary to correct the defects must accompany the request for setting. The request for setting may be refused without the corrections.

(Eff. 1/1/90; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 5
NOTICES

Rule 4.5.1

Additional Notice Requirements

A. Under the provisions of the Probate Code, the court may require additional notice in any matter.

B. Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised by the pleadings, such as when the status of property is to be determined or substantial fees for extraordinary services are requested.

C. The court may require notice in such cases to include not only the time and place of hearing but also a summary of the matters to be determined, or it may require a copy of the petition to be served with the notice.

D. The probate calendar clerk will prepare and post the notice as required pursuant to Probate Code section 10308(c). The clerk is not responsible for publications or mailings.

E. Notice to the Public Administrator/Public Guardian will be required in all appointment proceedings for decedent's estates when the proposed fiduciary is a creditor or not related to the decedent, and Letters Administration are requested; or when a non-resident of the United States is proposed.

F. 30 days "Notice of Hearing" to the Department of Health Services is required on petitions requesting approval of an accounting, amendment or addition to a first party Special Needs Trust by the Probate Court.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.5.2

Proof of Service

A. It is not sufficient in proofs of service by mail to declare that notice, etc., was mailed to the persons listed in the petition. Pursuant to Probate Code section 1260 and Code of Civil Procedure section 1013a, the court requires the proof of service to set forth the names and addresses of the persons as they appear on the envelopes.

B. In certain situations, the proof of service must show that notice was served by airmail, by registered or certified mail, by mail with a written acknowledgment of receipt of the notice, or by personal service.

C. Any person requesting that the court surcharge, suspend or remove a conservator, guardian, trustee, or personal representative, or objecting to an account by such fiduciary must file proof of service of the Notice to Surety required by

Probate Code section 1213 prior to the hearing on their Petition or Objection.
(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. eff. 7/1/2003; Renumbered and revised 1/1/2006)

Rule 4.5.3

Notice Re Special Letters in Will Contest

In the event of a will contest, a petition for special letters of administration will not be granted without notice to the surviving spouse, the person nominated as executor and any other person who, in the discretion of the court, appears to be equitably entitled to notice.
(Adopted 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.5.4

Notice to Persons Requesting Special Notice

Notice must be given to or waived by any person requesting special notice, whether or not the matter is one for which special notice was specifically requested. (Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.5.5

Notices to Trust Beneficiaries

If a personal representative is also the sole named trustee of a testamentary or non-testamentary trust, and the estate or any part thereof is to be distributed to the trustee of the trust, then notice must be sent to the beneficiaries of the trust. In addition, the names and addresses of the beneficiaries must be listed in the petition.
(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

CHAPTER 6
CALENDAR NOTES AND HEARINGS

Rule 4.6.1

Availability of Probate Examiner's Notes and Clearing of Defects

A. Probate examiner's notes are available to counsel to determine if any defects in pleadings or procedure have been noted by the examiner.

B. The notes are available on the San Diego Superior Court website.

When the examiner receives additional pleadings and updates the notes, the new notes will ordinarily be posted to the website by opening of business the following day.

C. If counsel does not have access to the internet, he may request that the notes be sent to him by attaching a "Mail Option" form which is available in Probate Services, to the petition, with a self-addressed, stamped envelope or a messenger slip.

D. After checking the notes, counsel are encouraged to call Probate Examining with any questions counsel may have or explanations that may assist in the clearing of the defects. Counsel may also appear in person to confer with Probate Examining to clear defects. All such calls or meetings must be during the open hours of Probate Examining.

E. An appearance is required on all matters not preapproved even though there are no defects.

F. To correct defects counsel are required, at least three court days in advance of the hearing date, and no later than 4:30 p.m. to supply to the probate examiner's office any additional documents or explanations necessary for approval of the petition without continuance. Any documents submitted late may not be examined before the hearing, and a continuance may be required. See Rule 4.3.2.
(Eff. 1/1/90; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered and revised 1/1/2006)

Rule 4.6.2

Appearance of Counsel by Telephone

A. In the downtown San Diego court, if an uncontested matter has not been pre-approved or continued by the examiner, counsel may appear by a telephone call, at such time as designated by the probate judge and posted on the court's website, to seek pre-approval or a continuance. The phone number for this "Telecourt" in San Diego is (619) 687-2023. Counsel must be on the phone line when the call is answered

B. In North County, if an uncontested matter has not been pre-approved or continued by the examiner, counsel may appear by a telephone call to the probate judge on Wednesday, before the date of the scheduled hearing, between 4:00 pm and 4:30 pm or such other time as designated by the probate judge, to seek pre-approval or a continuance. The phone number for the "Telecourt" in North County is (760) 806-6060. Counsel must be on the phone line when the call is answered.
(Eff. 1/1/90; Amended 7/1/95; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 7
ORDERS AND BONDS

Rule 4.7.1

Preparation of Orders

A. An order or document on a matter requiring the signature of the judge must be submitted to the Probate Business Office for review before being presented to the judge. Orders may be submitted on or after the hearing date.

B. Counsel for the prevailing party must, unless the court orders otherwise, prepare and submit a formal order. Orders must be submitted in accordance with the procedure set forth in California Rules of Court, rule 391.
(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered and revised 1/1/2006)

Rule 4.7.2
Material to be Included in Probate Orders

A. All orders or decrees in probate matters must be complete in themselves, in that they must set forth all matters actually passed on by the court, the relief granted, the names of persons, descriptions of property and/or amounts of money affected with the same particularity required of judgments in general civil matters. The introductory paragraph must include the subject of the hearing, the date, time, department number, judge's name, and names of the parties and attorneys who appeared and whether the appearance was in person, telephonic, or that the matter was preapproved and no appearance was necessary.

B. Probate orders must be drawn so that their general effect may be determined without reference to the petition on which they are based.

C. In no case may any material appear after the signature of the judge.

D. At least two lines of text must be included on the page containing the judge's signature.

E. While in orders settling accounts it is proper to use general language approving the account, the report and the acts reflected therein, it is not sufficient in any order to recite merely that the petition as presented is granted.

F. Orders settling accounts must also contain a statement as to the balance of the estate on hand, specifically noting the amount of cash included in the balance.

G. All orders for distribution (including estates, conservatorships, guardianships and trusts) must contain the following:

(1) A list of the assets on hand;

(2) The dispositive provisions of any will which has been admitted to probate, set forth verbatim; or, in the event of intestacy, the heirs at law and their specific relationship to the decedent; or, in termination of guardianships and conservatorships, the person or persons entitled to distribution of the assets. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest in an estate must be fully set forth;

(3) A distribution schedule describing each asset and setting forth charges against distributive shares with sufficient clarity to enable each distributee to determine the net distribution;

(4) A provision setting forth the persons to whom any later discovered property is to be distributed; and the appropriate share they are to receive

(5) The fees and commissions allowed by the court.

(6) The following statement is acceptable as a finding of assets on hand: "The court finds that the assets described in the order of distribution comprise the entire estate on hand for distribution".

H. The court will not hear any subsequently filed petition covering the same subject matter of a previous petition where the order previously made has not been submitted and approved pursuant to the requirements of these rules.
(Adopted eff. 1/1/90; Amended eff. 7/1/91; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

Rule 4.7.3
Riders and Exhibits

No riders or exhibits may be attached to any order, except as may be otherwise provided on Judicial Council forms.
(Adopted eff. 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.7.4
Orders for Continuing Payment Must Have a Maximum Time Limit

The court will not make orders for continuing payments to run "until further order of the court." All such orders must provide for payments that "commence as of _____ and continue for a period not to exceed _____ months or until further order of the court, whichever shall first occur."
(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.7.5
Application for Ex Parte Orders - Generally

A. All ex parte applications must comply with rule 379 of the California Rules of Court.

B. All applications for ex parte orders must be reviewed by Probate Examining before presentation to the judge. Examiners will be available just before the court's ex parte hours for making this review.

C. Any application for an ex parte order 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, for example, that the sale of property set forth in the petition has been approved.

D. Whether there are parties entitled to specific notice of any matter is not controlling as to whether a petition will be heard by the court on an ex parte application. Requirements of the Probate Code and

policy of the court are determinative of whether a matter may be heard ex parte.

E. The court requires notice to all parties entitled to notice no later than 10:00 a.m. the court day preceding the hearing. Every ex parte application must be accompanied by a written declaration of such notice or of the reason it was not given as required by CRC 379(a) and (e).

F. Filing fees must be paid and a case number issued before a party presents an ex parte application. This includes a petition for letters of special administration where no petition for probate is first filed and in those cases the ex parte petition will be filed to open the case and a conformed copy of that filed petition must be presented for the ex parte application. If a request for waiver of fees is presented, the underlying petition will be filed, however in the instance where a judicial officer must approve the waiver of fees, an ex parte application is required to be submitted with that request.

G. All papers presented for ex parte consideration must be presented with an appropriate "Ex Parte Application" coversheet. Coversheets are available at the Probate Business Office or on the court's website. Coversheets must be presented on green paper. All ex parte applications will be filed with the court irrespective of whether the relief sought was granted or denied.

H. Telephone the business office of the Probate Division for ex parte procedures specific to that location.

(Eff. 1/1/90; Amended 7/1/95; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

Rule 4.7.6

Matters Which May be Heard Ex Parte

Matters which may be heard ex parte include the following:

A. Sale of securities;

B. Sale of depreciating assets;

C. Family allowance (First application before Inventory);

D. Guardianship and conservatorship investments;

E. Appointment of special administrator;

F. Appointment of temporary conservator or guardian, providing good cause is shown for the appointment without the required five days notice to the proposed conservatee and petition for appointment of general conservator or guardian is on file or will be filed at same time as the petition for temporary, see Rule 4.18.2 and 4.19.1 for further requirements;

G. Increase in bond;

H. Amendment of title of proceedings;

I. Authorization to enter into exclusive listing agreement for sale of real property;

J. Preliminary distribution of estate pursuant to Probate Code section 11623 on proof that Inventory and Appraisal has been filed; and

K. Authorization to invest in units of a common trust fund.

L. Matters as allowed at the discretion of the court. The court will not hear contested matters in the absence of extraordinary circumstances.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.7.7

Communications with the Court

Document presented to the Probate Court for filing must comply with applicable Probate Codes and Rules of Court, and notice of filing must be given as required. Other communications such as letters and notes directed to the court or staff will not be filed or reviewed. (See Code of Judicial Ethics.)

(Renumbered and New 7/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.7.8

Nunc Pro Tunc Orders Correcting Clerical Errors

A. If, through inadvertence, the minute order or the signed decree fails to state the order actually made by the court, and such inadvertence is brought to the attention of the court by declaration, the court may make a nunc pro tunc order correcting the mistake, which will relate back to the date of the original order. The order must be captioned: "Nunc Pro Tunc Order Correcting...[Caption of original order]..."

B. The order must not take the form of an amended order and must be substantially in the following form: "Upon consideration of the affidavit or declaration of _____, to correct a clerical error, the [identify the order to be corrected, giving the title and date thereof] is corrected on the court's own motion, by striking the following [here set out the matter to be eliminated] and by inserting in lieu thereof the following: [here set out the corrected matter]".

C. The original order is to be marked by the clerk to indicate that a nunc pro tunc order has been signed, however, the original order is not to be physically changed by the clerk in any other manner, but is to be used in conjunction with the nunc pro tunc order correcting it.

D. To prevent further errors, a complete clause or sentence must be stricken, even if it is intended to correct only one word or a single figure. Reference must not be made to page and line

number of a written order intended to be changed as the line number may vary on various copies of the same order.

E. The date of the order must be left blank for the Court to fill in and immediately following or below the blank date must appear the words "nunc pro tunc to [date of original order]."

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.7.9

Tentative Rulings

At the option of the Judicial Officer sitting in Probate, tentative law and motion rulings will be made available in accordance with rule 2.1.19. For motions filed in Dept. PC of the Central Probate Division, tentative rulings will be made available by telephone at 619-531-3690 and on the court's website at www.sandiego.courts.ca.gov (click on "tentative rulings" from the probate webpage) by 3:00 p.m. on the day before hearing. For motions filed in the North County Division, tentative rulings will be made available at the time of the hearing.

(Renumbered and revised 1/1/2006)

Rule 4.7.10

Bonds; Additional Bond

In a matter where bond has previously been posted, there must be included in any current account a separate paragraph setting forth the total bond posted, the appraised value of personal property and real property subject to disposition without court approval or confirmation, the estimated annual income from real and personal property and a statement of any additional bond thereby required.

(Adopted, Eff. 1/1/90; Amended 1/1/91; Renumbered and revised 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.7.11

Deposited Funds

A. Unless specifically authorized by the court, all cash must be deposited in a fully insured account with a bank, credit union, trust company or savings and loan. The depositing party will allege the nature and location of the account and the fact of insurance at the time of an accounting and report.

B. Money deposited into a blocked account will be excluded in computing the amount of bond necessary.

C. Where the court makes the order blocking funds at any calendared hearing, both an order on the hearing and a separate "Order To Deposit Money Into Blocked Account" (MC-355) must be presented.

D. Within three weeks following the date of the minute order the "Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account" (MC-356) must be filed with the Probate Court. If the appropriate receipt is not returned, the personal representative and counsel of record are subject to an Order to Show Cause why bond should not be posted and sanctions imposed.

E. When there is good cause for failure to comply with paragraph "D", a party may present an ex parte petition to extend the time to return the receipt.

(Adopted 1/1/90; Amended 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 8
APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

Rule 4.8.1

Letters Issued in Decedent's Estates

A. Letters issued in a decedent's estate will expire 18 months after the date the underlying petition is approved.

B. At the hearing where the court approves the petition for administration and for letters to issue, a review hearing will be set for no later than 18 months.

C. At the time of the review hearing, if the estate has been closed or the report required by Probate Code section 12200 has been filed, the review hearing will be taken off calendar. If the estate has not been closed and the report required by Probate Code section 12200 has not been filed, the petitioner will be ordered to file a Status Report under Probate Code section 12200 and to show cause why sanctions should not be imposed pursuant to Code of Civil Procedure sections 177.5 and/or 575.5, or statutory fee reduced, for failure to file a Status Report prior to the review hearing. The court may make additional orders as, in the court's discretion, is appropriate.

D. Petitioners must file the report required by Probate Code section 12200 prior to the review hearing. Failure to file the report may result in sanctions. Upon failure to comply with Probate Code section 12200, the Court will consider reduction of statutory compensation pursuant to Probate Code section 12205. Counsel should file declarations at the time of Final Distribution, or at any hearing on an allowance for compensation, explaining why failure to comply with Probate Code section 12200 was beyond the control of the party seeking compensation or was in the best interest of the estate.

(Added eff. 7/1/2002; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

Rule 4.8.2

Allegations in Petitions Re: Beneficiaries

In all petitions pertaining to the administrative duties of a fiduciary:

A. The nominated trustee of a trust created by a will must be included in the list of beneficiaries and identified as the trustee on that list. (See also Rule 4.5.5)

B. If the interest of the beneficiary is contingent as of the date of the petition, or the happening of an event, such as survivorship for a specified period, then the contingent beneficiary must also be listed.

C. Each person provided for in the original will whose devise has been revoked in a subsequent codicil.

D. The street address and relationship of the proposed personal representative to the decedent must appear in the petition.

E. When second generation heirs are listed, the deceased ancestor through which they take must be named, along with the ancestor's relationship to decedent.

(Adopted eff. 1/1/90; Amended 7/1/91; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered and revised 1/1/2006)

Rule 4.8.3

Notice to Foreign Consul

A. If a citizen of a foreign country dies without leaving a will or leaves a will without naming an executor, or if it appears that property will pass to a citizen of a foreign country, notice must be given to a recognized diplomatic or consular official of the foreign country maintaining an office in the United States. (Probate Code section, 8113).

B. When notice is required to be given as set forth herein, the identity of the proper consul must be set forth in Attachment 8 to the petition for probate.

C. If a beneficiary whose address is in a foreign nation is an American citizen, that fact must be alleged to avoid having to set forth that nation's foreign consul.

D. Notices pursuant to this rule will be required only for an original petition for probate.

E. Information as to whether a country has recognized diplomatic or consular representation in the United States may be obtained from the United States Department of State.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.8.4

Will Admission

A. If the will of a person who was domiciled in this State at the time of death is detained in a court of any other state or country and cannot be produced for probate in this state, a certified photographic copy of the will may be admitted to probate in this state with the same force and effect as the original will. The same proof must be required as though the original will were produced. (Probate Code section 8202).

B. If the will of a person who was domiciled in another State at the time of death is admitted to the court of the state of residency, the requirements of Probate Code section 12521 will apply.

C. If the will of a person is written and executed in a foreign language, the requirements of Probate Code section 8002(b) (2) will apply.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.8.5

Multiple Testamentary Instruments - Proof

Each proffered instrument must be proved by a separate affidavit or declaration pursuant to Probate Code section 8220. Nevertheless, an instrument, as defined by Probate Code section 88, which has been republished by a subsequent instrument need not be proven independently of the subsequent instrument.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.8.6

Will With Deletions or Interlineations

Where the will offered for probate contains alterations by interlineation or deletion on its face, the petition for probate must contain allegations to explain the alterations and state petitioner's position in the matter. The petition must request that the interlineated portion be admitted or not admitted or that the deletions take effect or be disregarded or make such other request as petitioner finds to be according to the law. The petition must further contain statements of all relevant facts regarding the alteration, for example, whether the will was in the possession of the decedent. Such additional statements must be set forth in an attachment to the Judicial Council form petition.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.8.7

Bonding of Personal Representatives

A. When a bond is required, the minimum bond that will be set for a resident and non-resident personal representative upon initial appointment will be $20,000.

B. Bonds required by the court at the hearing of the petition for appointment of the personal representative must be filed with the Clerk of the Superior Court before the clerk will issue the appropriate letters.

C. Any request for a waiver of bond by a resident personal representative must include a statement by the petitioner regarding knowledge of any creditors of the decedent and the amount of the claim. Non-resident personal representatives are subject to a minimum bond notwithstanding a waiver of the bond by beneficiaries, heirs or by waiver in the will.
(Eff. 1/1/1990; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.8.8
Declinations and Consents to Serve

A. It is insufficient merely to allege that the person or non-California bank or trust company named in the decedent's will as executor thereof is not qualified or declines to act. A written declination to act, signed by such person or entity, must be filed with the court.

B. If a petition for issuance of letters to one or more personal representatives is filed and any of the named personal representatives for whom letters are sought is not a petitioner, then a consent to act, signed by each such non-petitioning personal representative must be filed with the court. If a consent to act cannot be obtained, the petition must state facts regarding both the efforts to obtain consent and the results of those efforts.
(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered and revised 1/1/2006)

Rule 4.8.9
Continuance to Permit Filing of Contest

If an interested party appears in person or by counsel when a petition for probate is called for hearing and declares a desire 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 proceed.
(Adopted 1/1/90; Amended 7/1/91; Renumbered & Rev. 7/1/2001; Renumbered 1/1/2006)

Rule 4.8.10
Multiple Representatives

The clerk will not allow less than all appointed representatives to qualify and will only issue letters jointly to all appointed representatives, unless the order of appointment specifically provides for separate qualification.
(Adopted 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.8.11
Statement of Address of Nonresident Personal Representative

A nonresident personal representative is to file with the court a signed and acknowledged statement setting forth the personal representative's permanent address. If this has not been done and anyone questions the handling of the estate, the court, on its own motion, may undertake proceedings for removal of the personal representative pursuant to the Probate Code.
(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

CHAPTER 9
SUMMARY PROCEEDINGS

Rule 4.9.1
Petition to Set Aside Small Estate

A petition to set aside a small estate (under Probate Code section 6602) must be filed as a separate petition and must not be worded in the alternative with a petition for probate. If a petition to set aside a small estate is filed concurrently with a petition for probate, the petitions may be set for hearing at the same time.
(Adopted 1/1/1990; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.9.2
Spousal Property Petition

A. If the basis for determining that property should pass or be confirmed to the surviving spouse is that the property is community property or quasi-community property, the following information should be included in the spousal property petition:

(1) Date and place of marriage;

(2) Ownership of any real and personal property on date of marriage and a description and approximation of values;

(3) Decedent's net worth at time of marriage;

(4) Decedent's occupation at time of marriage;

(5) A description of any property acquired after date of marriage by gift, devise, descent, proceeds of life insurance or joint tenancy survivorship, and dates of receipt and approximation of values;

(6) The identification of any property described in (2) or (5) above which is still a part of this estate;

(7) A copy (preferably a photocopy, showing signatures) of any document establishing the character of the property; and

(8) Any additional facts upon which the claim that property is community or quasi-community property is based.
(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.9.3

Proceedings to Establish Fact of Death

A. A petition to establish the fact of death (under Probate Code section 200), where title to or any interest in property is affected by the death of a person (as in the case of death of a joint tenant or life tenant), must be filed as a separate petition from a petition for probate.

B. There is no provision in the Probate Code for the determination by the court of attorneys' fees in proceedings to establish the fact of death. No request for fees for services of this character may be included in any probate proceeding relating to the person whose fact of death is determined. Where, however, proceedings are necessary to establish the fact of death of a person who predeceased the decedent, a fee for extraordinary attorney's services may be proper in connection with administration of the latter decedent's estate.

C. A petition to establish the fact of death must be filed in a proceeding in the name of the deceased person whose interest is to be terminated, and the petition will not be acted upon if it is filed in any other proceeding.

D. A petition to establish the fact of death will be set for hearing at the time of filing unless otherwise requested by the person filing the petition.

E. In proceedings to establish the fact of death, the judgment may recite that the interest of the deceased person in the property has terminated. Recitals as to vesting of title must not be included.

F. A petition to establish the fact of death of an individual under Health & Safety Code section 103450 is a separate proceeding from the petition identified in (A), above. Upon filing a petition under Health & Safety Code section 103450, a hearing will be set not less than five nor more than 10 days after the filing of a petition.

G. The court may make an order on the petition filed under (F) determining the death did in fact occur at the time and place shown by the proofs adduced at the hearing. The order must be made in the form prescribed and furnished by the State Registrar, and will become effective upon a filing of a certified copy with the State Registrar

H. Petitions to establish the fact of birth or marriage under Health & Safety Code section 10340 are set in the same manner as (F).

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 10
INDEPENDENT ADMINISTRATION

Rule 4.10.1

Independent Administration

When a personal representative has been granted authority to administer the estate under the Independent Administration of Estates Act (beginning at Probate Code section 10400), a Notice of Proposed Action will be required for the sale of a mobile home value at or above $50,000.

(Adopted 1/1/1990; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 11
MISCELLANEOUS PETITIONS

Rule 4.11.1

Petition for Instructions (Probate Code Section 11)

A. The use of petitions for instructions is limited to those matters for which no other procedure is provided by statute.

B. Petitions for Instructions may not be used to determine the manner in which an estate should be distributed. A direction of the court regarding distribution of an estate will only be furnished pursuant to a Petition for Distribution or a Petition to Determine Entitlement.

C. The petitioner must set forth in the petition the specific instructions which petitioner believes the court should give.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.11.2

Petition to Determine Title to Real or Personal Property (Probate Code Sections 850)

Petitions filed pursuant to Probate Code section 850 will be set for hearing at least 40 days from the date of filing. If difficulties in effecting personal service are anticipated, a later hearing date may be obtained from the clerk so as to avoid continuances.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.11.3

Petition to Determine Persons Entitled to Distribution (Probate Code Sections 11700-11705)

A. Petitions under Probate Code section 11700 may be filed to resolve issues relating to the determination of persons entitled to distribution of the decedent's estate. Such issues include, but are not limited to, the identification of heirs or beneficiaries, the interpretation of the will, and the characterization of assets as estate assets. (The term "person" is defined in Probate Code section 56.)

B. A petition under Probate Code section 11700 must set forth the specific determination which the petitioner believes the court should make and must provide for a complete disposition of the property of the estate.

C. When a determination of persons entitled to distribution is requested in a petition for distribution, notice must be given in the same manner as required when a separate petition under Probate Code section 11700 is filed.

D. When a determination of persons entitled to distribution is requested and it appears that there may be an escheat, notice of hearing and a copy of the petition must be sent to the Attorney General. If any of the heirs are unknown in the petition for probate, then there will be a presumption of possible escheat and notice to the Attorney General is required.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.11.4

Petition for Family Allowance (Probate Code Sections 6540-6545)

A. Ex parte petitions for family allowance may be made during the six-month period following the qualification of personal representative if an inventory has not been filed. Consent to the allowance or waiver of notice of the personal representative must accompany the ex parte petition when the petitioner is not the personal representative. Ex parte orders for family allowance may be made for a period commencing with the date of death and continuing for a period not to exceed 12 months.

B. If an application for family allowance is made more than six months after the qualification of the personal representative, or after the inventory is filed, or is a petition for a second or additional allowance, a petition may not be filed ex parte and the petition must be set for hearing and required notice must be given.

C. The petition for family allowance must set forth, (1) the nature of estate assets and estimated value of the estate, (2) an itemized estimate of the recipient's monthly expenses, and (3) the estimated value of the recipient's other property and estimated income. Where the itemized expenses show payments of loans secured by real or personal property, the vesting of title to the property must also be set forth in the petition.

D. All orders for family allowance will be limited to a definite period and must provide for the allowance to be "for _____ months from the date of the order or until further order of the court, whichever occurs first."

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.11.5

Petition for Authority to Operate a Business, (Probate Code Section 9760)

A. The court may direct that at least 15 days' notice be given to the three largest creditors of the business and to the beneficiaries of the estate when the personal representative petitions for authority to continue the operation of the decedent's business.

B. The court may prescribe any reasonable notice. A separate order prescribing notice must be obtained ex parte before the petition is filed.

(Adopted 1/1/90; Amended 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.11.6

Petition for Authority to Borrow (Probate Code Sections 9800-9807)

A. Petitions for authority to borrow money must set forth the amount of the bond in force and the amount of the loan proceeds. If no additional bond is required, or if bond is waived, that fact must be alleged.

B. If a loan is to be secured by the property of the estate, an inventory for that property must be on file prior to the hearing.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.11.7

Petition for Authority to Retain an Attorney

A. A petition for authority to retain an attorney to pursue litigation must contain an allegation regarding counsel to be retained, the hourly rate or contingent fee agreement, the service to be provided, and a prospective amount that will be required for litigation.

B. If it appears that additional funds will be required over the amount allowed by the court on the initial petition, a subsequent petition must be set for hearing requesting an additional amount including the necessity for further funds, the amount spent to date, and for what services.

(Adopted eff. 7/1/2002; Renumbered 1/1/2006)

Rule 4.11.8

Joinder in Pleadings

A. Any interested party in an action before the Probate Court may indicate his or her endorsement of all opinions and positions taken in the previously or contemporaneously filed pleading of another party (the "Joined Pleading") by filing and serving a verified "Joinder in Pleading" prior to the hearing on the matter. The Joinder in Pleading must identify the party endorsing the Joined Pleading, the exact

title of the Joined Pleading, and the filing date of the Joined Pleading if applicable.

B. The filing of a Joinder in Pleading indicates the endorsing party's adoption of the entire Joined Pleading, without exception. To bring additional facts, issues or other matters before the court, the endorsing party must file a separate or supplemental pleading. The endorsing party must give notice to all persons entitled to notice of the original Petition, and their attorneys of record, in the same manner as required for an original pleading. A party served with such Joinder in Pleading may move, demur, or otherwise plead to the Joinder in Pleading in the same manner as to an original pleading.

C. The Joinder in Pleading must be served upon all parties and interested persons as evidenced by a Proof of Service filed with the court prior to the hearing on the Joined Pleading. If it is the endorsing party's first appearance in the action, the endorsing party must pay the appropriate first appearance fee upon filing the Joinder in Pleading.
(Effective 1/1/2006)

CHAPTER 12
CREDITOR'S CLAIMS

Rule 4.12.1

Notice to Creditors

A. Notice of Administration must also be given to all known or reasonably ascertainable creditors pursuant to Tulsa Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478 and Probate Code section 9050. This notice must be filed with the court prior to or with the filing of a petition for distribution.

B. In an interim or final accounting, the personal representative must describe the compliance with Probate Code section 9050 and Tulsa. (See Rule 4.15.4.)
(Eff. 1/1/90; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

Rule 4.12.2

Filing Creditors' Claims

Counsel are advised to review the court file for creditors' claims prior to filing the final accounting. (See Probate Code section 9250.)
(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.12.3

Creditors' Claims of Personal Representatives or Counsel

A. The creditor's claim of a personal representative or counsel for the personal representative must be timely filed with the court. A separate notation must be attached to the face of the claim indicating that the claim requires specific court action.

B. A blank allowance or rejection form must be attached for the court's action, with copies to be returned to counsel.
(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.12.4

Payment of Claims and Debts

A. Other than those creditors' claims ordered paid by the court, the personal representative may defer payment of claims until settlement of an account.

B. The personal representative may timely pay any debts that are just and reasonable subject to later approval by the court under Probate Code section 11005, which approval must be supported by appropriate evidence required by that section.

Payment pursuant to Probate Code section 11005 assumes that the debt is undisputed and the estate is solvent. Prudence may dictate caution before paying such claims.
(Adopted 1/1/90; Amended 7/1/96; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.12.5

Special Creditors' Claims

A. Funeral expenses must be reasonable and interest is allowed on such claims commencing 60 days after the date of death.

B. Public entities' creditor's claims are governed by Probate Code section 9200, et seq., and may be barred only after actual notice is sent to the entity and the applicable claim period has expired.

C. Notice to the Director of Health Services for Medi-Cal claims must comply with Probate Code section 9202 and Welfare and Institutions Code section 14009.5.
(Adopted 1/1/90; Amended 7/1/96; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 13
SALES

Rule 4.13.1

Publication of Notice of Sale of Real Property

A. Unless one of the exceptions mentioned in Probate Code section 10301-10303 applies, a publication of notice of sale of real property is required. A discretionary power of sale given by a will to a named executor does not extend to an administrator with will annexed unless the will so provides.

B. The notice of sale of real property must set forth the street address or other common

designation of the property, if any, or if there is none, the legal description.

C. If a petition for confirmation of sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed.

D. If a fiduciary publishes a notice of sale of real property, the property must be sold pursuant to such publication.

E. If notice of sale is published, any sale must be in accordance with its terms. There cannot be a variance in the terms of sale as between the notice and the petition. Also, if the notice solicits cash offers only, the court cannot confirm a sale on terms other than cash.

F. If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the court cannot announce the sale on the date set for hearing, but must deny confirmation without prejudice to a new sale and filing of a new return of sale.

G. In conservatorships, notice must be given to the conservatee as well as to any person requesting special notice. In guardianships notice must be given to any ward age 12 or older.

(Adopted eff. 1/1/90; Amended eff. 7/1/95; Renumbered & Rev. 7/1/2001; Renumbered 1/1/2006)

Rule 4.13.2

Vesting of Title to Property

A. The court will not confirm a sale to a "nominee" or “assignee”, only to the actual buyer.

B. In a conservatorship of guardianship, a statement must be made whether or not the purchase of the real property has been made by a person with a family or affiliate relationship to the conservator or guardian as defined by Probate Code sections 2359 and 2403.

C. In a conservatorship or guardianship, a statement must be made whether or not there is a family or affiliate relationship between the conservator or guardian and any agent hired by them as defined by Probate Code sections 2359 and 2403.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.13.3

Bond on Sale of Real Property

A. Petitions for confirmation of sale of real property must set forth the amount of bond, if any, in force at the time of the sale, the amount of property in the estate which must be covered by bond subsequent to the sale, including proceeds of sale (cash and any note taken back by estate), and the probable annual income from remaining property. If no additional bond is required, or if bond is waived, such facts must be alleged.

B. Where an additional bond is required, the personal representative must file an additional bond, rather than a substitute bond, and it must be filed with the order confirming the sale.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.13.4

Exclusive Listings for the Sale of Real Property

A specific commission percentage will not be approved by the court as part of the exclusive listing agreement. All commissions are determined at the confirmation hearing.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.13.5

Commissions on Sale of Real Property

A. In all cases, a reasonable broker's commission will be determined by the court at the time of confirmation and must be paid from proceeds of the sale confirmed by the court. The court may consider current community practices and standards in making its determination. The court may allow a five percent commission on improved property or 10 percent on unimproved property absent good cause shown for a larger commission.

B. The court must be advised whether the broker is, or has any interest in, the purchaser. (See Prob. Code § 10160.5.)

(Adopted 1/1/90; Rev. 1/1/91; Rev. 7/1/95; Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.13.6

Sale of Real Property When Buyer Assumes Encumbrance: Necessity for Minimum Deposit

A. A sale of real property may not be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The petition must set forth the facts pertinent to such assumption agreement.

B. The court requires a 10 percent deposit be made prior to confirmation on any sale of real property.

(Adopted 1/1/90; Amended 1/1/91; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.13.7

Sale of Specifically Devised Property

A. The sale may not be approved without the specific beneficiary's consent unless the court finds good cause for approval without the consent.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered and revised 1/1/2006)

Rule 4.13.8

Personal Property Must Be Appraised Before Sale

Sales of personal property may not be approved as sales of depreciating property, or confirmed, unless the property has been appraised. When necessary, a partial inventory and appraisal or a letter of appraisal obtained from the probate referee may be filed for this purpose.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.13.9

Sales of Mobile Homes

The court may approve sales of mobile homes as depreciating property. The petition for approval must set forth the efforts made to expose the property to the market.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.13.10

Sales of Securities

A. Commonly traded securities need not be appraised before the sale may be authorized.

B. In petitions for sales of listed securities, the specific exchange on which such securities are traded must be set forth.

C. In petitions for sales of unlisted securities, the recent bid and asked prices must be set forth.

D. Petitions for sale of mutual funds redeemable by the issuer at net asset value need only allege that the shares will be redeemed for the net asset value per share on the date of redemption.

E. If securities are "closely held," the petition must furnish the basis (by appraisal or otherwise in the discretion of the court) for fixing the minimum sales price.

F. The order authorizing the sale of any bond or unlisted stock (other than a mutual fund) must provide that the sale must be at not less than a specified amount per unit.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.13.11

Overbids

If the overbid is on terms different from the terms of the returned sale, the offer may be considered only if the personal representative, prior to confirmation of the sale, informs the court in person or by counsel that the offer is acceptable.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.13.12

Increased Bid Forms

When there is a successful overbid in open court on a sale of real property, an “Increased Bid in Open Court” SUPCT. form PR-65(10-91) must be completed, signed, and filed with the court before the conclusion of the hearing; otherwise, confirmation is not effective.

(Form Deleted eff. 7/1/95; Renumbered & Rev. 7/1/2001; Renumbered and revised 1/1/2006)

Rule 4.13.13

Allowance of Commissions Upon Overbid

When sale is confirmed upon an overbid and a real estate commission is involved, it is the duty of counsel for the estate to compute the commission pursuant to Probate Code section 10164 or 10165 and any allocation thereof between brokers per any agreement they may have, and to report the same to the court for its approval and inclusion in the court's minute order.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

CHAPTER 14
INVENTORY AND APPRAISAL

Rule 4.14.1

Preparation of Inventory and Appraisal

A. Attachment No. 1 to the Inventory must include assets appraised by the personal representative. Those items which may be appraised by the personal representative are set forth in Probate Code section 8901.

B. Attachment No. 2 must list all assets to be appraised by the probate referee.

C. The Inventory must contain a statement of the character of the property on each attachment (i.e., separate, community, quasi-community). If the character of property is community and/or quasi-community, the statement must indicate whether the estate includes the entire or a one-half interest in the asset.

D. The Inventory must list all assets of the estate as they existed as of the date at which the assets are to be appraised (i.e., date of death or date of appointment of guardian or conservator).

E. With the exception of specific sums of cash, all specifically bequeathed personal property owned by the decedent on the date of death must be itemized and separately appraised on the Inventory.

F. An Inventory of real property must include the following information:

(1) Complete legal description;

(2) Common address;

(3) Assessor's Parcel Number;

(4) Description of type of property (i.e., single family residential, multi-family residential,

commercial, industrial, agricultural timber, mining, mineral interests, unimproved land).

G. The Inventory must not include any asset which is not an asset of the estate, such as:

(1) Insurance proceeds payable to named beneficiaries.

(2) Individual retirement accounts payable to named beneficiaries.

(3) Trust assets which pass by trust terms, including Totten Trusts.

(4) Assets held in joint tenancy.

(5) Out of state real property.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.14.2

Correcting Inventory and Appraisal

A. If, before filing the Inventory with the court, a mistake is found, the personal representative may make changes to Attachment No. 1. However, any changes to Attachment No. 2 must be made by the probate referee.

B. If a mistake is found after filing the Inventory with the court a Corrected or Amended Inventory must be filed to correct the error.

C. If a change to Attachment No. 2 is necessary after it has been filed with the court, the correcting Inventory must be signed by the probate referee.

D. If a change to Attachment No. 1 is necessary, a Correcting Inventory may be signed only by the personal representative.

E. Only items being corrected are described on a Corrected Inventory and Appraisal.

For example:

Item No.	Description	Appraised Value
4.	Item 4 was previously described as: 400 shares XYZ common stock	
	Item 4 is correctly described as: 300 shares XYZ common stock	
	Previously appraised value:	$4,000.00
	Correct appraised value:	$3,000.00
	Change in appraised value:	($1,000.00)

(Adopted 1/1/90; Amended 7/1/96; Renumbered & Rev. 7/1/2001; Renumbered 1/1/2006)

Rule 4.14.3

Petition for Waiver of Appraisal by Referee

When no referee has been designated for the case, 15 days notice of the filing of a petition for waiver of appraisal by referee must be given to the referee designated by the San Diego Probate Referees to represent them, in the same manner as would be given to a referee designated for the case.

(Adopted 7/1/96; Renumbered & Rev. 7/1/2001; Renumbered 1/1/2006)

CHAPTER 15
ACCOUNTS AND REPORTS

Rule 4.15.1

Required Form of Accounts

A. All accounts filed in probate proceedings, including guardianship, conservatorship, trust and decedents' estates, must set forth the beginning and ending dates of the account period and conform to Probate Code sections 1061 through 1064.

B. Accounting values of assets must not be changed to reflect fair market value, but fair market value may be set forth separately in the report or account.

C. Dispositive provisions of the Will, if any, must be set forth in the Final Accounting.

(Eff. 1/1/90; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.15.2

Bank Letters

A. All interim accounts by individual fiduciaries must be supported by bank statements or financial statements verifying the balances of accounts at financial institutions as of the closing date of the accounting. The statements must be the originals, must show the vesting of the account, date of balance and the amount of balance. If a financial institution will not produce records required by this rule, petitioner must submit a declaration setting forth the due diligence efforts undertaken to obtain the required records.

B. The appropriate balance must be clearly highlighted or otherwise marked.

C. Balances shown in the accounting, if different, must be reconciled to the letters or statements.

D. Bank or financial statements containing personal information that would not otherwise be kept in a public file (i.e. social security number) must be filed under a separate pleading marked "Confidential Bank and/or Financial Statements"

E. For purposes of this section, "institutions" is defined in Probate Code section 2890(c).

F. For purposes of this section, "financial institutions" is defined in Probate Code section 2892(b).

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered and revised 1/1/2006)

Rule 4.15.3

Allegations Re: Claims

The report accompanying any accounting or waiver of accounting must include the following information:

A. Whether any Notice of Administration was given to creditors within the last 30 days of the four-month statutory creditors' claim period and a complete listing of the creditors to whom such notice was sent, including the date mailed, to allow the court to determine the expiration of the creditors' claim period. This allegation is also necessary in petitions for preliminary distribution. (See Probate Code section 9051.)

B. If all Notices of Administration were given prior to the last 30 days of the four-month statutory claims period, an abbreviated statement noting that the requirements of Probate Code section 9050 were met is sufficient.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.15.4

Reporting Payment of Debts

Although a verified claim has not been filed, the court may approve payment of a debt. Such court approval is discretionary and may be granted pursuant to Probate Code section 11005 upon the basis of the following allegations in the verified petition and report:

A. Identification of the creditor, the amount and the date paid;

B. The debt was justly due from the decedent's estate;

C. The debt was timely paid in good faith;

D. The amount paid was the true amount owed by the decedent and was reasonable; and

E. The estate is solvent.

(Adopted, eff. 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.15.5

Property to be Distributed Must Be Listed

A. The petition for distribution must list and describe in detail all property to be distributed, including cash on hand.

B. The description of promissory notes must indicate whether they are secured or unsecured; if secured, the security interest must be described.

C. Real property descriptions must include a complete legal description and street address and Assessor's Parcel Number.

D. The description must be set forth 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.

E. Description by reference to the inventory is not acceptable.

F. The value of each individual asset on hand and the total value of the assets must be set forth.

(Adopted 1/1/90; Renumbered eff. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.15.6

Allegation Re: Character of Property

A. A petition for distribution must contain an allegation regarding the character of the property, whether separate, quasi-community or community.

B. An allegation regarding community or quasi-community property of the decedent must state whether the interest is the decedent's one-half or the entire community or quasi-community property of both spouses.

C. Unless the surviving spouse elects to include his or her interest in the probate estate pursuant to Probate Code section 13502, the court has no jurisdiction to order distribution of such interest or to order statutory fees based upon the value of such interest.

D. The court will authorize filing of a late election only upon showing of good cause.

(Adopted 1/1/90; Amended 7/1/91; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.15.7

Compliance with Notice -- Medi-Cal

Before the court will authorize distribution, there must be a showing of compliance with notice requirements to the Director of Health Services pursuant to Probate Code section 9202 or a showing that the notice thereunder is not required because neither decedent nor predeceased spouse received Medi-Cal, or that no claim can be made by the Department of Health Services because decedent died before June 28, 1981, was under age 65, or was survived by a spouse, minor child, or disabled child.

(Adopted eff. 1/1/90; Rev. eff. 7/1/95; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.15.8

Vouchers

Vouchers supporting accounts are not to be filed with the clerk unless the court specifically orders them filed. (Adopted 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.15.9

Damages for Wrongful Death and for Physical Injury of Decedent

A. Damages for wrongful death, as distinguished from physical injury and property damage, are held by the personal representative on behalf of the statutory beneficiaries of the decedent's estate and are not part of the estate.

B. The disposition of such damages for wrongful death, and the amount of attorneys' fees

and costs, may be determined by the court on a petition for authority to compromise. Notice of said petition must be mailed by the personal representative. This procedure is applicable to any action by the personal representative under federal as well as state law.

C. Damages and costs arising out of the physical injury to the decedent or property damage, as distinguished from wrongful death, must be held by the personal representative as the property of the estate and must be inventoried.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.15.10

Notice to Prior Representative or Counsel

If there has been a change of personal representative or a substitution of counsel, notice of hearing must be given to such prior representative or counsel of any petition in which fees or commissions are requested by the present personal representative or counsel unless:

A. A waiver of notice executed by the prior personal representative or counsel is on file; or

B. An agreement on the allocation of fees and/or commissions is on file or included in the petition; or

C. The file and the petition demonstrate that the fees and/or commissions of the prior personal representative or counsel have been provided for and allowed by the court.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Renumbered 1/1/2006)

Rule 4.15.11

Petition for Authority to Continue Administration

Requests for authority to continue the administration of an estate must be made by a status report. The court will limit the extension to a period not to exceed 12 months from date of the order. The court may require an accounting before approving a subsequent extension request. Refer to section 12201 of the Probate Code for notice requirements.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

CHAPTER 16
FEES AND COMMISSIONS

Rule 4.16.1

Office and Travel Expense

A. Ordinary office expenses and travel incurred by a fiduciary or counsel are deemed to be compensated by the statutory fee, and the court will not allow further reimbursement except:

1. An exception may be made for the reasonable expenses of fiduciaries for travel on estate business.

2. The court may allow unusual office expenses such as photocopying, express mail, postage, or long distance phone expense, if the court considers such expenses necessary and reasonable in view of the amount of the statutory fees and work required in administration of the estate.

B. Travel and office expenses appearing in any account must be explained in the report.

(Adopted eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 17
DISTRIBUTION

Rule 4.17.1

Distribution to Minor

When a beneficiary is a minor or a disabled adult, the court requires the following documents to be filed in conjunction with the accounting and petition for final distribution:

A. A certified copy of the Letters of Guardianship or Conservatorship when distribution is to be made to the guardian of the minor or a disabled adult.

B. The written assurance of a parent that the minor's estate, including the bequest, does not exceed $5,000 when distribution is made pursuant to Probate Code section 3401.

C. The consent of the custodian to act if distribution is to be made to a custodian under the California Uniform Transfers to Minors Act (Probate Code section 3900 et seq.).

(Adopted eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.17.2

Distribution Under Probate Code Section 13101 Affidavit

If distribution is to be made to a person collecting assets under Probate Code section 13100, the required affidavit or declaration pursuant to Probate Code section 13101 must be filed before distribution will be ordered.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.17.3

Blocked Accounts

In any case in which funds are to be placed in a blocked account, Rule 4.7.11 of these rules must be followed.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. eff. 7/1/2003; Renumbered 1/1/2006)

Rule 4.17.4

Distribution to Deceased Beneficiary

When an heir or beneficiary dies during administration of an estate, the decree must provide for distribution to the personal representative of the estate of the heir or beneficiary, pursuant to Probate Code sections 11801 and 11802, or, if applicable, to the person(s) entitled to the property in a summary proceeding pursuant to a declaration or affidavit under Probate Code section 13101.

(Adopted eff. 1/1/90; Amended eff. 7/1/91; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.17.5

Assignment of interest in Estate

When distribution is requested pursuant to an assignment by a distributee, the court will require that the assignment be filed in the proceeding and may require that the consideration paid for the assignment be set forth. The court will require additional information to assure that the assignor fully comprehends the effect of the assignment that it was voluntarily made and was not grossly unreasonable.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2005; Renumbered 1/1/2006)

Rule 4.17.6

Preliminary Distribution Bond

A. If a preliminary distribution is made before the time for filing creditors claims has expired, a bond must be furnished by the distributees.

B. When a bond is not required by the court, the order must include a finding that the time for filing or presenting claims against the estate has expired and that all uncontested claims have been paid or are sufficiently secured.

C. An allegation and showing will be required concerning notice to any additional known or reasonably ascertainable creditors pursuant to Tulsa Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478. Unless such notices have been given, the time to file claims will not be considered to have expired and the court will impose a bond upon each distributee of the preliminary distribution.

(Adopted eff. 1/1/90; Amended eff. 7/1/91; Renumbered & Rev. 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.17.7

Receipts on Preliminary Distribution

Receipts for property received in Preliminary distributions must be filed with the court before the final account, and follow the requirements of Rule 4.17.8.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.17.8

Receipts on Final Distribution

A. Receipts for property received on final distribution must be signed by the (1) distribute, unless there is a showing of good cause why the distributee cannot sign the receipt, (2) the attorney-in-fact for the distributee under a valid power of attorney where a true copy of the power of attorney is attached to the receipt and the attorney-in-fact certifies under penalty of perjury that the power of attorney in full force and effect, or (3) the conservator or guardian of the estate of the distributee, or (4) the personal representative of the estate of the distributee.

B. A receipt must be specifically itemized, giving the valuation of each asset and the total value of all the property received.

(Adopted eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.17.9

Order of Final Discharge

The court will not sign the order of final discharge until all receipts on distribution are filed and all remaining property withheld from distribution is properly disbursed and/or distributed by the personal representative as alleged in a separately filed declaration.

(Adopted eff. 1/1/90; renumbered & Rev. 7/1/2001; Renumbered 1/1/2006)

Rule 4.17.10

Requests To Withhold Funds From Final Distribution

In every case where the Petitioner requests to withhold $10,000 or more, the Petitioner must specify the items for which the withholding is required, together with an estimate of each item.

(Effective 1/1/2006)

Rule 4.17.11

Supplemental Accountings with Final Discharge

Unless the accounting is waived by the heirs or beneficiaries, supplemental accountings must be submitted for review when more than $2500 is withheld at the time of the final accountings. For withheld amounts of $10,000 or more, the court will set a review date to ensure that a supplemental accounting has been filed and set for hearing. Notice of the hearing on the supplemental accounting must be given to all persons entitled to notice of the hearing of Final Accounting. The

supplemental accounting must be for the amount withheld only.
(Eff. 1/1/90; Renumbered and Revised 7/1/2001; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

CHAPTER 18
CONSERVATORSHIPS

Rule 4.18.1

Conservatorship Orientation Program

All conservators, excluding limited conservators of the person, who are not Private Professional Conservators as defined by Probate Code section 2341, must complete an education class as ordered at the time of their appointment as conservator. Classes must be completed within six months of appointment as a conservator, and a certificate evidencing completion must be filed with the Court. Classes must be designed to explain the duties and responsibilities of Conservator of the Person and/or Estate and include information on healthcare, safety, living arrangements, management of assets, accountings and other legal obligations. A list of providers is available in the Probate Business Office. Failure to complete this requirement may be grounds for removal as ordered by the Court. In addition to removal, failure to comply with these requirements may result in the imposition of sanctions.
(Effective 1/1/2006)

Rule 4.18.2

Temporary Conservatorships

A. A petition for appointment of a temporary conservator of the person or estate or both must be made in a separate pleading. It may not be included in, and may not be filed prior to the filing of, the petition for appointment of a permanent conservator.

B. The court will not consider the appointment of a temporary conservator ex parte and will set the petition for hearing with a five day notice requirement unless proper showing is made that:

(1) An immediate necessity exists.

(2) The proposed conservatee is present; the proposed conservatee is hospitalized and cannot attend; evidence is presented that the proposed conservatee has notice of the ex parte hearing and its purpose and cannot appear; the proposed conservatee is incapable of understanding notice; or the proposed conservatee has consented and waived notice. Allegations of medical inability or lack of capacity to attend must be supported by a physician’s declaration.

(3) There are no relatives in equal or closer relationship than the petitioner, or such relatives nominated or consented to petitioner's appointment.

(4) No objections to the petition are known to petitioner.

(5) Unless good cause is shown, a report of the court appointed attorney is on file.

C. If it appears that a temporary conservator is necessary, but that notice should be given to the proposed conservatee or any other person, the petition will be set for the first conservatorship calendar not less than five days away and should be walked through Probate Examining by counsel to assure proper setting.

D. A temporary conservator is appointed for only 30 days, but such appointment will be automatically extended by the court to the date of the hearing on the permanent conservatorship absent a showing of good cause. If a continuance of the hearing on the general conservatorship petition is necessary, counsel may appear at the hearing and request the extension of the temporary conservatorship. Alternatively a request to extend may be made ex parte, if the request is presented before the expiration of the appointment and there are no objections.

E. Good cause must be shown for special powers to be granted without a hearing. When special powers are sought, they must be specifically requested and supported by factual allegations.
(Eff. 1/1/90; Amended 7/1/95; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.18.3

Petition for Appointment of Conservator; Allegations and Notice Requirements; Supplemental Information

A. All petitions for appointment of conservator must state whether or not there is presently a conservator appointed under the Lanterman-Petris Short Act ("LPS") and, if so, the number of the Mental Health action, the name of the conservator, and that court's findings regarding the proposed conservatee's ability to complete the affidavit of voter registration.

B. If an LPS conservatorship exists, notice must be given to:

(1) The LPS conservator.

(2) Counsel representing the LPS conservatee.

(3) All persons otherwise required by Probate Code section 1460 et seq.

C. When the conservatee has a spouse, the petition must allege whether any property is community property. If community, the petition should state what portion is to be included in the conservatorship. (Probate Code section 3051.)

D. Children and grandchildren are relatives within the second degree. The petition must allege the existence or the nonexistence of any children or

grandchildren and must list their names, addresses, relationship to the proposed conservatee, and whether they are minors or adults (e.g., "John Smith, adult grandchild," or "John Smith, grandchild age 13").

E. Unless the petitioner is a bank, any petition for appointment must be accompanied by the forms required by the California Rules of Court, rule 7.1050 and the following:

1. Investigator Referral;

2. Duties and Liabilities

The petition will be rejected for filing if required forms are not submitted with the petition. A copy of such forms must also be filed for the court investigator who must review the allegations in the supplemental information. A temporary appointment will not be made unless the petition for permanent conservatorship which is to be filed is accompanied by such supplemental information.

F. Any petition for appointment of conservator must disclose whether the proposed conservator is a private professional conservator (PPC) as defined by Probate Code section 2340.

G. The Petition for Conservatorship must state, with specificity, evidence to support a finding of lack of capacity to make decisions or do other acts as required by Probate Code section 811. The petition should set forth evidence attesting to a deficit in at least one of the mental functions set forth in Probate Code section 811. This evidence may, however, be set forth in a separate declaration attached to the petition.

H. When the proposed conservatee is, or was, the subject of a guardianship, the "Petition for Appointment of a Conservator" must include the case number of the prior guardianship, the name of the prior guardian(s), and the name(s) of the attorneys for the prior guardian(s) and ward, if any.

(Eff. 1/1/90; Amended 1/1/91; 7/1/96, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

Rule 4.18.4

Registration of Private Professional Conservators

A. A private professional conservator or private professional guardian must be registered per Probate Code Section 2341 before the court will appoint such person as conservator or guardian.

B. Registration will be handled by the Probate Division per the instructions available from that department. The instructions and two fingerprint cards may be obtained from Probate Examining in either Vista or San Diego by any person who needs to register.

C. Upon review of any conservatorship records, if it is determined that any person qualifies as a private professional conservator or private professional guardian and has not registered, the court will require such person to immediately register per Probate Code section 2341 and may suspend powers of that person if they do not register.

D. The Annual Information Statement which must be filed each year by each private professional conservator or private professional guardian is highly confidential and available only to the court personnel who have a need to know. None of the information will be given out to any other person.

(Adopted eff. 1/1/90; Amended, eff. 1/1/91; Revised eff. 7/1/95; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.18.5

Capacity to Give Informed Consent for Medical Treatment

A. Any petition seeking a determination that the proposed conservatee lacks capacity to give informed medical consent must contain facts to support the finding and must be accompanied by a declaration of a licensed physician, or, where appropriate, an accredited practitioner, as to conservatee's lack of capacity to consent to medical treatment. The "Capacity Declaration" must be used for this purpose. The provisions of Probate Code section 1881 must be complied with, but if the request for medical authority is part of the petition for appointment of a conservator, properly noticed, and after an interview by the court investigator the proposed conservatee has no objections, paragraph (2) of subdivision B. will not apply.

B. Medical authority for a limited conservator is granted pursuant to Probate Code section 2351.5, not Probate Code section 2355, and the Petition for Limited Conservatorship may not ask for 2355 authority.

(Eff. 1/1/90; Amended 1/1/91; 7/1/96, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.18.6

Dementia Authority

A. A request for dementia authority per Probate Code section 2356.5, may be contained in the petition for appointment of conservator, a petition for exclusive medical authority, or in a petition asking only for dementia authority.

B. A petition for appointment of conservator which includes such request must be a petition for appointment of conservator of the person, must also include a request for exclusive medical authority and must have sufficient specific examples and allegations to be clear and convincing evidence of dementia as defined by the last edition of Diagnostic and Statistical Manual of Mental

Disorders (DSM IV). The mere attachment of form PR-113 will not be sufficient evidence to permit the court to make the necessary findings under Probate Code section
2356.5, subdivisions (b) and (c).

C. Capacity Declaration (PR-32) must be filed in support, but must address each required finding per Probate Code section 2356.5 (f)(3) and therefore an additional declaration of physician may be furnished.

D. A request for dementia authority can be contained in a petition for exclusive medical authority if there is a conservator of the person in place.

E. A request for dementia authority only can be the subject of a petition where there is already a conservator of the person who has exclusive medical authority.

F. Counsel will be appointed to represent the conservatee or proposed conservatee in any case where dementia authority is requested and a written report from that attorney must be filed five days in advance of the hearing before the court acts on the dementia request. (see also Rule 4.18.12.)

G. A request for placement in a secured facility must indicate the specific facility and a showing it is the least restrictive placement available.

H. A request to authorize medications must show the specific medications currently prescribed, however no further relief will be required if changes to medication are required.

I. Dementia authority will not be granted where the petitioner is the proposed conservatee as there is a conflict in a person having sufficient capacity to file a petition and the court finding dementia per DSM IV.

J. The court finds that notice required on a petition for appointment of conservator is sufficient notice of a request for dementia authority and an additional "Order Prescribing Notice" need not be submitted.

K. A Petition for exclusive medical authority which includes dementia authority, or a petition for dementia authority, requires an order prescribing notice. The court will require 15 days notice, with a copy of the petition, to the conservatee, conservatee's spouse, domestic partner, and relatives in the second degree. An "Order Prescribing Notice" need not be submitted in addition to the requirements of this subsection.

(Eff. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.18.7

Independent Powers: Sale of Residence

A. The court will grant individual powers as authorized by Probate Code sections 2590 and 2591 only in response to specific allegations regarding their necessity.

B. Where power is granted to sell real property, the court requires that the sale be returned to the court for overbidding and confirmation. If independent power of sale of real property is requested, an allegation must be made whether the real property is conservatee's residence, as described in Probate Code section 2540.

C. The independent powers granted must be set forth in the order and in the letters of conservatorship.

D. If conservatee's present or former residence, including a mobile home or recreational vehicle, is to be sold, authority must first be obtained from the court. The petition must indicate the conservatee's support or opposition, including whether the conservatee opposed the sale in the past, the necessity for the sale, whether conservatee has the ability to reside therein and alternatives to the sale. In addition, the tax issues are to be discussed, particularly the impact of capital gains tax.

E. The court will consider the petition for authority to sell a residence on an ex parte basis if there are no requests for special notice or if the persons requesting special notice waive notice and it is shown the conservatee does not object or does not have the capacity to object.

(Adopted 1/1/90; Amended 1/1/91; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered and revised 1/1/2006)

Rule 4.18.8

Consent of Conservator to Act

When a proposed conservator is not petitioning, written consent of the proposed conservator to act must be on file before the appointment is made.

(Adopted eff. 1/1/90; Amended eff. 7/1/91; Renumbered 7/1/2001; Rev. eff. 7/1/2003; Renumbered 1/1/2006)

Rule 4.18.9

Court Investigator's Report

A. When a report is required from the court investigator, a Referral for Court Investigator must be filed with the petition.

B. If the proposed conservatee cannot attend the hearing because of medical inability a "Capacity Declaration" must be filed.

C. No Order Appointing Court Investigator is required because the court has made a general order appointing the San Diego Superior Court investigators for all cases.

D. When the proposed conservatee is the petitioner and attends the hearing, or nominates the conservator and attends the hearing, no court investigator's report is needed.

E. If it is anticipated that the petitioning proposed conservatee will attend the hearing, but before the hearing becomes unable to attend, the petition must be amended and the referral must be filed with the court investigator. Counsel must call the court investigator at (619) 236-3781 (Central) and (760) 806-6150 (North County) to alert them of the need for an investigation. If this is not accomplished at least 10 days before the hearing date a continuance ordinarily will be required.

F. It is the petitioner's responsibility to make the proposed conservatee available for a court investigation. If the proposed conservatee is not made available, the court investigator will report to the court and the petition may be continued or taken off calendar, at the court's discretion, until such time as the proposed consevatee is made available.

(Eff. 1/1/90; Revised 1/1/91; 7/1/91; 7/1/95; 7/1/96, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.18.10

Limited Conservatorships

Upon a petition for appointment of limited conservator, and under proper circumstances, the court may appoint a general conservator for a developmentally disabled person.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.18.11

Bond Requirements

A. Cash may be blocked as provided in Rule 4.7.11, and such blocked funds excluded from the bond amount.

B. Bond Review Hearing

If, at the hearing for the appointment of a temporary or permanent conservator of the estate, the proposed conservator does not have sufficient information regarding the proposed conservatee's income or assets to enable the court to set an appropriate bond, the court may appoint the temporary or permanent conservator and continue the hearing to a specified date so that the conservator can provide the required information and a proper bond can be set. Where appropriate, the court may place limitations on the letters of conservatorship until a proper bond has been posted. This rule also applies to appointments of guardians of the estate.

(Eff. 1/1/90; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.18.12

Appointment of Counsel for Conservatee or Patient

A. The court will appoint counsel for the person who is the subject of a conservatorship petition as required by law or for good cause

B. Counsel appointed by the court to represent conservatees must prepare and file a written report to the court at least five days prior to the hearing. Said report must:

(1) Make a recommendation as to the issues at hand.

(2) Document the services performed by counsel.

(3) Include a fee request in the prayer.

(4) Include a recommendation regarding the ability or inability of the conservatee or proposed conservatee to pay the fee, in order to enable the court to make a finding regarding such ability or inability, and to order payment by such conservatee or by the County of San Diego.

(5) Make a recommendation whether or not counsel may be discharged. In the case of an appointment under Probate Code section 2356.5, counsel will not be discharged.

(6) State that Counsel has reviewed Rule 4.21.7 herein regarding conflict of interest in a conservatorship proceeding.

(Eff. 1/1/90; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003; Renumbered and revised 1/1/2006)

Rule 4.18.13

Successor Conservator

Appointment of a successor conservator does not require service of a citation or personal service of notice on the conservatee, nor does it require a physician's affidavit of inability to attend the hearing or an 811 declaration per Rule 4.18.3 subsection (G). Unless the petition for appointment of successor states that the conservatee will attend the hearing, it will be necessary to file a Referral for Court Investigator. The investigator must interview the conservatee and file a report before the hearing. The notice of hearing and a copy of the petition must be served on the conservatee, either personally or by mail, at least 15 days prior to the hearing, and other notice given pursuant to Probate Code section 2683.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.18.14

Conservatorship Assessments

Probate Code section 1851.5 provides that an assessment will be made against the estate of each conservatee for the cost of any investigation made by the court investigator under appropriate statutes.

The assessment for investigations by the court investigator is set by the court. The assessment is due and must be paid immediately upon receipt of the investigator's report. The probate examiner will routinely check for the payment of assessments when any petition in a conservatorship is before the court and no order will be processed until all assessments are paid unless the court grants a request to defer payment for good cause shown.
(Adopted eff. 1/1/90; Amended eff. 1/1/91; Revised 7/1/95; 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.18.15

Investments by Conservator

A. In accordance with Probate Code section 16040, investments by conservators must be prudent and in keeping with the size and character of the conservatee's estate.

B. The Court will not approve the following:

(1) Unsecured loans.

(2) Loans to relatives.

(3) Bonds or obligations of foreign governments or corporations.

C. The court will not authorize investments in real estate, either by purchase or encumbrance, unless supported by an appraisal by the court-appointed probate referee or other qualified appraiser.

D. A conservator may petition the court for instructions and authority to make a specific investment including investments in CDARS.
(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered and revised 1/1/2006)

Rule 4.18.16

Substituted Judgments in Conservatorships Probate Code section 2580

Where petitioner seeks to establish a trust with conservatorship assets under substituted judgment, the petition must provide that the trust will remain under the continuing jurisdiction of the court.
(Adopted eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Renumbered and revised 1/1/2006)

Rule 4.18.17

Accounts and Reports

A. All accounts of conservators and guardians must follow the format prescribed in these rules for decedents' estates and in Probate Code sections 2620 and 1060 unless ordered by the court.

B. Reports of conservators must contain the current address and whereabouts of the conservatee, and describe the conservatee's status and condition.

C. Reports of conservators must reference the amount of the current bond and state whether additional bond is necessary to cover unblocked personal property plus one year's estimated income.

D. The report must also show any blocked bank accounts.
(Eff. 1/1/90; Amended 1/1/91, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. eff. 7/1/2003; Renumbered 1/1/2006)

Rule 4.18.18

Notices

A. The Probate Code requires that a conservatee receive notice of the hearing on an accounting. However, the court will accept a waiver of notice by the conservatee if the conservatee is shown to be competent to make such a waiver.

B. Notice must be given to a former conservatee or the personal representative of a deceased conservatee upon the settlement of the final account.
(Adopted, eff. 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.18.19

Change of Conservatee's Residence

Whenever conservatee's residence is changed, the conservator must promptly file a written "Change of Address" Judicial Council form with the Probate Division.
(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003; Renumbered 1/1/2006)

Rule 4.18.20

Routine Court Investigator's Report

When an investigator's report or report of the court appointed attorney for the conservatee is mailed to counsel for the conservator subsequent to the establishment of the conservatorship, counsel for the conservator must promptly respond to any problems pointed out by the investigator or court appointed attorney.
(Adopted eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003; Renumbered 1/1/2006)

Rule 4.18.21

Fees for Conservators and Counsel

A. The court will not grant a fee request without an accounting absent good cause.

B. Fees for court appointed counsel must be requested at the hearing as part of counsels' report.

C. Requests for compensation must be in accordance with California Rules of Court, rule 7.751 and 7.702.

D. Conservators must submit a completed Probate Court approved "Fee Request Declaration" with all requests for compensation in excess of $750.00.

E. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Conservators and Counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the court and include such authority in the prior order approving account.
(Adopted eff. 1/1/90; Amended, eff. 7/1/91; Renumbered & Rev. 7/1/2001; Rev. eff. 7/1/2003; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

Rule 4.18.22
Required Form of Accounts
A. The first accounting must be for a period not to exceed one year from the date of appointment.
B. Subsequent accountings will be either annual or biennial accountings running from the ending date of the first accounting period.
C. A final account in a conservatorship must set forth a list of assets on hand for distribution and the specific proposed distribution. If distribution is proposed pursuant to Probate Code section 13100, the necessary affidavits must be filed before the court orders distribution.
D. The final account of a conservator must allege whether or not all income and other taxes which became due and payable by conservatee during the period of the conservatorship have been paid.
E. In the final account, an allegation must be made as to whether or not the conservatee or predeceased spouse, if any were Medi-Cal recipients and if so, appropriate notice must be given per Probate Code section 215, unless distribution is to a personal representative of a deceased conservatee.
F. In all cases, notice must be given to all persons entitled to receive property.
G. Appropriate notice to the Department of Health Services must be given if required. That department has four months to perfect its claim.
H. All Conservatorship and Guardianship accounts must disclose the existence of a Trust where the Conservatee or Ward is a vested beneficiary, the current fair market value of the Conservatee/Ward's interest, whether the Conservator/Guardian is a Trustee, whether counsel for the Petitioner is also attorney for the Trust and/or Trustee, and whether fees approved in the account are to be paid from the Trust.
(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2003; Renumbered and revised 1/1/2006)

Rule 4.18.23
EADACPA Proceedings
When a civil action has been filed which cites the "Elder Abuse and Dependent Adult Civil Protection Act" (EADACPA), pursuant to Welfare & Institutions Code sections 15600 et seq., that action will be transferred to the Probate Court for litigation as required by Rule 2.4.10.
(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Deleted eff. 7/1/2003; Adopted eff. 1/1/2005; Renumbered 1/1/2006)

CHAPTER 19
GUARDIANSHIPS

Rule 4.19.1
Temporary Guardianships
A. A petition for appointment of temporary guardian must be a separate pleading and may not be filed prior to the filing of a petition for appointment of a general guardian.
B. The court will require a full bond from the temporary guardian of the estate unless waived for good cause.
C. The court will not consider the appointment of a temporary guardian ex parte unless proper showing is made that:
i. An immediate necessity exists
ii. The parents have received notice or good cause exists to dispense with notice
iii. Petitioner knows of no objections to the petition
iv. The minor is residing with the petitioner at the time the request for temporary guardianship is made.
(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.19.2
Petition for Appointment of Guardian: Jurisdiction
A. If there is a proceeding regarding the minor pending in Juvenile Court or Family court, counsel must refer to the Guardianship Protocol available in the Probate Business Office.
B. When an appointment is requested for guardianship of the estate only, the petition must be filed in the Probate Court.
C. Any proposed guardian not related to the minor must disclose if they are serving as guardian for any other minors to whom they are not related.
D. Allegations that parental custody would be detrimental to the minor child, other than a statement of ultimate fact, must not appear in the petition, but may be submitted on a separate document that must be held as a separate confidential document. (Family Code section 3041)
(Adopted eff. 1/1/90, Amended eff. 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.19.3

Co-Habitant of Proposed Guardian

A. If the minor resides with the proposed guardian and the proposed guardian is co-habiting with another adult who will share in the physical custody of the minor, the court must presume that the co-habiting adult is a person having care of the minor and a copy of the petition and notice must be served by mail on said spouse.

B. Written consent of the co-habiting adult must be filed with the court.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003; Renumbered 1/1/2006)

Rule 4.19.4

Proceedings to Have Child Declared Free From Custody and Control of One or Both Parents

Probate proceedings authorized by Probate Code section 1516.5 will be filed and heard in the Juvenile Division. The guardianship file will be consolidated into the juvenile proceedings pursuant to the request and direction of the juvenile court.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003; Rev. 1/1/2005; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

Rule 4.19.5

Investigation

A. Probate Code section 1513 requires that, unless waived by the court, in each proposed appointment of guardian, an investigation be made and a report submitted to the court. These investigations in San Diego County will be done by the Family Court Services, Health and Human Services Agency (Guardianship Unit) or the Court Investigator as follows:

(For these purposes, relative is defined by Probate Code section 1513 g).

(1) Guardianship of the Person, or Person and Estate-Relative.

(a) Submit Order Directing or Waiving Investigation to Probate Services with petition for appointment. (Fill out order, check #1.)

(b) Call Family Court Services for appointment; (619) 557-2151 in San Diego or (760) 940-4433 in Vista within three days of filing.

(c) Follow directions received from Family Court Services.

(d) At the discretion of the court, an abbreviated report may be ordered in lieu of a full investigation.

(2) Guardianship of the Person, and/or Estate-Non-Relative.

(a) Per Probate Code section 1542, notice is to be given to the Director of Social Services in Sacramento and to the local agency investigating guardianships.

(b) Submit the Order Directing or Waiving Investigation to Probate Services (Fill out order, check #2.) with the petition for appointment.

(c) Send a second copy of the petition only to Department of Social Services, Guardianship Unit, at the address listed in their instructions. This will expedite assignment for investigation and minimize court continuances.

(d) Hearings are set no sooner than 60 days from filing.

(3) Guardianship of the Estate only-Relative or Non-Relative.

(a) Submit Order Directing or Waiving Investigation to Probate Services. (Fill out order, check #3.) with the petition for appointment.

(b) Send copy of Order Directing or waiving investigation to the Court Investigator to initiate investigation along with a completed Guardianship Questionnaire and fee.

(c) If a waiver of court investigation is requested, submit the "Application for Waiver of Investigation", "Guardianship Questionnaire" and "Order Directing or Waiving Investigation" to the Probate Business Office. (Fill out order, do NOT check a box.)

(d) If waiver is approved, appointment will proceed. If waiver is denied, counsel will receive a copy of the Order Directing Investigation and should contact the court investigator.

B. If waiver of investigation is sought, the request must be made in advance of the hearing to provide sufficient time for review and processing. At least 10 days must be allowed.

(Eff. 1/1/90; Amended 7/1/95, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. eff. 7/1/2003; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

Rule 4.19.6

Bond at Appointment and Accounting

A. The court will impose a bond to cover the full amount of the personal property and one year's income or require the funds to be placed in blocked accounts. In a guardianship the relationship of parent does not constitute good cause for waiving bond.

B. The report and account must allege the amount of bond in effect and whether it is sufficient to cover personal property and income, and, where necessary, additional bond suggested.

C. See Rule 4.18.11. Bond Review Hearing, which also applies to appointment of guardians of the estate.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.19.7

Additional Powers

A. The court may, on the petition of the guardian of the estate, either at the time of appointment or later, grant additional powers to the guardian as authorized by sections 2590 and 2591 of the Probate Code. Such powers are not granted unless sufficient reason is shown for their necessity. The court will grant only those additional powers necessary or proper under the specific circumstances of each case. The powers so granted must be set forth in the order and in the letters of guardianship.

B. A petition to transfer the minor to another state, once approved by the court, will be continued for a 60 day review. Upon showing a guardianship has been established in the new state of residence, the matter will be taken off calendar.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003; Renumbered 1/1/2006)

Rule 4.19.8

Investments by Guardian

A. See Rule 4.18.15.

B. The guardian should also consider the circumstances of the estate, indicated cash needs and the date of prospective termination of the guardianship.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.19.9

Timely Accounts

A. The first accounting must be filed not later than one year after appointment and accounts must be filed at least biennially thereafter. The account should be filed with the court as soon as possible after the end of the accounting period, but not longer than three months thereafter.

B. If funds are maintained in a blocked account, the court may order proof of continued deposits in lieu of a full accounting.

(Adopted, eff. 1/1/90; Renumbered 7/1/2001; Renumbered and revised 1/1/2006)

Rule 4.19.10

Required Form of Account

A. Accounts must follow the format prescribed in Rule 4.15.1.

B. Where a guardian accounts for assets of more than one minor the accounting for each minor must be set forth separately within one report.

C. Minors' funds must not be commingled with guardian's or another person's.

(Eff. 1/1/90; Amended 7/1/95; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.19.11

Report to Accompany Accounting

The report of guardian must give the current age, status and whereabouts of minor.

B. The guardian's current address must be set forth in the report.

(Eff. 1/1/90; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.19.12

Request for Use of Minor's Assets

A. If a minor has a living parent or receives or is entitled to support from another source, prior court approval must be obtained before using guardianship assets for the minor's support, maintenance or education pursuant to Probate Code section 2422.

B. A request to expend funds may be made at the time of appointment of guardian, in a separate noticed petition, or included in an accounting and report.

C. The petition must set forth in detail the parents' financial inability or other circumstances which in the minor's interest would justify use of the guardianship assets.

D. The request must be for a specific and limited purpose and for a limited period of time.

E. The petition must be accompanied by a statement describing income, expenses, assets and liabilities of any parent and must include the receipt of Social Security if applicable.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.19.13

Fees and Commissions in Guardianships

A. The court will not grant a request for fees without an accounting absent good cause.

B. Fees for court appointed counsel must be requested at the hearing as part of counsel’s report.

C. Requests for compensation must be in accordance with California Rules of Court, rules 7.751 and 7.702.

D. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Guardians and Counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the court and include such authority in the prior order approving accounting.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered and revised 1/1/2006)

Rule 4.19.14

Court Appointed Attorney and Guardian ad Litem

A. Any party petitioning for appointment of a guardian ad litem may suggest an independent individual to be appointed or request the court make such appointment. Due to the potential conflicts of interests, parents asserting individual claims or defenses may not serve as guardians ad litem for their children, absent a court order to the contrary.

B. Any report required of a court appointed attorney or guardian ad litem must be filed no later than five days before the scheduled hearing.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

CHAPTER 20
TRUSTS

Rule 4.20.1

Accounts

A. Accounts filed by trustees must conform to these rules and Probate Code Section 1060-1064.

B. The value of the property set forth in the decree of distribution, or a reconciliation thereof, must be the starting balance of the first account.

C. Unless the testator provides otherwise in the will, a trust created by will executed on or after July 1, 1977, is not subject to the continuing jurisdiction of the court and the court will require an accounting and report only when the same has been requested by someone beneficially interested in the trust.

D. Testamentary trust accounts and related proceedings must be filed in the estate case; but an inter vivos trust must be filed as a new proceeding, even if it is the beneficiary of a pour-over will.

(Adopted 1/1/90; Amended, Eff. 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.20.2

Petition to Determine Title in Trust Matters (Probate Code Section 850)

In trust matters filed with the court to determine the title to property under Probate Code Section 850, the following allegations are required to be set forth in the petition:

A. The vesting of the asset at all relevant times;

B. Evidence of any transactions indicating the settlor intentionally removed the asset from, or added the asset to, the trust;

C. The value of the asset to be transferred.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered and revised 1/1/2006)

Rule 4.20.3

Identification of Persons Entitled to Notice

In addition to the requirements of Probate Code section 17201 to state the names and addresses of each person entitled to notice of a trust petition, the petition must also contain the relationships of those persons to the trustor(s). The trustee will likewise be identified by name, address and relationship to the trustor(s).

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.20.4

Trusts Established Before Decree of Distribution

A. Probate Code section 6321 provides that a decedent may designate as beneficiary of a life insurance policy a trustee named in decedent's will. The statutes also apply to certain employment and other benefits which may be payable to such a trustee.

B. A trustee named in a will admitted to probate may be appointed before the decree of distribution is made, upon the filing of a petition. As to such a petition, the court will require 30 days' notice to beneficiaries.

C. Where a vacancy exists in the office of the trustee before distribution, a trustee not named in the will may be appointed upon the filing of a petition and proper notice pursuant to Probate Code section 17200.

D. The order appointing the trustee must contain all the terms of the trust and the trustee must have all the powers and duties in respect to the trust corpus set forth in the order.

E. Any matters governing the trust not specifically covered by these sections must be governed by the provisions of Probate Code section 15000, et seq.

F. If no trustee claims the trust corpus or can qualify to receive the same and there is no indication in the will as to where the proceeds are to go, a petition to determine heirship may be filed to determine to whom distribution shall be made.

(Adopted Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.20.5

Special Needs Trusts

A. With respect to Special Needs Trusts and Trusts sent to the Probate Court for review pursuant to Rule 2.4.6 subdivision (c), the following must be included in the trust:

1. Provisions for appointment of successor trustee on approval of the Probate Court.

2. A payback provision must be inserted as required by 42 USC 1396(d) (4) (a).

3. Notice requirements on termination or death of beneficiary, and for any additions to the trust must be included.

4. Dispositive provisions must include disposition to heirs at law after payback required by 42 USC 1396(d) (4) (a).

B. Once the Trial Court has sent the trust to the Probate Court for review, it will be assigned to an Examiner for review and processing.

C. If the Probate Court approves the Special Needs Trust or Trust, a determination will be made whether the trust must be returned to the Probate Court to be brought under the Probate Court's jurisdiction. The Trial Court will make an appropriate Order thereon, and the trustee of the newly established trust must file a "Review of Compliance with Probate Code Section 3602 or 3611" with the Probate Court within 60 days.

D. A Special Needs Trust or Trust brought under the jurisdiction of the Probate Court will be assigned a new Probate case number and set for hearing. First appearance fees will apply. Any further trust proceedings and bonds must be filed under the new Probate case number.

E. A Special Needs Trust or Trust established by Probate Code sections 2580 and 3100 must include the same requirements as listed in rule 7.903 of the California Rules of Court and as listed in subsection (A) (1-4) above.

(New 7/1/2003; Rev. 1/1/2005; Renumbered and revised 1/1/2006)

CHAPTER 21
MISCELLANEOUS

Rule 4.21.1

Withdrawal of Counsel of Record

A. Counsel wishing to withdraw from a probate proceeding as counsel of record must file and serve a Motion to Withdraw in accordance with the provisions of Code of Civil Procedure section 284 and California Rules of Court, rule 376.

B. The filing in the case file of a substitution in pro per without prior court approval will not effectively relieve the counsel of record. Such counsel will only be relieved by substitution of another counsel or by court order upon showing that the person wishing to act in pro per is not precluded from doing so by virtue of his or her capacity in the pending proceeding. See, for example, Ziegler v. Nickel (1998) 64 Cal. App. 4th 545. Court approval may be obtained by noticed motion.

C. Motions for withdrawal where a bond has been filed by a surety must be accompanied by proof of service of the Notice required by Probate Code section 1213.

(Adopted eff. 1/1/90; Amended eff. 7/1/91; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered and revised 1/1/2006)

Rule 4.21.2

Appointment of Probate Referees

A. Probate referees will be appointed in rotation.

B. A probate referee may be designated out of rotation where the property has already been appraised by the probate referee or interests in the property are part of two pending proceedings. Examples of such proceedings would be the conservatorship of husband and wife, simultaneous deaths or death of husband and wife within one year of each other, decedent's estate following conservatorship, guardianships of siblings and court proceedings following non-judicial proceedings.

C. A declaration must be presented with the order designating probate referee which sets forth the relevant circumstances.

(Eff. 1/1/90; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.21.3

Ready Matters

A matter is considered "ready" when the file is in order, proper notices have been given and all documents which must be filed before the matter can be heard have been filed with Probate Examining not later than 12:00 noon, two court days preceding the hearing. Any matters not "ready" are subject to a continuance on request or appearance of counsel, or to be taken off calendar if counsel does not appear.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.21.4

Settlements Involving Charities

The Attorney General is a party to and is entitled to notice of probate matters involving interests of charities. Attention is directed, for example, to Government Code section 12591, as well as to the Probate Code.

(Adopted eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.21.5

Dismissal of Proceedings

In most instances, proceedings pending in the Probate Court, to which a file number with a prefix "P" has been assigned, may not be dismissed, either with or without prejudice. Before attempting to dismiss a probate proceeding, specific authority must be submitted and the approval of the probate judge must be obtained.

(Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 4.21.6
Declaratory Relief Petitions
(Probate Code Section 21320)

A. A copy of the proposed, unsigned and unverified petition marked "proposed" below the caption, must be attached to the Probate Code section 21320 application which is set for hearing.

B. If the court determines the proposed petition or a portion thereof would not violate the no contest clause contained in the instrument, a duplicate original of the proposed petition, or the approved portion thereof, signed and verified must be filed with the court and set for hearing. The wording " proposed" must be deleted from the petition to the filed.

(Adopted eff. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renumbered 1/1/2006)

Rule 4.21.7
Disclosure by Conservators, Guardians, and Attorneys

Conservatees and Wards are generally not in a position to give their informed consent to representation by attorneys, or the appointment of a Conservator and/or Guardian. To avoid the appearance of a conflict of interest in duty, a Conservator, proposed Conservator, Guardian, proposed Guardian, and/or attorney who appears in matters involving a Conservatee, Ward, or their estate, must disclose all present and past relationships to the Court at their earliest opportunity in the following circumstances:

A. Conservators. A person who is or has served in the past as a Conservator of the individual or estate which is the subject of the pending proceeding [Trust or Decedent's Estate] must disclose all present and past relationships.

B. Attorneys.

a. An attorney for a Conservatee or proposed Conservatee, or a Conservator or proposed Conservator, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

b. An attorney for a Ward or proposed Ward, or a Guardian or proposed Guardian, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

c. In complying with this rule an attorney shall not be required to violate an existing attorney-client privilege, but should consider that continued participation in the matter may constitute a violation of the Professional Rules of Conduct.

C. Guardians. A person who is or has served in the past as a Guardian of the individual or estate which is the subject of the pending proceeding (Conservatorship, Trust, or Decedent's Estate) must disclose all present and past relationships.

(Effective 1/1/2006)

Rule 4.21.8
Sanctions

A. If any counsel, a party represented by counsel, or a party in pro per, fails to comply with any of the requirements of Division IV of these rules, the court, on motion of a party or on its own motion, may strike all or any part of any pleadings of that party; or dismiss the action or proceeding or any part thereof; or enter a judgment by default against that party; or impose other penalties of a lesser nature or otherwise provided by law; and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees.

B. If a failure to comply with the rules in Division IV is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto.

(Effective 1/1/2006)

CHAPTER 22
CONTESTED MATTERS

Rule 4.22.1
Introduction

When written objections are filed to a petition or other pleading seeking affirmative relief in the Probate Court of either Central or North County Division (herein "Probate Court"), the matter becomes a "contested matter" as the term is used in these rules. These rules apply to all contested matters. They supplement applicable general statutes and other rules of court and are intended to further the policies of the Legislature and the San Diego Superior Court for the prompt completion of probate administration and efficient resolution of disputes.

(Adopted eff. 1/1/93, Amended eff. 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.22.2
Filing of Petitions and Contests and Setting Contested Matters for Hearing

All petitions, will contests and other pleadings seeking affirmative relief or adjudication by the Probate Court must be filed as soon as the petitioner knows of facts establishing a claim or the right to the requested relief. All such matters must be set for hearing by the clerk of the court as follows:

A. By statute or Rule of Court.

B. Notice not Prescribed. If the time for notice of hearing on a particular matter is not set

forth in a statute or a rule of court, the time for notice of hearing must be 30 days.

C. Will Contests. A probate summons must be presented by the contestant and issued by the court at the time of filing of a will contest. A will contest filed before admission of the will to probate constitutes an objection to the petition to admit the will, and the hearing on the petition to admit the will must be continued to a date no less than 30 days from the date of filing the will contest, in order to allow sufficient time to complete service in the will contest. If all service, including personal service of the summons as required by law, is not completed by the date of the continued hearing on the petition to admit the will, contestant must file a Certificate of Progress (on the form approved by the Superior Court) at least two court days prior to the hearing. If service is not completed prior to the continued hearing, the court at the hearing may further continue the matter or may impose sanctions, including the dismissal of the will contest, pursuant to the civil rules of San Diego Superior Court (Division II). When service has been completed, the will contest will be set for trial or short cause hearing pursuant to these rules. The petition to admit the will may be continued until the date of trial or short cause hearing on the will contest.

(Adopted eff. 1/1/93; Amendede eff. 7/1/95; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.22.3

Service of Notice

All notice requirements on contested matters, including personal service when required, must be completed prior to the date of the hearing (whether the hearing date originally assigned to the matter by the clerk of the court or a later date if the matter has been continued). If a party on whom personal service is required has not been served timely, a Certificate of Progress (on the form approved by the Superior Court) must be filed at least two (2) court days prior to the hearing.

(Adopted eff. 1/1/93; Renumbered 7/1/2001; Rev. 7/12/2002; Renumbered 1/1/2006)

Rule 4.22.4

Filing of Objections

A person with standing may appear and object orally at the first hearing on any matter before the Probate Court. Thereafter objections, including grounds of opposition, to any petition or other pleading filed in Probate Court must be set forth in writing and filed either as required by statute or, in the absence of specific statutory requirements, by 4:30 pm at least three court days before the next scheduled hearing date on the petition or pleading. If written objection has not been filed in accordance with this rule, the court will either continue the matter to allow compliance with this rule or decide the matter as if no objection had been made, if the court, in its discretion, determines a party has been dilatory in complying with this rule.

(Adopted eff. 1/1/93; Renumbered 7/1/2001; Renumbered and revised 1/1/2006)

Rule 4.22.5

Determination of Contested Matters

A. General. Contested matters will be determined as set forth herein. At the earliest appropriate hearing after a contested matter is at issue, the court will determine the type of hearing required, the length of the hearing and the manner of disposition.

B. Submission Without Evidentiary Hearing. If all parties agree in writing or on the record in open court, the court may decide the matter based on the pleadings, evidentiary materials filed prior to the conclusion of the hearing, and the arguments of counsel, or as otherwise agreed.

C. Short Cause Matter Hearing. If the court determines that the matter will require an evidentiary hearing of three hours or less (a "hearing"), the court may establish guidelines to govern discovery proceedings, if any are required, and may set the matter for hearing as a "short cause" matter.

If counsel desire to submit trial briefs, they must be filed at the business office of the Probate Court and faxed (in accordance with the California Rules of Court, rule 2008) or personally served on opposing counsel no later than 4:30 p.m. five count days prior to the date set for the short cause hearing.

Due to the "Short cause" nature of this hearing, the court will not entertain, receive or read responsive pleadings to said trial briefs. The trial briefs submitted are deemed sufficient to allow the parties the opportunity to state their positions regarding the contested issue(s) to be addressed at the short cause hearing. The provisions of rule 4.180 do not apply to short cause hearings.

D. Trial. If the court determines that the matter will require an evidentiary hearing of more than three hours (a "trial"), the court may set the matter for a case management conference, (see Rule 4.22.6 below).

E. Other Procedural Orders. If none of the foregoing procedures are appropriate for the matter before the court, the court may make any other procedural orders the court deems appropriate.

(Adopted eff. 1/1/93; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.22.6

Meet and Confer, Joint Case Management Report

If a contested matter is set for a case management conference, counsel must:

A. Meet and confer no later than 20 days before the case management conference.

B. File with the court a "Case Management Statement" (CM-110) as Required by California Rules of Court, rule 212 - FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN SANCTIONS BEING IMPOSED PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 575.2.

(Adopted 1/1/93; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.22.7

Case Management Conference

At the case management conference, the court may take any one or more of the following actions:

A. Determine whether or not all applicable procedures have been complied with and, if not, order appropriate remedial action, including the imposition of sanctions considered appropriate in the court's discretion;

B. Set the following dates based upon review of the "Case Management Statement" (CM-110) and the representations of counsel:

1. Trial date;

2. Joint disposition conference date;

3. Discovery cut-off date;

4. Law and motion cut-off date;

5. Dates for the exchange of experts;

6. Settlement conference date, if requested (See Rule 4.22.10.)

C. Make appropriate assignments and orders upon approval of a written agreement to refer the dispute to a temporary judge or to arbitration (Prob. Code, §§ 9620-9621) or to a Special Master or Referee (Prob. Code, § 1000; Code Civ. Proc., §§ 638-645.1).

D. Dispense with any of the procedures provided for herein for good cause.

E. Direct counsel to submit an order setting forth the dates and directives of the court.

(Adopted eff. 1/1/93, Amended eff. 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.22.8

Joint Trial Statement

No later than five days prior to the joint disposition conference, counsel must meet and confer in person to prepare in good faith a Joint Trial Statement. The Joint Trial Statement must contain the following:

A. Summary Statement of Facts, including, where applicable, the following: date of decedent's death and dates of wills, codicils and other operative documents; identification and inclusive dates of appointment of the fiduciary (administrator, executor, conservator, trustee, etc.); names of the parties and their counsel; dates and substance of prior relevant court orders; identification of pleadings previously filed which are relevant to the action; a summary of the case so as to apprise the court of the nature of the action.

B. Statement of Uncontested Material Facts.

C. Statement of Contested Material Facts.

D. Statement of Contested Material Issues. Counsel must set forth a concise statement and comprehensive discussion of each contested issue, a list of all documents (or other tangible evidence) to be offered at the time of trial regarding each issue and a summary of the content of each such document, as required by the court. Each contested item of an account must be specifically identified. Counsel will also provide as an exhibit a copy of each appraisal and report of an expert to be offered at the time of trial.

NOTE: FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN AN ORDER EXCLUDING THE DOCUMENT, SCHEDULE, SUMMARY, REPORT OR APPRAISAL, OR TESTIMONY OF THE EXPERT AT TRIAL.

E. List of Witnesses Indicating Whether Each Witness is a Percipient or Expert Witness. Except for impeachment witnesses, the court may, in its discretion, refuse to permit any witness to testify who is not listed.

F. Index of Exhibits. Counsel must pre-mark and jointly index all exhibits numerically as court exhibits. The index must set forth the following as to each exhibit: exhibit number; by whom offered; a description of each exhibit sufficient for identification; whether the parties have stipulated to admissibility, and, if not, the legal grounds for objections to admissibility. Exhibits must be numbered serially, as court exhibits, beginning with the number "1" (one); a block of exhibit number may be allocated to each party. If discovery, such as depositions, requests for admissions, interrogatory responses or any other form of discovery responses, is to be used in lieu of live testimony at trial, such discovery must be set forth in the exhibit index together with the legal grounds for objections to admissibility. Counsel must also comply with the provisions of Code of Civil Procedure section 2025, subdivisions (1) and (u) with respect to the anticipated use of videotaped depositions. Counsel must prepare and exchange a written transcript of any other audio and/or video presentations intended to be used at trial in accordance with the California Rules of Court, rule 303.5. FAILURE TO COMPLY WITH THESE

REQUIREMENTS MAY RESULT IN AN ORDER EXCLUDING DOCUMENT(S) AND/OR EXHIBITS AT TRIAL.

G. Stipulations Regarding Admission of Evidence and Summaries of the testimony.

H. All Points and Authorities (legal arguments) on which counsel intends to rely.

I. A statement of the specific relief requested. The relief may be requested in the alternative.

J. The Joint Trial statement must be signed by all counsel (and litigants appearing in propria persona) who will appear and participate in the trial.
(Adopted 1/1/93; Amended 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renumbered 1/1/2006)

Rule 4.22.9

Joint Disposition Conference; Sanctions

The Joint Trial Statement must be presented to the court at the joint disposition conference.

A. Separate reports will not be accepted. The completed report must be presented to the judge at the scheduled conference. The function of the joint disposition conference is to assure that the matter is ready for trial.

B. Counsel completely familiar with the case and possessing authority to enter into stipulations must be present at the scheduled hearing; however, clients need not appear unless specifically ordered by the court. Orders made will be binding on trial counsel and will not be subject to reconsideration due to counsel's unfamiliarity with the case at the time of the joint disposition conference.

C. If the court determines that a party, or counsel, has failed to reasonably comply with these rules, including the diligent preparation of a Joint Trial Statement, the court may impose appropriate sanctions against that party or counsel including a summary determination of any contested issues in accordance with the other party's papers filed in compliance with these rules, the levy of sanctions pursuant to Code of Civil Procedure section 575.2, the issuance of citations or bench warrants, or any other appropriate action.
(Adopted eff. 1/1/93; Revised eff. 7/1/95, 7/1/96; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.22.10

Settlement Conference

Upon filing a written stipulation that the probate judge may act as both settlement judge and trial judge if the matter is not settled, which is signed by all parties and their attorneys of record the probate judge in the central division will preside at settlement conferences unless any party requests that another judge be designated or the probate judge determines it would be inappropriate under the circumstances. If another judge is to be designated, an effort will be made to select a former probate judge or a judge with extensive probate experience. Counsel may also, by unanimous approval, accept as settlement judge one or more temporary judges designated by the probate judge. If all parties, after the case management conference, agree upon a settlement conference to assist in resolving the matter, a settlement conference may be set ex parte.

Except in special circumstances, the probate judge in the North County Division will not hear settlement conferences. Where a judicial settlement conference has been agreed to or ordered by the probate judge, the probate department will assist the parties in arranging for a judge to preside over the settlement discussions.
(Adopted eff. 1/1/93; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.22.11

Trial Briefs and Motions *in Limine*

A. All motions *in limine* (as authorized by law) and trial briefs must be filed with the clerk of the trial court and faxed (in accordance with the California Rules of Court, rule 2008) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for trial. Opposition pleadings to *in limine* motions must be filed and faxed (in accordance with the California Rules of Court, rule 2008) or personally served on opposing counsel no later than 12 noon of the day prior to the date set for trial.

B. Prior to the time the matter is called for trial, the parties must provide the clerk of the trial court with a final joint exhibit list, which must include appropriate summaries, as set forth hereafter. The parties must also provide two joint exhibit binders, one for the court and one for the witnesses, containing a complete set of all exhibits. The exhibits must be marked to correspond to the joint exhibit list. Copies of exhibits to be offered by the petitioner must not be duplicated by the respondent.

C. If ordered by the court at the Case Management Conference, each party seeking a surcharge or to justify items of an account to which objections have been made in the Joint Trial Report must prepare a summary of the documentary evidence supporting the request for surcharge or the accounting of contested items (e.g., canceled checks, receipts, bills, etc.). This summary must be included in the final joint exhibit list and exhibit binders.
(Eff. 1/1/93, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.22.12

ADR and Mediation Statement of Purpose

Contested estate, trust, conservatorship and other matters covered by the Probate Code are uniquely appropriate for alternative dispute resolution and supervised mediation in the interests of prompt, efficient and economical dispute resolution. Therefore, the court adopts the within Probate Code Mediation Program, which must be subject to the following special rules. Except to the extent otherwise specified, all other provisions of Division IV, Section One of the San Diego Superior Court Rules must apply to matters subject to this mediation program. The rules set forth below must be integrated into and must be a part of the rules relating to contested matters in probate.

(Adopted eff. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.22.13

Statements and Documents not Admissible Evidence

All responsive pleadings and all other documents filed with the court concerning mediation under these rules, and all matters disclosed verbally concerning any such mediation, must not be admissible evidence in any later contested proceeding between the parties solely by reason of their disclosure under these rules. The law governing statements and documents disclosed in mediation as set forth in Evidence Code section 1119 must expressly apply to all documents and statements filed with or made to the court under this mediation program.

(Adopted eff. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.22.14

Alternative Dispute Resolution in Contested Probate Matters.

A. Statement of Purpose.

Contested estate, trust, conservatorship, guardianships and other matters covered by the Probate Code are uniquely appropriate for court-supervised Alternative Dispute Resolution ("ADR") in the interests of prompt, efficient and economical dispute resolution. The Court states that mediation is the preferred method of dispute resolution and adopts the within Probate Court-Supervised ADR program in contested probate matters.

B. ADR Defined

ADR is a term covering the full range of techniques designed to resolve disputes short of trial in the courts. Certain cases will always have to be tried in the courts. ADR complements the court system by making methods available to resolve disputes at less cost, in less time, and often without the win-lose outcome that characterizes conventional litigation.

ADR includes, but is not limited to, mediation, a referee or special master appointed by the court pursuant to Code of Civil Procedure sections 638-645.1, binding arbitration, a judicially supervised settlement conference, a two-attorney settlement panel in North County, and neutral evaluation.

C. Court Ordered Alternative Dispute Resolution Absent Opposition

At the first hearing after a probate matter becomes contested, the court will order the matter to ADR unless one or more of the parties objects.

D. Court Determination Re ADR Upon Opposition Being Filed

At the time of the ADR assignment, a party may orally or in writing object to the need for ADR, the method of ADR selected, the selection of the neutral person or neutral panel, the method of payment of the costs of ADR, or the timing of ADR. The court has the discretion to order ADR, proceed pursuant to rule 4.22.1, or defer the order to ADR until discovery has been completed. In ordering ADR the court may restrict discovery until the completion of ADR. The court may also order that the case proceed in accordance with Rule 4.22.1, *et seq.* re contested probate matters. The order for ADR may be made by a minute order or by a formal order at the request of any party. Additionally, the court at any time may order the parties to ADR as a method of attempting to resolve the matter. If ADR is unsuccessful, the court will allow unrestricted discovery.

(Effective 1/1/2004; Renumbered 1/1/2006)

Rule 4.22.15

Parties Select Mediator; Probate Mediation Panel

Upon ordering the parties to ADR, the parties and their counsel must jointly select a qualified mediator or ADR facilitator to conduct the ADR. As a resource, the court must maintain and have available a directory of trained mediators (the "Probate Mediation Panel"). One category of mediators in the directory must consist of trained mediators who either have significant probate experience, or are retired judges. A second category of mediators in the directory must consist of trained mediators without significant probate experience. If the parties cannot agree on a mediator or ADR facilitator, they must attempt to determine a mechanism whereby the mediator or ADR facilitator may be selected; providing, however, that in the event the parties cannot agree, the court may appoint a mediator or ADR facilitator.

(Adopted eff. 7/1/2001; Rev. 7/1/2002, Rev. 1/1/2004; Renumbered 1/1/2006)

Rule 4.22.16

Fiduciary Pays Costs and Fees

Absent the agreement of all interested parties, and subject to 4.22.17 of these rules, the fiduciary (i.e., the executor, conservator, trustee or guardian of the estate) must pay the costs and fees of ADR. For purposes of this rule, the term "costs and fees of ADR" must include only those costs and fees directly relating to the ADR service and must not include the attorneys' fees and costs of the parties.
(Adopted eff. 7/1/2001; Rev. 7/1/2002, Rev. 1/1/2004; Renumbered 1/1/2006)

Rule 4.22.17

Discretion to Allocate Costs and Fees of ADR

On a noticed petition filed by any party, the court may, in its discretion, allocate the costs and fees of ADR to one or more of the interested parties to the contested matter; and providing further, if the court determines any party acted in bad faith or unreasonably in the ADR process, the court may charge such costs and fees to such party.
(Adopted eff. 7/1/2001; Rev. eff. 7/1/2003, Rev. 1/1/2004; Renumbered 1/1/2006)

Rule 4.22.18

ADR Statement Re: Impartiality

Every person who conducts an ADR pursuant to these rules must, as soon as practicable, disclose to the parties any facts that might reasonably cause any party to entertain a doubt that such person would be able to be impartial. ADR facilitators will comply with all applicable disclosure standards, including, but not limited to, those found in California Rules of Court, rule 1580 *et seq.*.
(Adopted eff. 7/1/2001; Rev. 7/1/2002, Rev. 1/1/2004; Renumbered 1/1/2006)

Rule 4.22.19

Continuance Pending Completion of ADR

Upon ordering a matter to ADR the court may continue the proceeding to a date when ADR will be completed, or may set the matter for hearing, or trial, as provided in rule 4.22.5. The court may either continue the matter for further mediation efforts or, if the court concludes further efforts at mediation are not warranted, the court may set the matter for such further proceedings the court deems appropriate.
(Adopted eff. 7/1/2001, Rev. 1/1/2004; Renumbered 1/1/2006)

Rule 4.22.20

Application and Compliance Requirements for Probate Mediation Panel

To be included as a member of the Probate Mediation Panel, an applicant must:

Have completed a 25 hour Basic Mediation Training course approved for MCLE credit; and

Be familiar with the provisions of Evidence Code sections 115 through 1128, Code of Civil Procedure sections 1775 through 1775.112 and California Rules of Court, rules 1630 through 1639, recognizing some of the foregoing rules may not be directly applicable to probate court mediation arrangements.
(Adopted eff. 7/1/2001; Rev. 7/1/2002; Renumbered 1/1/2006)

Rule 4.22.21

Application and Compliance Requirements

Application: Each applicant requesting appointment to the Probate Mediation Panel must execute under penalty of perjury and file an application certifying that he or she has satisfied the requirements of Rule 4.22.20.

Filing Fee: Each application must be accompanied by a $100.00 filing fee made payable to the San Diego County Bar Association and by a one-page resume for inclusion in the court's directory.

Annual Compliance Statement, Renewal Fee and Program Administration: Each member of the Mediation Panel must file an annual Compliance Statement on or before the 15th day of January of each calendar year and must pay an annual renewal fee of $100.00 as a condition to continued inclusion on the Mediation Panel. Applications for admission to the Mediation Panel and Annual Compliance Statements must be obtained by written request to the San Diego County Bar Association, ATTENTION: PROBATE MEDIATION PROGRAM, at 1333 Seventh Avenue, San Diego, California 92101.
(Adopted eff. 7/1/2001, Rev. 7/1/2002; Renumbered 1/1/2006)

CHAPTER 23
LAW AND MOTION AND DISCOVERY MATTERS

Rule 4.23.1

Preliminary Definitions

An application for relief based upon the Probate Code must be brought as a petition. An application for relief based upon the Code of Civil Procedure must be brought as a motion.
(Effective 1/1/2006)

Rule 4.23.2

Applicability of Division Two in Probate Proceedings

Except to the extent the Probate Code provides otherwise, counsel and parties appearing in propria persona must comply with the pertinent sections (as amended from time to time) of Division II of these

Rules and the California Rules of Court beginning at Rule 301 et seq., with respect to demurrers, motions to strike, requests to take judicial notice, motions for summary judgment, and all other pretrial motions. Counsel and parties appearing in propria persona must also consult Department Rules of the various Probate Departments for further requirements.

In addition, the form and format of discovery proceedings in probate are governed by the California Rules of Court, rule 331 et seq., which will be enforced in all probate proceedings.
(Effective 1/1/2006)

Rule 4.23.3
Filing Motion Papers

Unless a specific greater or lesser time is authorized by statute, court rule, or order, moving papers must be filed directly with Probate Services at least 16 court days prior to the scheduled hearing. This rule may be waived by an order shortening time upon ex parte application.

Unless otherwise ordered by the court, motions must be presented to Probate Services prior to the issuance of a hearing date.
(Effective 1/1/2006)

Rule 4.23.4
Hearings

Unless otherwise authorized by the court, all Probate Law and Motion and Discovery matters in the North County division of the Superior Court will be set for hearing in Department 23 between 2:00 p.m. and 4:00 p.m. on Thursday. All Probate Law and Motion and Discovery matters in the Central division of the Superior Court will be set for hearing in Departments PC and F-10. Once set, the matter may be continued only with a written order of approval from the Court. A matter "continued" by stipulation without court approval will be taken off calendar.
(Effective 1/1/2006)

Rule 4.23.5
Filing and Serving Opposition or Support Papers on Motion

Opposition, joinder and reply papers must be filed in Probate Services. The deadlines provided by law for serving and filing opposition and reply papers, as provided in Code of Civil Procedure section 1005(b), will be enforced for all matters. In this regard, the court is not obligated to, and may not without good cause shown, consider any late-filed or surreply papers in a matter.
(Effective 1/1/2006)

Rule 4.23.6
Filing Within 3 Days of Hearing

When papers are filed within three calendar days of the hearing, service on opposing counsel must be by personal delivery (or by fax when permitted by rule 2008 of the California Rules of Court).
(Effective 1/1/2006)

Rule 4.23.7
Filing of Proof of Service

Proof of service of the moving papers must be filed no later than five calendar days before the time set for hearing.
(Effective 1/1/2006)

APPENDIX I
JUDICIAL COUNCIL FORMS

DECEDENTS ESTATES

Form #	Year	Description or Title
DE-120MA/GC -020(MA)	05	Attachment to Notice of Hearing Proof of Service by Mail (Probate Decedents' Estates and Guardianships and Conservatorships
DE-120(P)	05	Proof of personal Service of Notice of Hearing – Decedent's Estate or Trust (Probate-Decedents' Estate)
DE-120(PA/GC-020(PA)	05	Attachment to Notice of Hearing Proof of Personal Service (Probate)
DE-111	03	Petition, for Probate (Decedents dying after December 31, 1984)
DE-221	00	Petition, Spousal Property
DE-260/GC-060*	06	Report of Sale and Petition for Order Confirming Sale of Real Property (Probate-Decedents' Estates and Guardianships and Conservatorships)
DE-270	98	Petition, Ex Parte; Sale Securities (and Order)
DE-275	98	Petition, Ex Parte; Sale Personal Property (and Order)
DE-310	98	Petition, Determine Succession to Real Property
DE-350	02	Petition and Order for Appointment of Guardian Ad Litem
DE-140	98	Order, for Probate
DE-226	03	Order, Spousal Property
DE-265/GC-065*	06	Order Confirming Sale of Real Property (Probate-Decedents' Estate and Guardianships and Conservatorships)
DE-295/GC-395*	06	Ex Parte Petition for Final Discharge and Order (Probate-Decedents' Estates and Conservatorships and Guardianships)
DE-315	03	Order, Determining Succession to Real Property
DE-200	98	Order, Prescribing Notice
DE-120	05	Notice of Hearing (Probate)
DE-121*	06	Notice of Petition to Administer Estate (Probate-Decedents' Estates)
DE-11(MA)	06	Attachment to Notice of Petition to Administer Estate-Proof of Service by Mail (Probate-Decedents' Estates)
DE-157	98	Notice of Administration to Creditors
DE-122/GC-322*	06	Citation-Probate (Probate-Decedents' Estates and Guardianships And Conservatorships)
DE-125	98	Summons Probate
DE-131	98	Proof of Subscribing Witness (Decedents Dying after December 31, 1984)
DE-135	98	Proof of Holographic Instrument
DE-147	02	Duties & Liabilities of Personal Representative
DE-150	98	Letters
DE-160	03	Inventory & Appraisal
DE-161	98	Inventory & Appraisal (Attachment)
DE-165	98	Notice of Proposed Action (Objection-Consent)
DE-166	98	Notice of Proposed Action, Waiver of and Revocation of Waiver
DE-172	98	Creditor's Claim (Estates after June 30, 1988)
DE-174	00	Creditor's Claim, Allowance or Rejection
DE-305	03	Affidavit re Real Property of Small Value
DE-154	98	Request for Special Notice

* Adopted for Mandatory Use

GUARDIANSHIPS AND CONSERVATORSHIPS

Form #	Year	Description or Title
GC-020(C)	05	Clerk's Certificate of Posting Notice of Hearing – Guardianship or Conservatorship (Probate – Guardianship Or Conservatorship)
GC-395/DE-295*	06	Ex Parte Petition for Final Discharge and Order (Probate-Decedents' Estates And Conservatroships and Guardianships)
GC-020(P)	05	Proof of Personal Service of Notice of Hearing Guardianship or Conservatorship (Probate – Guardianship And Conservatorships)
GC-110	98	Petition, Appointment Temporary (Guardianship or Conservatorship)
GC-210	01	Petition, Appoint Guardian Minor
GC-310*	06	Petition for Appointment of Probate Conservator (Probate-Guardianships And Conservatorships)
GC-060	98	Petition, Confirm Sale Real Property (G or C)
GC-070	98	Petition, Ex Parte Sell Securities (and Order G or C)
GC-075	98	Petition, Sale Personal Property (and Order) (G or C)
GC-380	98	Petition, Give Consent for Medical Treatment
GC-140	98	Order, Appointing Temporary Guardian or Conservator
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FAMILY LAW

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DIVISION V
FAMILY LAW

CHAPTER 1
GENERAL

Rule 5.1.1

Applicability of Rules

These rules are intended to provide uniformity of practice and procedure in all departments of the San Diego Superior Court hearing and deciding Family Law matters. Variations between divisions must be approved by the Supervising Judge of the Family Courts and must not constitute a significant deviation from these rules. All litigants and attorneys must comply with these rules in addition to all applicable statutes and California Rules of Court. Litigants representing themselves without an attorney and all attorneys will be held to the same standards of practice and procedure. The court is not permitted to provide legal assistance to unrepresented litigants. All references to "counsel" and/or "attorney" in these rules apply to any unrepresented litigant.

Sanctions. For any noncompliance with these rules or any order of the Court, the Court may set an order to show cause why sanctions should not be imposed pursuant to Code of Civil Procedure section 575.2.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.1.2

Court Locations

The Central Division, Family Law Courthouse ("Central Division") is located at 1555 Sixth Avenue, San Diego. The South County Division ("South County") is located at 500 Third Avenue, Chula Vista. The East County Division ("East County") is located at 250 East Main Street, El Cajon. The North County Division ("North County") is located at 325 South Melrose Drive, Vista. Each Division is a separate Division and a separate venue.

Child Support actions involving the Department of Child Support Services of the County of San Diego will be heard at the Central Division, County Courthouse located at 220 West Broadway, San Diego. If both parties reside in the North County, the matter may be heard at the North County Division at 325 South Melrose Drive, Vista on the FSD calendar available on Wednesdays. Matters involving the Department of Child Support Services may also be heard at such other Division locations as directed by the Supervising Judge of the Family Law Courts.

Domestic Violence Protection Act cases for the Central Division are filed and heard at the Madge Bradley Building, located at 1409 Fourth Avenue, San Diego and each of the South County, East County and North County Divisions.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.1.3

Work of the Family Law Court

The Family Law Divisions of the San Diego Superior Court hear all motions and trials in Family Law matters including, but not limited to, all proceedings under the Domestic Partnership Act, warrants in lieu of writ of habeas corpus' warrants for arrest in child custody matters; motions to determine arrearages due on support orders; motions for support, custody, visitation, restraining orders and attorney's fees and costs; in addition to applications under the Domestic Violence Prevention Act, the Uniform Parentage Act, *Marvin* actions and related discovery motions.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.1.4

Words and Phrases Defined

Unless the provision or context otherwise requires, these definitions govern the construction of these rules.

"Child" includes the plural **"children"** where the context requires.

"Declaration of Disclosure" is a statement under penalty of perjury that is a complete and accurate listing of all assets and liabilities in which one or both of the parties have an interest regardless of its characterization as community or separate property. (Family Code sections 2103, 2104 and 2105.)

"Settlement Brief" (See **Appendix E** for format. The format is the same as for the Mandatory Trial Statement.) is a document prepared by each party setting forth the same information as required in the Mandatory Trial Statement.

"Shall" and **"must"** are mandatory; **"will"** and **"may"** are permissive.

"Mandatory Trial Statement" (See **Appendix E** for format.) is a document prepared by each party setting forth the statistical data for the case; the resolved and disputed issues; the known financial information; the history of the proceedings; and a list of the proposed exhibits to be presented at trial.

"Unrepresented Litigant", **"Pro Per"**, **"Pro Se"** and **"In Propria Persona"** mean any litigant or party who is representing himself or herself in a Family Law matter without an attorney.

"Writing" includes any handwriting, typewriting, printing, photostatting, photograph, photographing, photocopy, photocopying, transmission by electronic mail or facsimile ("FAX") and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols or combinations thereof, and any record thereby created regardless of the manner in which the record has been stored.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.1.5

Applicable Abbreviations

The following abbreviations are used throughout these rules:

CCC	=	Case Classification Conference
CLETS	=	California Law Enforcement Telecommunications System
CMC	=	Case Management Conference
CRC	=	California Rules of Court
DCSS	=	Department of Child Support Services, County of San Diego
DVPO	=	Domestic Violence Protective Order
EPO	=	Emergency Protective Order
Fam.C.	=	California Family Code
FCS	=	Family Court Services
FSD	=	Family Support Division
MSC	=	Mandatory Settlement Conference
OSC	=	Order to Show Cause
TRO	=	Temporary Restraining Order
UCCJEA	=	Uniform Child Custody Jurisdiction and Enforcement Act

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.1.6

Time Estimates

Each Family Law case is calendared based on the time estimates given. The Court must rely on the accuracy of the time estimates to properly manage the Court's calendar. Counsel and the parties should expect to be limited to the time estimate given. A failure to abide by the time estimate given may result in a mistrial being declared by the Court or an award of appropriate sanctions. The time estimate must include time for the Court to review the file and time for argument.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 2
CASEFLOW MANAGEMENT

Rule 5.2.1

Case Assignment

New cases are randomly assigned to a judicial officer for all purposes. All appearances in the case must be made before the assigned judicial officer unless otherwise ordered. **Appendix A** contains a list of addresses and telephone numbers for each court and its departments and FCS. The Petitioner/Plaintiff will receive a notice of case assignment when the petition/complaint is filed. The Petitioner/Plaintiff must serve the Respondent/Defendant with a copy of the notice of case assignment with the petition/complaint.

This court strictly follows the timing requirements for peremptory challenges set forth in California Code of Civil Procedure section 170.6 and California Government Code section 68616(i).

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.2.2

Alternative Dispute Resolution

The Family Law Act and the California Rules of Court encourage Alternative Dispute Resolution of Family Law Matters. The Family Law Court promotes and encourages the use of mediation, arbitration, Collaborative Family Law, a private judge (Temporary Judge) and, when appropriate, judicial case management as methods of Alternative Dispute Resolution in Family Law cases.

A. Mediation or Arbitration

Upon being retained, attorneys representing Family Law litigants, except in cases of domestic violence, are encouraged to provide their clients with the informational notice set forth in **Appendix B** and to advise their clients of the availability of mediation and arbitration as alternative means of dispute resolution. Parties wishing to participate in mediation or arbitration must advise the Court as soon as possible by submitting a written stipulation signed by both parties and their attorneys if the parties are represented. Where known, the name of the Mediator or Arbitrator selected by the parties must be included in the written stipulation. The parties must specify in their stipulation whether the decisions of their Arbitrator are to be binding or nonbinding.

B. Collaborative Family Law

1. A case will be designated a "Collaborative Family Law Case" if the parties have signed and filed with the Court a written Collaborative Family Law stipulation which provides that:

a) The parties will engage in the full and candid informal exchange of all relevant information and documentation;

b) The collaborative attorneys are disqualified from continuing to represent the parties if the Collaborative Family Law process is terminated by either party;

c) The parties will jointly retain any experts needed to assist them in reaching a collaborative settlement;

d) All documents filed in the case will be submitted by the parties in propria persona;

e) No contested matters will be presented for determination by the Court either by Motion or Order to Show Cause while the case is proceeding as a Collaborative Family Law Case; and

f) The words **"Collaborative Family Law Case"** will be included in the caption of every document filed with the Court.

2. The essence of the Collaborative Family Law process is a series of intense settlement

negotiations. Therefore, pursuant to the written Collaborative Family Law stipulation of the parties:

a) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the Collaborative Family Law process will be admissible as evidence or subject to discovery, and disclosure of such will not be compelled in any non-criminal proceeding;

b) No writing (as defined in Evidence Code section 250) that is prepared for the purpose of, in the course of, or pursuant to a Collaborative Family Law Case will be admissible or subject to discovery, and disclosure of the writing will not be compelled in any non-criminal proceeding; and

c) All communications, negotiations, and/or settlement discussions by and between the participants in a Collaborative Family Law Case will remain confidential.

3. In any Collaborative Family Law Case, pursuant to the written Collaborative Family Law stipulation of the parties, the Court will:

a) Consider collaborative counsel to be advisory counsel and not attorneys "of record";

b) Refuse to schedule any contested hearings, impose discovery deadlines or enter any scheduling orders; and

c) Provide notice and an opportunity to be heard prior to any dismissal based on a failure to prosecute or delay.

4. The designation of a case as a Collaborative Family Law Case is completely voluntary and requires the agreement of all parties. The Collaborative Family Law Case designation will be removed by the Court upon stipulation of the parties or upon the filing of a noticed motion with the Court indicating a party's desire to terminate the Collaborative Family Law process and compliance with any termination provisions of the written Collaborative Family Law stipulation.

5. Except as otherwise set forth in this Rule, Collaborative Family Law Cases will be governed by California law.

C. Use of a Private Judge (Temporary Judge)

With the Court's permission, the parties may agree to use a Private Judge (Temporary Judge) to resolve some or all of the substantive or procedural issues in their case. Parties wishing to use a Temporary Judge must advise the Court as soon as possible by submitting a written stipulation signed by both parties and their attorneys, if the parties are represented. The name of the Temporary Judge selected by the parties and the specific issues to be resolved by the Temporary Judge, if less then the entire case, must be included in the written stipulation. The parties' written stipulation must also set forth their agreement regarding whether a transcript of the proceedings before the Temporary Judge will be created for appellate or any other purposes. A sample form Stipulation and Order for the Appointment of Temporary Judge is attached as **Appendix C**. Under no circumstances will the Court's case file be removed from the Courthouse. It is the responsibility of the parties to provide the Temporary Judge with a duplicate case file.

D. Judicial Case Management

Attorneys representing Family Law litigants are also encouraged to advise their clients of the availability in appropriate cases of judicial case management under Family Code section 2032, subdivision (d).

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.2.3

Filing Locations

Family Law cases must be filed in the division in which the Petitioner and/or the Respondent reside, or, in paternity cases, where the child resides. Appendix D reflects the division boundaries within the Court sorted by zip codes. Original petitions must bear the proper filing location and be filed in the appropriate division.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.2.4

***Marvin* Actions**

Any family law related action not specifically authorized by the Family Law Act (e.g., *Marvin* complaints) must initially be filed as a separate proceeding in the Family Law Division. Upon the Court's own motion or if a timely request for a jury trial is made and granted, the assigned judicial officer will consult with the supervising judge to determine whether the matter will remain in the Family Law Division for trial. On the Court's own motion or upon noticed motion, the action may be consolidated with a pending Family Law case pursuant to California Rules of Court, rule 367. (See also Rule 5.2.5.)

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.2.5

Consolidated Cases

If the Court consolidates a case, the case of broader jurisdiction or the lower case number if the cases are of equal jurisdiction will be designated as the lead case. The originals of all papers thereafter filed will be placed in the lead case file. (California Rules of Court, rule 367.) Any hearing date in any case other than the lead case will be vacated or reset, and all future hearing dates will be noticed under the lead case number.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.2.6

Case Classification Conference ("CCC")

The court will calendar a Case Classification conference (CCC) for the earlier of 150 days after the

filing of the petition or 90 days after the filing of the response, unless the parties have requested that the CCC be held earlier or the parties have filed an ADR/Reconciliation stipulation pursuant to sections C and D below.

A. Purpose. The purpose of the CCC is to assess which track best suits the case's particular needs. The parties or, if represented, their attorneys must be prepared to advise the Court of which track best suits their case. At the discretion of the judge, the case will be assigned to one of the following tracks:

1. Conventional. The case is ready to proceed to Judgment without delay. Cases in which neither party is represented by an attorney will generally be classified as Conventional and will be processed by the Family Law Facilitator's Office.

2. Diverted. A case where the parties have decided to use an Alternate Dispute Resolution ("ADR") method to resolve their case including but not limited to mediation, arbitration, Collaborative Family Law, or private judging or where the parties are attempting a reconciliation. These cases will be classified as Diverted at the time the ADR/Reconciliation stipulation is filed.

3. Managed. Any case which is not classified as Conventional nor Diverted.

B. Scheduling and Notice. The Court will provide notice of the CCC to all parties. Each party may request one continuance by telephone up to 1 day before the scheduled conference date for a reasonable period of time. The continuance must be by stipulation if Respondent has appeared. Additional continuances may be requested ex parte with a declaration showing good cause.

C. Alternate Dispute Resolution (ADR). Parties who file a stipulation indicating they are presently participating in ADR including but not limited to mediation, arbitration, Collaborative Family Law, or private judging, will be exempt from the CCC for a period of 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the Court will notice the case for a CCC.

D. Reconciliation. Parties who file a stipulation indicating they are attempting a reconciliation will be exempt from the CCC for a period of 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the Court will notice the case for a CCC.

E. Preparation for Case Classification Conference.

1. Prior to the CCC, the parties must meet and confer to best determine the classification of their case.

2. If the parties determine that their case should be classified as Conventional, then no later than 7 calendar days prior to the CCC, the parties must serve completed Preliminary Disclosure documents to include the Schedule of Assets and Debts and the Income and Expense Declaration.

3. If the parties determine that their case should be classified as Managed, the Court at the CCC will set a date for the exchange of the Preliminary Declarations of Disclosure (DOD), if they have not already been exchanged.

F. Attendance at Case Classification Conference. Parties must be present at the CCC unless represented by counsel, in which case, counsel must appear.

G. Orders. The Court may make the following orders at the CCC:

1. Conventional. Set a Case Management Conference (CMC), set a Mandatory Settlement Conference (MSC), set a trial date upon confirmation that all first paper fees have been paid, or enter judgment.

2. Managed. Set another CCC or set a CMC and, if necessary, set a date for the exchange of the preliminary DOD.

3. Stipulation. Upon stipulation of the parties or their attorneys treat the CCC as a CMC.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.2.7

Case Management Conference (CMC)

A. Attendance at Conference. Parties must be present at the Case Management Conference (CMC) unless represented by counsel, in which case, counsel must appear. The parties or the attorneys must be fully prepared to discuss the timetable for resolution and be sufficiently familiar with the facts of the case so that the Court may make the orders set forth in B, below. Any attorney making a special appearance for counsel of record must have actual knowledge of the facts and procedural history of the case.

B. Orders. The Court may make the following orders at the CMC:

1. Seat a Mandatory Settlement Conference or set a trial date for short cause matters (i.e., those cases which will take no more than 3 hours to try) upon confirmation that all first paper fees have been paid.

2. Set a date for the exchange of Final Declarations of Disclosure and the filing of proofs of service.

3. Set a discovery cut-off date.

4. Set a date for the exchange of expert witness information.

5. Set a Family Court Services (FCS) date in cases where custody/visitation is at issue and no evaluation or private mediation is pending or completed.

6. Resolve selection of joint experts.

7. Resolve appointments of Special Master requests made by stipulation pursuant to Code of

Civil Procedure section 639 and California Rules of Court, rules 244.1 and 244.2.

8. Determine any issues to be bifurcated.

9. Set a date for the exchange and filing with the Court of a joint CMC Questionnaire which includes a list of settled issues and a list of issues to be litigated. Absent leave of court, a party may not present an issue for trial that was not set forth in the CMC list of issues to be litigated.

10. Set an MSC after counsel, or unrepresented party, certify that all first paper fees have been paid, all discovery is complete, no law and motion matters are pending or anticipated, and all expert reports have been exchanged. The Court, in its discretion, may set an MSC without these certifications. If an MSC is unable to proceed because counsel or a party has improperly certified the case, the matter will be returned for another CMC before the assigned judge, who may impose monetary sanctions against counsel or a party for improperly certifying the case as being ready for the MSC.

11. Any other orders the Court deems appropriate for the expeditious resolution of the case to include the setting of another CMC.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.2.8

Mandatory Settlement Conference

A. Calendaring. Mandatory Settlement Conferences ("MSC") will be set for all Family Law cases unless specifically exempted by the Court. No Family Law case will be set for trial until the parties participate in a MSC. The MSC will be set at the final Case Management Conference or the Case Classification Conference. Absent a court order allowing a party to appear by telephone, both parties and their counsel of record must personally attend the MSC. Failure to comply may result in monetary sanctions. Counsel and parties must be present for the calendar call, during which time the Court will explain the process and assign locations for the settlement conferences. Because of the time settlement judges spend reading the briefs and preparing for the conference, there will be NO continuances granted on the day of the MSC.

B. Attorney Participation on the Settlement Conference Panel. Whenever possible, an experienced Family Law attorney will be assigned as a temporary judge (Temporary Judge) to each case to assist the parties and trial counsel in reaching a settlement. If available, two Temporary Judges will be assigned to more complex cases. The Supervising Judge and any judges not otherwise engaged may be available for additional assistance.

Approximately 6 months before the date(s) of service, the Court will mail invitations to Family Law attorneys to participate on the settlement conference panel. If an invited attorney wishes to participate, the attorney must mail written acceptance to the Court forthwith and calendar the date(s) of service. The Court will telephone confirmations to the panelists not later than the Monday immediately preceding the Thursday settlement conference date. An experienced panelist will be assigned to sit with each new panelist as a co-panelist during the new panelist's first 2 settlement conferences.

The minimum qualifications for service on a settlement conference panel hearing most cases are:

1. Certified Family Law Specialist; or

2. 7 years of legal practice, of which at least 75% is in Family Law; AND

3. Attendance at the CFLS-sponsored settlement conference seminar; or commitment to attend the CFLS-sponsored settlement conference seminar to be presented or a comparable seminar, or listen to the tapes from the seminar; AND

4. Approval of the Supervising Judge of the Family Law Courts.

The minimum qualifications for service on a settlement conference panel hearing more complex cases are:

1. Certified Family Law Specialist; or

2. 15 years of legal practice of which at least 90% is in Family Law; AND

3. Approval of the Supervising Judge of the Family Law Courts.

C. Telephone Confirmation With Calendar Clerk. At least 10 calendar days in advance of the MSC, counsel must call the court to confirm that the MSC will go forward. An MSC will only be continued for good cause. The Court will generally notify counsel who the settlement judge(s) will be at this time. Where the MSC is not timely confirmed, the Court will return the matter for a CMC before the assigned judge.

D. Meet and Confer Requirement. Counsel must meet and confer either in person or by telephone at least 5 court days before the MSC to resolve as many issues as possible and to specify those matters to be litigated. Results of the conference must be included in the settlement brief. Failure to comply with these requirements may subject non-complying counsel to monetary sanctions pursuant to Code of Civil Procedure section 575.2.

E. Settlement Briefs. Each party must prepare a settlement brief. Documents to be submitted to the settlement judges include the Preliminary Declaration of Disclosure and, if support or fees are at issue, a current Income and Expense Declaration. Each party must serve a copy of each document on opposing counsel and the settlement judges in such a manner as to assure they are received no later than 4:oo p.m. three court days preceding the MSC. The settlement briefs must be in the same format as the Mandatory Trial Statement (**Appendix E**). Each party must state

with specificity that party's proposal on each contested issue and the reasons therefor.

F. Division of Furniture, Furnishings and Personal Effects. If the parties have been unable to divide their furniture, furnishings and personal effects by agreement, the parties must jointly prepare a combined list of these items at the time they meet and confer. This list must be attached to each party's settlement brief. The list must include a description of each item, and (opposite that item) each party's position concerning value, character (separate or community), and the proposed disposition of the asset.

G. *Epstein* Credit Claims. If a party is claiming reimbursement for payment of community debts from separate funds following separation, that party must fully document these claims by attaching to the settlement brief all documents to be introduced into evidence on this issue at trial. Absent court order obtained before trial, or for other good cause shown, no other documentary evidence in support of this claim may be introduced or considered by the trial court. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

H. Family Code Section 2640 Reimbursement Claims. A party claiming reimbursement pursuant to Family Code section 2640 must attach to the settlement brief any documentary evidence which that party intends to introduce at the time of trial to substantiate the claim(s). This includes canceled checks, bank statements, title documents, escrow documents, etc. Absent court order obtained before trial, no other documentary evidence in support of this claim may be introduced or considered by the trial court. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

I. Reference to Special Master. Failure to meet the requirements set forth in sections **F**, **G**, and **H** above may result in those issues being referred to a Special Master pursuant to Code of Civil Procedure section 639. Any costs relating to proceedings before the Special Master will be borne by one or both of the parties as ordered by the Court.

J. Valuation of Vehicles. Current *Kelley Blue Book* values, whether obtained from the current printed book or from the *Kelley Blue Book* on-line service (www.kbb.com), for all vehicles will be accepted into evidence without further foundation. There will be a rebuttable presumption that the value of the vehicle in question is midway between the "wholesale" and "retail" values, or the on-line "trade-in" and "retail" values, with appropriate adjustments for extras and mileage. Copies of the relevant *Kelley Blue Book* information for all vehicles whose value is in issue must be attached to both parties' settlement briefs.

K. Trial Setting When Case Does Not Settle. If a case does not settle then the settlement judge and counsel for each party, or the parties if unrepresented, must complete, execute and return the Family Law Settlement Conference At Issue Form (SDSC D-116 - Appendix F) to the clerk of the department managing the settlement calendar prior to adjourning the settlement conference. The parties will then be directed to the assigned judge for trial setting.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 3
EX PARTE MATTERS

Ex Parte Requests are intended for Emergency Relief Only

Rule 5.3.1

Time for Ex Parte Matters

Ex parte matters will be heard in all Divisions, including the Family Support Division and Madge Bradley Building, beginning at 8:30 a.m., on Monday through Friday.

Ex parte matters may be also heard on Wednesday afternoon beginning at 1:30 p.m. in the Central and South County Divisions. The North County, East County and Family Support Divisions also hear ex parte matters beginning at 1:30 p.m., on Monday through Friday.

Additional ex parte hours may be set by the judicial officers of each Division with the concurrence of the Supervising Judge of the family Law Courts. Notice of such additional ex parte hours will be posted in each of the Divisions of the Court.

A judicial officer of any Division of the Family Court may hear an emergency ex parte request at any time that the business of the Court permits during its normal business hours.

Ex parte request will generally be heard and determined in open court and on the record except when, in the discretion of the judicial officer, such hearing would more properly be held in a semi-private setting and off the record.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.2

Notice to Opposing Counsel

Except as provided in Family Code section 6300, a party requesting an ex parte hearing must notify the opposing counsel or party, including the Department of Child Support Services if appropriate, by no later than 10:00 a.m. on the previous court day. "Notice" of an ex parte appearance given by facsimile ("FAX") machine DOES NOT constitute notice under these rules unless this method of notice has been previously agreed upon by and between counsel or the unrepresented litigants. "Notice" of an ex parte

appearance given by message left on a voice mail machine DOES constitute notice under these rules.

The requesting counsel or party must provide a Declaration of Notice to the Court at the time of the ex parte appearance. The Declaration of Notice must include, *under penalty of perjury*, the details of how and to whom notice of the date, time and place of the ex parte hearing and a description of the relief to be requested was given, or a complete description of the good faith effort to provide such notice.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.3

Exceptions to the Notice Requirement

Except as provided in Family Code section 6300, if the moving party alleges that notification may negate the benefit of the requested relief, or explains why notice could not be given, ex parte relief may be granted without the required notice. The Declaration re Notice must set forth the factual basis upon which such claim is based. The parties may stipulate that notice is unnecessary.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.4

Application for an Ex Parte Appearance

A case number must be issued before an application for an ex parte order may be made, including a request for a temporary restraining order, provisional remedy or any other emergency relief.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.5

Requesting the Court File Before an Ex Parte Appearance

When ex parte notice is given, counsel must request that the Court file be made available to the judicial officer assigned to hear the ex parte matter. The telephone numbers for requesting the case file are: Central Division (619) 557-2073 or 557-2074; East County (619) 441-6770; South County (619) 691-4600; North County (760) 726-9595; and Family Support Division (For Department of Child Support Services matters) (619) 515-8849.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.6

Order of Hearing Ex Parte Matters

Judicial officers will hear ex parte matters in an order which will facilitate the matter for the Court and counsel and so as not to significantly interfere with the Cour's normal calendar. Any opposed ex parte request which cannot be heard prior to the Court's normal calendar may be added to the calendar and heard in due course.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.7

Meet and Confer

If an ex parte request is contested, both sides must meet and confer on the issue(s) in dispute. The meet and confer conference must occur in a way that will ensure that all issues and positions of the parties have been discussed before appearing before the Court. Failure to comply with this rule may result in sanctions, including denial of the ex parte request.
(Adopted effective1/1/2005; Renumbered 1/1/2006)

Rule 5.3.8

Ex Parte Application Form

The requesting party must completely fill out the pre-printed NCR ex parte application form (SDSC D-46). If the opposing party is present, the requesting party must personally serve the opposing party with the ex parte application form. The completed form must be presented to the judicial officer or the bailiff of the Court prior to the ex parte hearing.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.9

Evidentiary Declarations

The judicial officer will only consider ex parte requests that are supported by written evidentiary declarations that have been signed by the declarant under penalty of perjury. The ex parte declaration(s) must describe why this request cannot be heard on the Court's regular motion calendar. The ex parte declaration(s) must be filed with the Court and made a part of the Court's file. If the facts shown in the evidentiary declaration(s) do not justify the ex parte request, it will not be granted. A requesting party cannot verbally correct declarations at the ex parte hearing.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.10

Exceptions to Notice, Application and Evidentiary Requirements

A. Requests for the following types of ex parte relief do not require notice to opposing counsel, an Ex Parte Application, or evidentiary declarations:

1. Signature of an order or judgment which opposing counsel has approved or agreed not to oppose;

2. Signature of an order or judgment after a default proceeding;

3. Wage and earning assignment order (See rule 5.3.15);

4. Restoration of former name after judgment;

5. Order for publication or posting; and,

6. Order shortening time to depose Respondent within twenty days of service of summons.

B. The business office at each division has a drop box where these ex parte requests may be deposited for processing. An attorney service slip or stamped return envelope should be included if conformed copies are requested.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.11

Proposed Order Required

The requesting party must give the judicial officer a proposed order at the time of the hearing. If the proposed order is not signed, the judicial officer will write the words "NOT SIGNED" on the signature line of the proposed order. The original unsigned proposed order will be placed in the Court file.

If the opposing counsel is present, the requesting party must personally serve counsel with a copy of the proposed order. If the proposed order is contained in the Ex Parte Application form (SDSC D-46), the requesting party shall file the original with the Court clerk and serve a copy on opposing counsel.

If the opposing counsel is not present, the requesting party shall serve counsel with a copy of the ex parte application form, evidentiary declarations and the proposed order, or final order if one is signed, by mail within 24 hours of the ex parte hearing.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.12

Ex Parte Motions Re Order Shortening Time for Hearing and Taking of Deposition

When requesting an order shortening time for hearing and/or taking deposition, the supporting evidentiary declaration(s) must set forth the necessity for the order shortening time. For good cause shown, time for service may be shortened up to two court days before the hearing date and to 5 calendar days before the taking of a deposition.

Upon a proper supporting declaration, the business office in each Division may routinely grant an order shortening time for Respondent's deposition to a date that is within 20 calendar days after service of the Summons on the Respondent, pursuant to Code of Civil Procedure section 2025, subdivision (b)(2). Attorneys requesting an order shortening time for the taking of a deposition must submit the following supporting declaration with their request:

"I am an attorney at law duly licensed to practice in the State of California and the attorney for the Petitioner herein. For me to properly prepare for the order to show cause which is being filed at this time, I must depose the Respondent. I request that the Court shorten time so that Respondent may be deposed on [enter date]."
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.13

Ex Parte Motions Re Custody and Visitation

Pursuant to Family Code section 3061, an order regarding custody stipulated to by counsel may be signed by a judicial officer only when a copy of the custody agreement signed by the parties and counsel or an appropriate declaration is attached to the Petition.

Pursuant to Family Code section 3064, other than stipulated orders, ex parte orders regarding child custody and visitation will be granted only upon a clear showing of immediate harm to the child or immediate risk that the child will be removed from the State of California.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.14

Ex Parte Requests Regarding Vacation and/or Holiday Schedules

Ex parte requests to change a child's vacation or to request a change to the holiday visitation schedule, or the school that the child attends, are disfavored. Requests for such changes should be presented on a regular motion calendar. A judicial officer may grant an order shortening time for such hearing.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.3.15

Ex Parte Motions Re Earnings Assignment Orders

Pursuant to Family Code section 5230, unless the order provides otherwise, all support orders made on or after July 1, 1990 are deemed payable by wage assignment. Earnings assignment orders may be granted ex parte for support orders made on or after July 1, 1990 by submitting the assignment order separately or with the underlying support order or judgment. Notice to the opposing counsel or party is not required.

Earnings assignment orders may be granted ex parte, pursuant to Family Code section 5252, for support orders made before July 1, 1990 by submitting an "Ex Parte Application for Earnings Assignment Order" (FL-430). An "Order/Notice to Withhold Income" (FL-195) for child support must be included. Spousal support may be included with this form. If only spousal support is ordered, then the "Earnings Assignment Order For Spousal Support" (FL-435) must be included. Notice to opposing counsel or party is not required.

Ex parte assignment orders for arrearages accrued under any support order may be requested by completing a declaration, signed under penalty of perjury, setting forth the month to month accrual of amounts paid and amounts unpaid. Ex parte assignment orders for arrearages are granted without prejudice to subsequent attack by a motion to quash.

Attorneys' fees will not be granted ex parte for assignment orders. Fees incurred to obtain an assignment order for arrearages may be requested by a noticed motion set on a regular motion calendar.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 4
TEMPORARY RESTRAINING ORDERS (TRO's)

Rule 5.4.1

Appropriate Forms and Filing with the Sheriff

When seeking a TRO pending a court hearing, the current forms adopted by the Judicial Council must be used. In all cases, including cases which are not filed under the Domestic Violence Protection Act, parties seeking personal conduct, stay away or residence exclusion orders must file an Order to Show Cause and Temporary Restraining Order and an Application and Declaration for Order (Domestic Violence). If custody or visitation orders are requested, parties must also file a Child Custody, Visitation and Support Request attachment to Request for Order and a Child Custody and Visitation Order attachment.

In non-domestic violence cases where orders other than custody and personal conduct, stay away or residence exclusion are requested, parties must file an Order to Show Cause, an Application for Order and Supporting Declaration, and Temporary Orders. In non-domestic violence cases the party must prepare a declaration on a separate sheet and attach it to the Application. Supporting allegations in the declaration must refer to the same number as the order it supports on the temporary order form.

The court will deliver a copy of the protective restraining order to the Sheriff for entry into the Department of Justice's computer system (CLETS). To be enforceable by a law enforcement agency, the protected person must give a conformed, certified copy of the restraining order to the Office of the San Diego County Sheriff for service.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.4.2

Residence Exclusion Orders

An ex parte order pursuant to Family Code section 6321 (residence exclusion or "kick-out" order) requiring a party to vacate the family home must be signed by a judicial officer only. Such orders must be issued only upon a showing, by declaration, of ALL the following:

- That the party who will stay in the dwelling has a right under color of law to possession of the premises;

- That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party; and

- That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

If the foregoing guidelines preclude the issuance of an ex parte residence exclusion order, counsel may request an order shortening time for hearing and service.

If a residence exclusion order is granted, a separate removal order (Order For Removal From residence, SDSC D-72) directing the Sheriff to assist in the removal must be prepared and submitted to the Court for signature. Two certified copies of the removal order are required by the Sheriff.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.4.3

Personal Conduct Orders

An ex parte order pursuant to Family Code section 6320 restraining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Penal Code section 653m, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the Court, on a showing of good cause, of other named family or household members, must be signed by a judicial officer only. Such orders will be issued only upon a showing, by declaration, that abuse or physical violence has occurred or there is a threat of imminent abuse or physical violence. This showing must included a DETAILED description of EACH episode of alleged abuse or physical violence, the date(s) of the episode(s), and of the other party's disposition toward violence, intoxication or use of drugs. Where the person sought to be restrained is a non-custodial parent, the appropriate box on the temporary order form must be checked. The Court may not issue a mutual order enjoining the parties from specific acts of abuse (a) unless both parties personally appear and each party presents written evidence of abuse or domestic violence and (b) the Court makes detailed finding of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense. (Family Code section 6305.)
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.4.4

Custody and Visitation Orders

Restraining orders regarding custody and visitation must be signed by a judicial officer only. A stipulated order regarding custody may be signed where a copy of the custody agreement or appropriate declaration is attached to the petition. (Family Code section 3061.) Pursuant to Family Code section 3064, ex parte orders regarding custody and visitation will only be granted upon a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. A motion requesting a change in a child's summer or holiday vacation schedule, or the school that the child attends, must be presented sufficiently in advance to allow the Court to obtain any necessary information.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.4.5

Restraint of Accounts

The Court will not grant a temporary restraining order to enjoin the removal of funds or securities from financial institutions or securities firms unless there is notice to the opposing side or a declaration stating facts which show a clear danger of the dissipation of funds. These orders shall be issued by a judicial officer only.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.4.6

Restraining Orders Issued by the Clerk in Non-Domestic Violence Cases

The business office has been authorized to issue certain TRO's in cases that are not filed under the Domestic Violence Protection Act. The clerk's duties are strictly ministerial. Parties may avoid an ex parte appearance before a judicial officer by complying precisely with these rules. While declarations containing the language indicated below will enable the clerk to issue these particular orders, the same declaration may be insufficient evidence at a subsequent opposed hearing to warrant extending the orders. Parties may still need to provide a detailed declaration containing specific factual allegations before the opposed hearing. Requests for any orders on the temporary order form which are not listed below must be presented to a judicial officer. The orders which the Business Office may issue are:

A. Property Restraint

The orders listed in section 5 of the temporary order form are already contained in the Family Law Summons and take effect for the Petitioner upon the filing of the Petition, and for the Respondent upon service of summons. Nevertheless, the clerk may issue a mutual order listed in section 5 of the temporary order form without a declaration.

B. Property Control

The clerk may issue an order listed in section 6a of the temporary order form only if the order is limited to a specific motor vehicle. The declaration must state "(Petitioner/Respondent) has regularly been the primary driver of the (year/make). The other party has regularly been the driver of another, currently-operating motor vehicle, namely the (year/make). The other party has possession of the keys to that vehicle."

C. Minor Children

The order listed in section 7a(1) of the temporary order form restraining a party from removing any minor children of the parties from the State of California is already contained in the Family Law Summons. The clerk may issue an order listed in section 7a(1) of the temporary order form without a declaration.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.4.7

Continuances

Only the Court may issue the TRO or continue the hearing on a domestic violence restraining order. TRO's will not remain in effect during the continuance, absent a stipulation or court order. The moving party must obtain a "half slip" from the Court and provide it to the Sheriff's Office.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 5
ORDERS TO SHOW CAUSE/ LAW & MOTION RULES

Rule 5.5.1

Time for Service and Filing of Papers

Absent an order shortening time, all moving, opposing, and reply papers, as well as orders to show cause, must be filed and served in compliance with Code of Civil Procedure section 1005, subdivision (b). If an FCS appointment has been set, all moving papers must be served at least 10 calendar days prior to the FCS date. Conformed copies of all papers must also be provided to the opposing party or their counsel prior to the hearing.

Supplemental declarations serve a valid purpose in Family Law matters, particularly where relevant evidence has been obtained through discovery subsequent to the filing of the original moving papers. In recognition of this fact, supplemental declarations, if any, must be filed and personally served by either party up to 5 court days before the hearing. Responses to supplemental declarations must be filed and personally served before 10:00 a.m., 2 court days before the hearing. If the supplemental declaration or responses are served by mail, the required time for service is increased by 5

calendar days. No reply declarations are permitted except as set forth below.

If a party personally serves supplemental declarations at least 10 court days before the hearing, then responses to the supplemental declarations must be filed and personally served at least 5 court days before the hearing. Replies to responding declarations must be filed and personally served by 10:00 a.m., 2 court days before the hearing.

The Court may decline to consider any supplemental declarations which are not timely served or do not appear to be the result of newly discovered evidence or facts which were not available when the original pleadings were filed, or where the supplemental pleadings were filed late to gain a tactical advantage.

In cases where a temporary restraining order or a protective order has been issued under either Family Code sections 240, 2040 (children, property and insurance), 4620 (disposable property), 6320 (Domestic Violence Prevention Act), or 7710 (Uniform Parentage Act), filing and service of the moving and supporting papers must be in compliance with Family Code sections 242 and 243.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.5.2

Form of Papers Presented For Filing

All papers presented for filing must comply with the California Rules of Court, Rule 201. After the initial filing, all pleadings must bear the case number and the name of the judicial officer to whom the case has been assigned. The date, time and department where the matter is to be heard must also be designated on the first page underneath the case number and nature of the paper.

Memoranda of points and authorities must comply with the California Rules of Court, Rule 313, and must be separate from declarations. Declarations must not contain points and authorities.

Exhibits filed or lodged by Petitioner/Plaintiff must be numbered consecutively for each hearing beginning with Number 1. Exhibits filed or lodged by Respondent/Defendant must be lettered consecutively for each hearing beginning with Letter A.

Machine-produced copies of any Judicial Council forms may be submitted as originals provided they are identical in clarity and quality. Forms not meeting California Rules of Court, Rule 201.1 may be rejected. Current adopted Judicial Council forms must be used where appropriate.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.5.3

Exhibits - Lodgments and highlighting

Exhibits accompanying a Motion or Order to Show Cause which exceed 10 pages must be lodged rather than filed with the Court. The provisions of the California Rules of Court, rules 316 and 319, apply. The evidentiary foundation for the exhibits must be set forth in the appropriate declarations filed with the Court. A notice of lodgment listing the documents must be filed and served on all parties, and a copy must be submitted with lodged material. Documents lodged with the Court must be tabbed or paginated to correlate to the notice of lodgment. Each document, particularly deposition testimony, must be marked in a manner that calls attention to the relevant portion(s) of the document or testimony.

Lodged documents will be stamped "received" by the Court. Following the return of the lodged documents by the Court, the party lodging them must retain them until the applicable appeal period has expired. Due to limitations of storage space, counsel may not lodge exhibits more than five court days prior to hearing, except by court order.

The clerk is authorized to refuse to accept lodged documents if a self-addressed envelope with sufficient postage for mailing or an attorney service pick-up slip is not submitted with them. If the clerk is persuaded to accept the documents despite non-compliance with the above, the risk of loss is on the party or his/her counsel and it is solely the responsibility of the party or his/her counsel to arrange for retrieval of the material at counsel's expense within 5 court days of the date of the hearing. Papers not retrieved within 5 court days may be discarded without further notice.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.5.4

Fee Waivers

Applications and orders for waivers of court costs and fees must be in the current form prescribed by the Judicial Council.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.5.5

Family Court Services Initial Screening Form

When filing an Order to Show Cause regarding custody or visitation, whether disputed or not, the moving party must also file a Family Court Services Screening Form (SDSC FCS-46).
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.5.6

Income and Expense Declarations

A current Income and Expense Declaration with verification of income pursuant to Rule 5.6.3 must be filed and served with the moving papers for any hearing involving financial issues, such as support, attorney's fees and costs. (See Chapter 6 for details.) Failure to comply with this rule may subject the party and/or their attorney to sanctions pursuant to Code of Civil Procedure section 575.2.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.5.7

Pleadings Not Timely Served

If a party objects to a pleading as not being timely served, the Court may, in its discretion, refuse to consider the pleading or, for good cause shown, continue the hearing. The Court may, in its discretion, consider an Income and Expense Declaration not served in conformity with these rules.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.5.8

Companion Matters

A companion matter is a matter which addresses only those issues reasonably related to the issues raised by the calendared OSC or motion. A companion matter need not be served and filed as set forth in Rule 5.5.1. An order shortening time for hearing is not required to join a companion matter with another currently calendared matter. The companion matter must be filed and personally served by 10:00 a.m., five court days before the original hearing A response to a companion matter must be filed and personally served by 10:00 a.m., 2 court days before the hearing. No written replies are permitted.

Requests for attorneys' fees and standard restraining orders may be addressed in the responsive declaration without filing a companion matter. The same is true for affirmative relief regarding modification of support, custody or visitation when the moving papers seek modification of support, custody or visitation.

Absent prior court order, an Order to Show Cause re Contempt may not be filed as a companion matter and must be heard on a date before any other pending motions involving the same or similar subject matter. However, a request to determine arrears and/or for attorneys' fees and costs may be filed as a companion matter to an Order to Show Cause re Contempt for Failure to Pay Support.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.5.9

Reissuing Orders to Show Cause

Except as provided to the contrary in Family Code section 3062, orders to show cause not timely served may be "reissued" by the clerk, provided the original matter was filed less than 30 days before re-issuance is requested and the applicant files a completed form, "Application and Order for Reissuance of Order To Show Cause" (FL-306). A reissuance filed more than 30 days after the original filing requires a judicial officer's signature.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.5.10

Post Judgment Service of Process

Post judgment motions must be served pursuant to Family Code section 215. Service of post judgment motions on the responding party's attorney is insufficient.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.5.11

Hearings On Orders to Show Cause and Noticed Motions

A. Calendaring. The hearing dates for Order to Show Cause (OSC) matters and noticed motions are not available from the business office by telephone. However, the business office will advise as to the approximate setting dates. Preferred dates for hearings may be indicated to the business office on the messenger slip or by other writing addressed to the clerk. The writing should be attached to the accompanying pleadings. When temporary restraining orders (TRO's) are granted pending a hearing, the business office must calendar the hearing within 25 calendar days of the date of the order. Hearing dates for OSC's and noticed motions without TRO's will be set in the future to allow for proper notice. If no TRO's are requested and mediation at Family Court Services (FCS) is needed, the hearing should be set at least 10 court days after the FCS appointment. If TRO's are granted and mediation at FCS is needed, the hearing date must still be scheduled within 25 calendar days of the date of the order. However, the custody and visitation aspects of the hearing will normally be continued if an FCS appointment is not available at least 10 court days before the hearing.

B. Morning and Afternoon Calendars. At the Central Division, OSC's and noticed motions are generally heard Monday, Tuesday and Wednesday mornings and Monday and Tuesday afternoons. The morning calendar is limited to short cause matters (those which take no more than 20 minutes of court time including time for the Court to review the file and time for argument). All contempt matters, longer OSC's and noticed motions (those with time estimates of more than 20 minutes but less than 40 minutes) are generally set on the afternoon calendar. When counsel is aware that a matter will take more than 20 minutes but less than 40 minutes, counsel must request an afternoon setting. Matters which require more than 40 minutes must be specially set by the Court.

In North County, short cause matters (those which take no more than 20 minutes of court time including time for the Court to review the file and time for argument) are generally heard Monday, Tuesday and Wednesday, mornings and afternoons. Long cause matters (those which take more than 20 minutes but less than 3 hours of court time including

time for the Court to review the file and time for argument) are generally heard on Thursday and Friday, mornings and afternoons. Domestic violence and contempt matters are heard on Wednesday afternoon.

In East County, short cause matters (those which take no more than 20 minutes of court time including time for the Court to review the file and time for argument), including contempt matters, are generally heard on Tuesday and Thursday, mornings and afternoons. Long cause matters (those which require more than 20 but no more than 40 minutes of Court time to review the file and time for argument) are heard on Tuesday and Thursday afternoons. Long cause matters requiring more than 40 minutes of Court time are specifically set by the Court.

In South County, short cause matters (those which take no more than 20 minutes of court time including time for the Court to review the file and time for argument), including contempt matters, are generally heard Monday through Thursday mornings and Monday through Wednesday afternoons. Long cause matters (those which take more than 20 minutes of court time) are generally heard on Thursday afternoons.

The above schedules may be modified at the Court's discretion.

C. Continuances. Stipulated continuances of a noticed motion or an OSC (except contempt and domestic violence matters) will be routinely granted by telephone or in open court. The stipulated continuance may be made to any available court date and time. The request may be made by either counsel.

No more than three continuances will be granted without court order and for good cause shown. If a case is not ready to proceed to hearing on the date established as a result of the third continuance, the Court will, absent good cause shown, take the matter off calendar. Upon a matter being taken off calendar as provided above, the Court may also reserve jurisdiction to reset the matter for hearing upon ex parte application by the moving party. The court may also reserve jurisdiction to issue the requested relief retroactive to the date the initial motion was filed upon a showing of good cause. At the time of the ex parte application, the moving party will submit suggested dates to the Court on which the matter will be ready to proceed to hearing. Once reset, and except for emergencies, a hearing will only be continued for good cause shown by ex parte order obtained before the date of the reset hearing.

Only the Court may issue the TRO or continue the hearing on a domestic violence restraining order. TRO's will not remain in effect during the continuance, absent a stipulation or court order. The moving party must obtain a "half slip" from the Court and provide it to the Sheriff's Office.

Continuances of OSC's re contempt must be requested in open court, with the citee present, or obtained by written stipulation including a signed consent by the citee to the continuance and a waiver of time to hear the contempt. The stipulation must be filed with the Court at or before the time set for the original hearing. If the citee does not appear, upon request, a bench warrant will normally be issued and held until the new date to retain jurisdiction.

Stipulated telephone continuances may be directed to the Family Law calendar clerk for the department until 3:30 p.m. the Court day before the scheduled hearing. On the day of the hearing, stipulated continuances may be obtained from the Court clerk in the department before the calendar call. The Court may also grant stipulated continuances at the time of the calendar call.

If custody or visitation are at issue and the Family Court Services or private mediator's report is not available at least 10 court days before the hearing, the Court will normally grant a continuance upon request of a party who has been prejudiced by the inability to review the report sufficiently in advance of the hearing.

D. Calendar Calls. Generally, the morning calendar is called at 9:00 a.m. and the afternoon calendar is called at 1:45 p.m. These times may be changed by the supervising judge, and notice thereof will be published in the legal newspapers in the county and posted in the affected courthouses.

The Court will attempt to accommodate counsels' calendar conflicts upon reasonable request. Requests for calendar priority should be made at the calendar call.

All matters unanswered by 10:00 a.m. on the morning calendar or 3:00 p.m. on the afternoon calendar may be taken off calendar unless counsel have previously informed the Court of the reason that they will not be present at the calendar call, and, if engaged elsewhere, of where they are actually appearing. Counsel unable to appear at the calendar call must give notice of that fact to opposing counsel at the earliest reasonable time.

At the time the calendar is called, it is the duty of counsel to give the Court accurate time estimates for the presentation of the entire matter. Failure to do so may result in the hearing being interrupted, continued or ultimately concluded at the end of the calendar. Counsel should meet and confer before presentation of the case to determine which issues are settled, which issues are to be presented to the Court as contested and the total time estimate for their presentation.

E. Manner of Presentation. Counsel must present OSC's and motions in the following order:

1. Announce appearance;

2. Clearly state ALL contested issues;

3. Recite any stipulated matters for the approval of opposing counsel, the parties and the Court; and

4. Briefly present argument on each contested issue including a recommended resolution.

Counsel may not interrupt the opposing side's presentation, other than with valid evidentiary objections and must direct all remarks to the court. Once the court has rendered its decision, counsel must not attempt to reargue the case. It is, however, acceptable to inquire of the Court in order to clarify a ruling or correct a mistake.

F. Chambers Conferences. Chambers conferences may be held at the discretion of the judicial officer in each department. The purpose of a chambers conference is solely to discuss matters with the Court which should not be set forth on the record in open court. These conferences will usually not be held until after the conclusion of other matters ready to be heard in open court. Chambers conferences may not be used to rehearse OSC and motion presentations.

G. Stipulation Forms. Long and short stipulation forms are available in all Family Law departments. The Court encourages the use of these forms in lieu of oral stipulations. After the form is completed, counsel should give the form to the clerk for immediate filing and distribution. Use of the stipulation forms will eliminate the need for the filing of a subsequent order. If counsel desires, however, a typed formal order may be prepared and filed after filing the stipulation form.

H. Limitations on Evidence/Oral Testimony. It is the policy of this court to consider only the papers filed with the court when granting or denying applications for orders. Factual arguments must be limited to evidence, and/or reasonable inferences drawn therefrom, which are contained in declarations filed with the Court and signed under penalty of perjury. Except for contempt citations, oral testimony will generally not be received. In contempt hearings, the charging declaration, subject to evidentiary objections, may be received in evidence, provided the declarant is present in court and available for cross-examination. Other than an OSC re contempt, if any party wishes to present oral testimony, written declarations must still be filed in a timely manner. Written notice of the intent to present oral testimony must be served on the opposing party at least five court days before the scheduled hearing. The notice must state the name of the intended witnesses and the subject matter of the witnesses' testimony.

The written declarations must be the direct testimony of the declarant. Oral testimony must be limited to hostile third party witnesses or cross-examination on the contents of the written declarations and/or reasonable inferences drawn therefrom. Oral testimony may also include re-direct and rebuttal, if necessary. If the intended oral testimony will be cross-examination of the opposing party, a third party who submitted a written declaration on behalf of the opposing party, or a court-appointed expert witness, the party who wishes to conduct the cross-examination must set forth in a written declaration the reasons for requesting cross-examination, and that declaration must accompany the notice of intent to present oral testimony.

Failure to give the required notice will generally result in a denial of the request for oral testimony. Even if such notice is given, the taking of oral testimony will be left solely to the discretion of the Court.

I. Awards of Attorneys' Fees and Costs. If liquid community assets exist, an award of attorneys' fees and costs will generally be made from this source. If no liquid community assets exist, the Court will generally award attorneys' fees plus costs to a party who is unable to bear the party's fees and costs. The Court will require the repayment of a retainer where the party awarded attorneys' fees was compelled to borrow money to pay the retainer, and the community or the paying party has the ability to repay the loan. If attorneys' fees and costs are awarded on a monthly installment basis, the standard acceleration provisions upon default will apply such that if any two payments are missed, the entire balance will immediately accelerate and become all due and payable.

When awarding attorneys' fees in support enforcement actions, including contempt matters, the Court will be governed by Family Code section 3557.

J. Calendar Management. Some Family Law motions and orders to show cause involve unusually complex issues of law and fact. This rule is intended to ensure that the Court has adequate time to review lengthy papers and/or consider complex issues or factual situations before a scheduled hearing and to allow hearings to proceed without undue delay. In all cases, the Court reads all relevant pleadings before rendering its decision either by reading them prior to hearing, at the time of hearing, or by taking the matter under submission. In the interest of expediting hearings on complex issues of fact or law, counsel may request that the court “pre-read” specific documents in the Court file by notifying the department’s calendar clerk and all parties no later than 12:00 p.m. two court days before the hearing. The pre-read request must identify all relevant documents filed by both sides. If the pre-read request identifies more than 8 documents, counsel must make arrangements with the calendar clerk for counsel or counsel's representative to place yellow tags on the documents to be read. The Court will also accept lodged copies of the identified documents in lieu of tagging the documents. If opposing counsel objects to the request for the pre-read, opposing counsel

must notify the calendar clerk for the department of the specific objection. However, this will not prevent the pre-read unless the objection clearly demonstrates the prejudice which will result from the requested pre-read.

K. Extra Copies of Pleadings. Counsel must bring an extra set of all relevant pleadings to the hearing. Due to last-minute filings and the volume of business, it is not uncommon for the Court file to be incomplete.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 6
DECLARATIONS OF DISCLOSURE, INCOME & EXPENSE DECLARATIONS AND TAX RETURNS

Rule 5.6.1

Declarations Of Disclosure

All preliminary Declarations of Disclosure ("DOD") must be prepared and served in compliance with Family Code sections 2103 and 2104.

All final DOD's must be prepared and served in compliance with Family Code section 2105 unless waived in compliance with Family Code section 2105, subdivision (d) or Family Code section 2110.

Pursuant to Family Code section 2106, except as provided in subdivision (d) of Family Code section 2105 or in Family Code section 2110, absent good cause, no judgment with respect to the parties' property rights will be entered without each party executing and serving their final DOD and filing a Proof of Service of the DOD. "Good cause" can only be established by a declaration, signed under penalty of perjury, stating sufficient supporting facts.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.6.2

Income and Expense Declarations

A current Income and Expense Declaration, and verification of income pursuant to Rule 5.6.3, must be filed *with the moving papers* for any hearing involving financial issues, such as support, attorney's fees and costs. An Income and Expense Declaration is current if it is executed within 90 days of the hearing. Supplemental, updated or responsive Income and Expense Declarations must be served at least five court days before the hearing.

The Income and Expense Declaration must be printed on green paper and all portions of the form must be completed. The gross income of a co-habitee or new spouse must be set forth as provided on the Income and Expense Declaration and all cash, funds on deposit, stocks, bonds and other easily sold assets must be fully disclosed.

When attorney's fees or costs are requested the Court requires actual amounts be entered on the lines "Cash and checking accounts, savings, credit union, money market, and other deposit accounts", "Stocks, bonds and other assets you can easily sell" and "All other property real or personal (estimate fair market value minus the loans and debts you owe)". The attorney's fees paid to date must be completed and must include all monies held in trust by the attorney for fees and costs. The fees owed to date provision must not include fees that have been paid. Insertion of the word "unknown" does not constitute compliance with this rule.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.6.3

Attachments to Income and Expense Declaration

To verify current income, parties must serve copies of the following documents with their Income and Expense Declaration. Documents that are required by this rule to be served with the Income and Expense Declaration may be lodged with the Court at the time of the hearing.

For Salaried Employees: The prior calendar year's W-2 and the last two months pay stubs showing all forms of year-to-date earned income.

For self-employed individuals, including independent contractors: A schedule reflecting all compensation received by that party year-to-date; the last filed IRS 1040 Schedule C or C-EZ; the prior calendar year's and the most recent profit-and-loss statement or other documents which reflect the prior year, year-to-date and prior month's income.

For employees who are shareholders in a closely-held corporation: The prior calendar year's W-2; the three most recent pay stubs; the prior year's IRS K-1; the last filed IRS Schedule E (Part II); the prior year's and the most recent profit-and-loss statement or other documents which reflect the prior year, year-to-date income and prior month's income.

For partnership income: A schedule reflecting all compensation received by that party year-to-date, the prior year's IRS K-1; and the last filed IRS Schedule E (Part II); the prior calendar year's and the most recent profit-and-loss statement or other documents which reflect the prior year, year-to-date income and prior month's income.

For rental income: The last filed IRS Schedule E (Part I); copies of statements, summaries or other documents reflecting all rental receipts, deposits, disbursements and expenses for the prior calendar year, for all periods year-to-date and for the last month.

For dividend income, interest income or other unearned income: The prior calendar year's IRS 1099's; the last filed IRS Schedule B; a copy of all documentation evidencing all funds on deposit, shares of stock, bonds, or other income-producing assets owned by that party, and the rate of return

currently being paid thereon; and, any income derived therefrom during the prior calendar year, year-to-date and in the prior month.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.6.4

Disclosure of Income Tax Returns

When child, family or spousal support is requested, a party may require the opposing party to provide income tax returns pursuant to Family Code section 3552. A request for tax returns must be made no later than 10:00 a.m., 5 court days before the hearing. The tax returns including all Schedules, W-2's, 1099's and K-1's must be provided to opposing counsel on the earlier of 5 court days after the request or 10:00 a.m. 2 court days before the hearing.

Tax returns served pursuant to this rule must not be filed with the Court except as provided in Family Code section 3552.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.6.5

Privileges Retained

The above rules concerning attachments to Income and Expense Declarations and production of income tax documents are subject to any and all privileges held by a party or any third party whose privilege for non-disclosure would be violated by a party complying with these rules.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 7
SHORT CAUSE TRIALS

Rule 5.7.1

Short Cause Trials

A. Time Limit

Short cause trials may not exceed 3 hours including time for the judge to review the file, read the trial briefs, conduct chambers conferences and issue a ruling. Cases that exceed the 3-hour time limit may result in a mistrial and be set for a Case Management Conference at which time the matter will be set for a long cause trial.

B. Calendaring

Generally, short cause trials are heard Fridays in the Central Division; Fridays mornings in South County; Mondays in East County; and Thursdays and Fridays in North County. See Chapter 9, Rules 5.55 and 5.58 for additional rules governing short cause trials in the FSD Division.

No more than 3 continuances will be granted without court order and for good cause shown. If a case is not ready to proceed on the trial date and a third continuance has already been granted, absent good cause shown, the Court will take the matter off calendar. When taking a matter off calendar in these circumstances, the Court will reserve jurisdiction to reset the matter for trial upon ex parte application.

C. Temporary Judges

Occasionally, temporary judges will be available to hear short cause cases when the assigned judicial officer is absent. These temporary judges will be experienced Family Law attorneys who have been approved by the Supervising Judge of the Family Law Court. If a case is assigned to a temporary judge, the parties will be asked by the clerk in the assigned trial department to sign a stipulation consenting to that temporary judge. If consent to a temporary judge is not obtained, the case shall be referred to the Supervising Judge of the Family Law Court for assignment that day to an available judicial officer or continuance to a convenient date on the originally assigned judicial officer's calendar.

D. Custody and/or Visitation Issues

If custody or visitation is in issue at the time of trial, the parties shall meet with Family Court Services before trial. This meeting shall be scheduled sufficiently in advance of trial to allow time for the counselor to prepare and file a recommendation at least 10 calendar days before the scheduled trial date.

E. Mandatory Short Cause Trial Statements

Counsel must prepare a short cause trial statement and, if financial matters are at issue, an current Income and Expense Declaration. Copies of these documents must be personally served on opposing counsel no later than 2:00 p.m., 2 court days before trial. The originals of the trial statement and a current Income and Expense Declaration must be filed with the clerk in the trial department by **3:00 p.m., 2** court days before trial. Every short cause trial statement must be in the form of **Appendix E**. No other format will be accepted for filing. Failure to timely serve and file the trial statement and current Income and Expense Declaration may subject the non-complying counsel to sanctions. This rule does not apply to "long" OSC's heard on the short cause trial calendar.

F. Legal Points and Authorities

When a case involves complex or novel points of law, a party may file a trial brief which includes legal points and authorities along with the mandatory trial statement.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 8
LONG CAUSE TRIALS

Rule 5.8.1

Long Cause Trials

A. Time Limit

A long cause trial is defined as any trial estimated as requiring more than three hours of court time.

B. Trial Setting

If a trial date was not set at the final Case Management Conference, and the case does not settle at the Mandatory Settlement Conference, the case will be referred to the assigned judge to set a trial date based on counsel's time estimate. Inaccurate time estimates may result in a mistrial and sanctions. Where necessitated by the Court's calendar, the assigned judge may make arrangements with the Supervising Judge of the Family Law Court to assign the case to another department for trial. If the Court is unable to hear the case on the trial date, it will trail the case and notify the parties as soon as possible when their matter can be heard.

C. Continuances

Trials may only be continued by the trial judge.

D. Trial Preparation

The rules governing trial preparation are set forth in **Appendix G**.

E. Trial Statements and Trial Briefs

Trial statements as set forth in **Appendix E** are required. If a case involves complex or novel facts or points of law, a trial brief including legal points and authorities may be submitted. Trial statements and trial briefs must be exchanged as set forth in **Appendix G**.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 9
FAMILY SUPPORT DIVISION MATTERS

Rule 5.9.1

Calendaring

Except as otherwise provided by law, all matters involving the Department of Child Support Services will be set and heard on the Family Support Division (FSD) Calendar. All Domestic matters involving parentage determinations or support issues where the Department of Child Support Services is involved, filed with the County of San Diego, will be heard on a Family Support Calendar unless the Department of Child Support Services has provided a written waiver. Written notice to the Department of Child Support Services is required in any proceeding where there has been previous Department of Child Support Services involvement or one or both of the parties are currently receiving, have received, or intend to apply for any form of public assistance unless not required per Family Code section 17404(e)(4). Such notice must be in accordance with Code of Civil Procedure section 1005(a) and served on the Department of Child Support Services at 220 West Broadway, Room 5003, San Diego, California 92101.

The Family Support Division Calendar is called at 9:00 a.m. and 1:45 p.m. Monday through Thursday - Special settings and short cause trials in the Downtown location are scheduled each Friday at 9:00 a.m. and 1:45 p.m.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.9.2

Orders

A. All orders involving the Department of Child Support Services will include the following provisions:

1. All payments must be made by wage assignment payable to the Department of Child Support Services.

2. The payor must make all payments directly to the Office of the Department of Child Support Services unless payments are fully collected by wage assignment;

3. The payor must provide the Department of Child Support Services with their date of birth, social security number, income, employer's name, employer's address and residential address;

4. The payor must notify the Department of Child Support Services in writing within 48 hours of any change of address, income or employment;

5. The payor must provide health insurance for the child in the action, if available at no or reasonable cost through their employment; and

6. The payor must provide documentation showing proof of health insurance coverage to the Department of Child Support Services within 48 hours.

B. All stipulations reached in matters involving the Department of Child Support Services must be reviewed and signed by a Department of Child Support Services attorney before being submitted to the Court. If the Department of Child Support Services does not sign the stipulation, one of the parties may place the issue before the Court on an ex parte basis.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.9.3

Custody/Visitation Matters

The parties may use the Department of Child Support Services' case number to litigate issues of custody and visitation provided there is a judgment granted in the case. Matters involving issues of custody/visitation are to be filed and heard in the Courts of proper venue, i.e. case numbers beginning with:

Case Designation:		To be heard at:
D - Central Division	–	1555 Sixth Avenue, San Diego, CA 92101
DN - North County	–	325 South Melrose, Vista, CA 92081

DE - East County – 250 East Main Street, El Cajon, CA 92020

DS - South County – 500 Third Avenue, Chula Vista, CA 91910

DF - Appropriate division depending on the residences of the children and parties.

When an order to show cause involving custody or visitation is filed in a case involving the Department of Child Support Services, the filing clerk in the appropriate venue is to provide hearing dates as follows:

1. Hearing Date for Family Court Services.

2. Court hearing date for the issues of custody/visitation.

3. Family Support Department hearing date. OSC's and motions involving custody or visitation must be served on all appropriate parties in accordance with Code of Civil Procedure section 1005, subdivision (b).

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.9.4

Conduct of Hearings & Trials

A. Trials and hearings on the FSD calendar are governed by the rules and readiness procedures as set forth below.

B. These rules apply only in the Family Support Division. For any trial/hearing set on the short cause calendar in FSD, all parties must comply with the following.

C. The Monday before the hearing date counsel/parties are ordered to meet and confer either in person or by telephone. Upon completion of the meet and confer, the Department of Child Support Services will provide a status report to the Court as to the following issues:

1. Issues resolved by stipulation;

2. Contested issues;

3. Time estimate;

4. Pre-read request due by 2:00 p.m. on Wednesday before the hearing date.

D. By 2:00 p.m. on the Wednesday before trial, counsel/parties must file in the trial department and exchange all documentation including but not limited to the following:

1. Any and all pleadings including but not limited to trail statement and trial briefs, which must include a list of issues, whether contested or uncontested;

2. Where support or fees are at issue, current Income and Expense Declarations including all required attachments pursuant to the local rule of court;

3. A list of proposed exhibits and copies of actual exhibits which are to be pre-marked prior to the trial date; and

4. A list designating non-party witnesses including the witness' name and the subject matter of each witness' testimony.

E. A mandatory trial statement for an FSD matter must include all relevant items listed in **Appendix E**.

ANY WITNESSES NOT DISCLOSED PURSUANT TO THESE RULES WILL NOT BE PERMITTED TO TESTIFY AT TRIAL. ANY EXHIBITS NOT EXCHANGED PURSUANT TO THESE RULES MAY NOT BE INTRODUCED AT TRIAL. THE ONLY EXCEPTIONS ARE TRUE IMPEACHMENT OR REBUTTAL WITNESSES OR EXHIBITS.

F. Should counsel/parties reach a full stipulation at any time prior to the trial date, the Department of Child Support Services must inform the Court immediately.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.9.5

Time for Ex Parte Matters

Ex Parte matters will be heard Monday through Friday from 8:30 a.m. to 8:55 a.m. and 1:30 p.m. to 1:45 p.m. All other requirements as set forth in Chapter 3 as to notice, meet and confer, and the preparation of an ex parte application form and proposed order apply.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 10
FAMILY COURT SERVICES

It is recommended that prior to filing an OSC/motion to address disputed issues of child custody or visitation that the parties enroll in a parent education class or participate in family therapy to gain an understanding of the negative impact conflict has on children.

Rule 5.10.1

Mediation Required

Before a hearing on any disputed issue of custody or visitation, the parties must participate in mediation either with a mediator at Family Court Services (FCS) of the Superior Court or a private mediator retained by the parties. However, the Court may make temporary custody and/or visitation orders pending the hearing. Unless otherwise stipulated by the parties or ordered by the Court, FCS mediation and private mediation in San Diego County is understood to be a non-confidential process which means that the information provided to the mediator

is not confidential and if the parties do not reach an agreement through mediation, the mediator will submit a recommendation to the Court with reasons for the recommendation. Upon a showing of good cause, the Court may order that the parties and their minor children undergo a psychological evaluation or custody evaluation to assist in addressing any disputed issue of custody or visitation.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.10.2

Private Mediation

The parties may stipulate to use a private mediator or the Court may order the use of a private mediator. Rules 5.10.3, and 5.10.4 E, F, G, H, I, J and K apply to the use of and recommendations of a private mediator. If the parties elect to participate in confidential private mediation and are unable to reach an agreement, the parties must participate in a non-confidential private mediation or schedule and participate in a meeting with FCS mediator before the matter is heard by the Court. The mediator will then prepare and submit recommendation with reasons for the recommendation to the Court before the custody hearing.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.10.3

Mediation at Family Court Services (FCS)

Except in cases where the parties stipulate or the Court orders private mediation, all disputed custody or visitation matters will be mediated at FCS.

A. Agreements Reached in Mediation. If the parties reach an agreement during mediation, the mediator will prepare a written agreement and it will be submitted to the parties and their attorneys before the custody hearing. If the parties and attorneys approve the agreement, they will submit the agreement to the Court for the Court's approval and adoption as an order.

B. Unresolved Issues in Mediation. If the parties are unable to resolve issues of custody or visitation through mediation, FCS mediator will submit a written recommendation with reason for the recommendation to the parties and their attorneys and the Court before the custody hearing. The Court will consider the recommendation at the time of the hearing. If the FCS or private mediation report is not available at least 10 court days before the hearing, the Court will normally grant a continuance upon request of a party who has been prejudiced by the inability to review the report sufficiently in advance of the hearing. Counsel has the right to cross-examine the mediator during the hearing.

C. Location of Family Court Services.

The locations and telephone numbers of Family Court Services are contained in **Appendix A**.

D. Initiating Family Court Service Mediation.

1. Custody/Visitation Hearing Pending. If a custody/visitation hearing is pending, the moving party must file a completed FCS Initial Screening form with the moving papers. The business office will assign both a hearing date and an FCS appointment and insert both dates on the custody/visitation moving papers. Both parties are required to attend and participate in the FCS appointment. If the moving papers contain no FCS appointment and the responding party determines that a custody or visitation dispute exists, th responding party will schedule the earliest possible FCS mediation appointment and promptly notify the moving party of the time, date and place.

2. No Custody/Visitation Hearing Pending (self-initiated mediation). If there is no custody/visitation hearing pending, a party may request an FCS appointment to address disputed issues of child custody or visitation by contacting FCS directly. The party scheduling the appointment is responsible for notifying the other party of the date, time and place of the appointment. This is a voluntary process and participation is not mandatory.

E. Unanticipated Issues Arising at Hearing. If unanticipated child custody or visitation issues are raised for the first time at a hearing, the Court may make a temporary custody/visitation order and may order the parties to participate in FCS mediation. However, the parties must meet with a FCS mediator before the Court will make final orders regarding a disputed custody/visitation issue.

F. Resolution of Dispute Before Mediation; Cancellation or Rescheduling of Appointment; Sanctions.

1. Cancellation. Parties and their attorneys are encouraged to try to resolve child custody/visitation disputes with the opposing party/attorney before the mediation appointment and the Court hearing. If the disputed custody/visitation issue is resolved prior to the Family Court Service mediation appointment, the party/attorney who scheduled the mediation must promptly notify the opposing party/attorney and call FCS to cancel the appointment.

2. Rescheduling of Mediation. Parties may reschedule, by stipulation, the FCS mediation appointment no later than 1 week prior to the appointment date. Other requests to reschedule a mediation appointment require court approval. The requesting party must notify FCS of the scheduling change.

3. Sanctions. Failure to cancel or reschedule an appointment at least 2 court days before the appointment or failure to attend and participate in an FCS appointment may subject the party to monetary sanctions of up to $1,500.

G. Submitting Mediation Data Sheet, Writings and Other Materials.

1. The Mediation Data Sheet. At or before the scheduled mediation session, each party must submit a completed Family Court Services Mediation Data Sheet to the office where the mediation is scheduled. No attachments are permitted to the Mediation Data Sheet. Blank Mediation Data Sheets may be obtained from either the business office or any FCS office.

2. Service of Writings and Other Materials. Prior to the mediation conference, the parties, or their attorneys, may provide FCS with writings and other materials including declarations, letters or other documents. Absent court order to the contrary, FCS will not accept these writings and other materials unless they have been served on the opposing party or their attorney and a Proof of Service is attached.

a) Service by Moving Party. The following constitutes proper service by the moving party on the issue of child custody and visitation: if personally served, at least 10 calendar days before the mediation conference; or if served by mail, 15 calendar days if mailed within the State of California, 20 calendar days if mailed outside California but within the continental United States, or 30 calendar days if mailed outside the continental United States.

b) Service by Responding Party. The following constitutes proper service by the responding party on the issue of child custody and visitation: if personally served, at least 2 calendar days before the mediation conference; or if served by mail, 7 calendar days if mailed within the State of California, 12 calendar days if mailed outside California but within the continental United States, or 22 calendar days if mailed outside the continental United States.

3. Documents Requested by FCS. FCS may request the parties to submit additional documents for consideration. Copies of the documents must be provided to the other party concurrently with the submission to FCS.

H. Consultation Between Attorneys and Mediator.

If both parties are represented by attorneys and the attorneys want to confer with the mediator prior to or after the mediation conference, they may schedule a time that is mutually agreeable to the attorneys and the mediator. The mediator will not meet with one attorney unless the opposing attorney is available in person or by telephone. The mediator may have ex parte contact with either attorney or party at any time during the mediation and/or recommendation process to obtain necessary information. Neither a party nor an attorney may contact the mediator, except upon request of the mediator, unless the other party or attorney is present in person or by phone. If, during the course of the mediation, a party by oral communication with the mediator raises issues or allegation which can influence the mediator, the mediator will give the other party an opportunity to respond before completing his or her report. If one attorney refuses to meet with the mediator, the other attorney may meet individually with the mediator after obtaining an ex parte order.

I. Telephone Conference. If an in-person meeting with a mediator at FCS is not feasible, such as when one party resides outside the County of San Diego, a conference will be conducted by telephone. The parties or their counsel must advise the FCS calendar clerk of the need for telephone mediation and provide appropriate telephone numbers. The Family Court mediator will call the telephone participant collect at the time of the conference. If represented, it is the attorney's responsibility to advise his or her client to accept this collect call. A Mediation Data Sheet must be submitted by each party even though the meeting is to be conducted by telephone.

J. Attendance at Initial Meeting.

Other than a statutorily authorized support person, only the parents may attend the initial mediation conference, unless otherwise requested by the Court or FCS mediator. The parties' attorneys do not participate in the FCS mediation. If the mediator wants to interview the child, new mates or other person, the mediator will arrange for such interviews after the initial meeting.

K. Request for Change of Mediator.

1. No Peremptory Challenges. A peremptory challenge of a mediator is not allowed. However, a party may request a change of mediator by following these rules.

2. Perceived Bias of Mediator. Should counsel believe that a particular mediator is biased in a way that affects the fair and equal treatment of their client, counsel may bring this matter to the attention of the Director of Family Court Services for consideration of this perception and assignment to a different mediator as the Director may deem appropriate.

3. Timing of Request for Change of Mediator.

a) Prior to Mediation. A party or counsel wanting to change a mediator before the mediation begins must send a written request to the Director of FCS and serve a copy on the opposing party or their attorney. The Director of FCS will review the request and, if warranted, assign the matter to another mediator. If the request is not granted, the Director of FCS will advise the parties of the decision in writing.

b) During Mediation. A party or counsel must request a change of mediator as soon as

a sufficient basis for a change is known. No request to change a mediator will be granted unless there is a demonstrable showing of bias or prejudice against one of the parties or their attorney such that an independent, fair and impartial recommendation cannot be made to the Court.

c) Subsequent Court Proceedings. If either party files a subsequent court proceeding requiring FCS mediation, either party may, at the time of the assignment, request a different mediator, without a showing of good cause.

L. Extended Family Court Services Mediation/Investigation. If the Court orders FCS to perform a custody investigation or extended mediation, the parties must bear the cost of such services at the prevailing hourly rate. The Court will require one or both parties to pay an initial nonrefundable deposit set by the Court.

The court will make the order on form SUPCT FCS-6. The parties must take a copy of the order to FCS when they report for in-take. Failure to complete the intake information will delay completion of the evaluation. Rules 5.10.4 subdivisions E, F, G, H, I, J, K and L apply to extended FCS mediation and investigations.

The parties may enter into agreements on any issues to which they agree. As to those issues raised to which the parties are unable to agree, the mediator will make a recommendation to the Court to include comments on each parents' support for or opposition to the recommendations, the best interests of the child, and other information available to the mediator. The recommendations will be provided to the parties and the Court in a written report.

(Adopted effective 1/1/2005; Renumbered and revised 1/1/2006)

Rule 5.10.4

Custody/Psychological Evaluations

A custody evaluation is a process by which a mental health professional uses appropriate professional techniques to gather information. The mental health professional uses this information to formulate a recommendation that is submitted to the Court. Courts order child custody evaluations, investigations, and assessments to assist them in determining the health, safety, welfare, and best interest of the child with regard to disputed custody and visitation issues. California Rules of Court, rules 5.210 – 5.230, which require local courts to implement this rule, affect both court-connected and private child custody evaluators appointed under Family Code section 3111, Evidence Code section 730 or Code of Civil Procedure section 2032.

The court may order either a partial evaluation or a full evaluation. A "partial evaluation, investigation or assessment" is an examination of the health, safety, welfare, and best interest of the child. It is limited by court order in either time or scope. A partial evaluation may address a single issue, such as: the level of the alleged substance abuse, domestic violence, mental instability/illness of a parent; with whom is the child most closely bonded; which parent is most likely to facilitate a positive and meaningful relationship between the child and the other parent; the child's preference and basis therefore; the effect upon the child in a "move away" situation. Partial evaluations will include contact with both parents to obtain information regarding the referring issue or question. A "full evaluation, investigation or assessment" is a comprehensive examination of the health, safety, welfare, and best interest of the child.

"Evaluation," "investigation," and "assessment" are synonymous terms as used in this rule. All evaluations will include those requirements set forth in the California Rules of Court, rule 1257.3(e).

A. Initiating Partial/Full Custody Evaluation.

1. The Court, on its own motion, or upon the request of either party, may order a partial or full evaluation.

2. The parties, whether unrepresented or through counsel, may stipulate that the issues of custody and visitation be referred for an evaluation prior to or in addition to other recommendations made by Family Court Services.

3. A partial or full evaluation may be requested by Family Court Services following mediation/extended mediation. In the event a partial evaluation is requested, FCS may make recommendation as to the referring issue or question.

4. Nothing herein may be construed to prevent the evaluator from contacting all counsel and/or parties when it appears to the evaluator that new and/or additional information is being provided which causes the evaluator to recommend a different level of evaluation.

5. A formal order must be jointly drafted by counsel for the parties, or the parties if unrepresented, setting forth the purpose and scope of the evaluation; identifying the referring issues or questions; identifying the evaluator; listing the types of documents, correspondence and other things to be provided to the evaluator by counsel or party, copying all other parties or counsel in accordance with rule 5.10.4 subdivision F; establishing payment plan for the evaluator's services; setting a commencement date for evaluation and the probable duration thereof; and such other matters as the Court deems appropriate. The Court will instruct counsel or a party to provide copies of the order to the evaluator, all counsel or parties and the FCS mediator.

B. Participation in Evaluation. The parents must participate in the evaluation. The parties' attorneys do not participate in the evaluation. The Court may require the child(ren) or allow other

persons relevant to a determination of custody and visitation issues to participate in any of these proceedings.

C. Selection of Evaluator; Request for Change of Evaluator. The parties may stipulate to the selection of an evaluator subject to the evaluator being approved by the Court. Evaluators must meet the qualifications, training and continuing education requirements of Family Code sections 1815, 1816 and 3111 and California Rules of Court, rule 5.220(g), and will be required to acknowledge that they are so qualified and trained. All evaluators appointed pursuant to Evidence Code section 730 (Appointment of Expert by Court) under this rule are protected under Civil Code section 47 (Privileged Publications or Broadcasts) acting in the proper discharge of their official duty as appointed by this court for communications made and will be granted immunity from prosecution so long as the evaluator is acting within the judicial proceedings, for the appointment, or in any other official proceedings authorized by the Court or law, to achieve the objects of the litigation and in connection with or in a manner logically related to the litigation and the underlying action.

If the Court appoints an evaluator on its own motion, or upon motion when the parties are unable to agree on an evaluator, a party may request a change of evaluator. Requests for a change of evaluator made within 5 calendar days of receiving written notification of the Court-appointed evaluator assigned to the case may be made without cause. No peremptory challenges of an evaluator are allowed. Requests for a change of evaluator made after this 5 calendar day period will not be granted unless there is a substantial showing that the evaluator is biased or prejudiced against one of the parties or otherwise unable to render a fair and impartial evaluation. The Court will consider the basis and timeliness of the request upon an ex parte application.

Evaluators may petition the Court to withdraw from a case, for good cause, in a writing directed to the judicial officer to whom the case has been assigned with copies to counsel or parties. If requested by counsel or either party, a hearing will be scheduled within 15 days of the mailing of the request, or as deemed necessary by the judicial officer. The evaluator need not be present at the hearing, unless directed by the Court. Any complaints regarding the evaluator's performance will be directed to the appropriate licensing/regulatory board.

D. Request for Information from Evaluator. Before a non-county employee is appointed as an evaluator, upon request, that person must provide the parties or their attorneys with the following information:

1. A curriculum vitae; and

2. The names of at least 3 attorneys who have worked with them in connection with previous evaluations or 3 mental health professionals who are familiar with their work.

E. Payment of Costs. When a private mediation or evaluation is ordered by the Court, the issues of custody and/or visitation will be set for hearing after the anticipated completion of the mediation or evaluation. Generally, the Court will initially order either or both parties to advance the mediation or evaluation costs, and reserve jurisdiction to reallocate the costs at the subsequent hearing. If the court reallocates the costs, it will use Family Code sections 270 through 272 as guidelines, rather than Family Code sections 2030 and 2032.

F. Exchange of Information. If either party or their attorney wishes to submit any form of information to an evaluator or mediator for consideration during private mediation or evaluation, he or she must submit the information to the evaluator or mediator with a cover letter describing or itemizing the materials provided. The cover letter must clearly state that the information has also been sent to the opposing counsel and/or the unrepresented litigant using the same method of delivery as was used for the mediator (i.e. mail/hand delivery/fax, etc). The mediator or evaluator will not review the enclosed information unless it has been sent to the opposing counsel or unrepresented litigant. If the information to be reviewed by the mediator or evaluator is a tape recording; video cassette; movie film; personal diary; or journal of the other party, that item must be delivered to the opposing counsel or unrepresented litigant at least 7 calendar days before submitting the item to the evaluator or mediator. If the information is an audio recording it must be accompanied by a written transcript of the recording. The mediator or evaluator must immediately return any submitted information that was not sent to the opposing counsel or unrepresented litigants in accordance with the foregoing.

G. Consultation Between Attorneys and Evaluator.

If both parties are represented by attorneys and the attorneys want to confer with the evaluator, they may schedule a time that is agreeable to the attorneys and the evaluator. The evaluator will not meet with one attorney unless the opposing attorney is available in person or by telephone. The evaluator may have ex parte contact with either attorney or party at any time in the evaluation process to obtain necessary information. Neither party or attorney may contact the mediator, except upon request of the mediator, unless the other party or attorney is present in person or by telephone. If, during the course of the evaluation, a party by oral communications with the evaluator raises issues or allegations which can influence the evaluation, the evaluator will give the

other party an opportunity to respond before completing his or her report.

If one attorney refuses or is unwilling to meet with the evaluator, the other attorney may meet individually with the evaluator pursuant to court order upon ex parte application.

H. Information from Children – Not Confidential. If a child provides information to a mediator or evaluator, there is no guarantee the information will be kept confidential.

I. Involvement of Children in Process.

A child seen with one parent will also be seen with the other parent unless there is a court order stating otherwise or, in an unusual case, the evaluator determines that such observation is unnecessary or not in the best interest of the child and notifies counsel and the parties of the reasons. The mediator or evaluator has discretion to determine the number of interviews and amount of time spent with each parent-child combination and whether siblings should be interviewed separately or jointly.

J. Recommendation by Evaluator or Mediator. The mediator or evaluator's written recommendation will be considered by the Court at the time of the hearing, subject to a party's right to cross-examine the mediator or evaluator.

Unless both parents participated in the evaluation, or there is a court order in this regard, the mediator or evaluator will not make recommendations regarding custody and/or visitation.

This rule does not prevent an evaluator from seeing only one parent in order to give an opinion or assessment regarding a particular aspect of the case or to resolve questions related to that parent, provided the opinion or assessment does not go to the ultimate issue of which parent should have primary physical custody of the child or a parent's timeshare. However, the evaluator will have contact with the other parent regarding the referring issue or question.

A copy of the recommendation will be released simultaneously to counsel for all parties or litigants, and to Family Court Services when FCS was previously involved. If the parties have so stipulated at the outset of the evaluation, the parties may read the entire report and/or supporting information and test results but may not have a copy. Relevant portions of the information and test results regarding a party may be provided to the party's therapist upon written request.

Unless otherwise ordered, the written report of the evaluator will be lodged with the Court and admitted without further foundation. Either party may call the evaluator, upon reasonable notice, to examine the evaluator on their report and/or their recommendations.

If requested by subpoena, the underlying data, including test results and all written correspondence or documentation upon which the evaluator relied, will be produced. The party seeking the underlying data is solely responsible for all copying costs. However, any other party to the action must be provided with a copy, upon written request. The requesting party will be responsible for the reasonable costs of copying the documentation.

To the extent some documents within the control of the evaluator are privileged, those documents cannot be released or copied, except upon a specific court order.

K. Sealing Reports, Filing Recommendation. Upon the request of either party, counsel for the child or FCS, the Court may consider sealing an FCS report.

All reports submitted by other mental health professionals will be sealed with the exception that the recommendation made by an evaluator will be separated from the report and included in the Court file.

L. Confidentiality of Reports.

An evaluation report is confidential and unavailable to any person except the Court, the parties, their attorneys, their experts, FCS and any person to whom the Court expressly grants access by written order made with prior notice to all parties. Absent a court order to the contrary, minors must not have access to the evaluation report.

Anyone receiving the evaluator's report must not give copies of, or parts of, the report to anyone who is not assisting in the preparation of the case. These reports usually contain very sensitive information and must not be used to cause unnecessary embarrassment or harm to the parties but must be handled in a responsible, confidential manner for purposes limited to the litigation.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 11
JUDGMENTS AND ORDERS

Rule 5.11.1

Judgment by Default or Uncontested Hearing

A. Dissolution or Legal Separation

1. A dissolution or legal separation may proceed by way of default or stipulation. The judgment of dissolution or legal separation is obtained by testimony at a default prove-up or uncontested hearing or by stipulation and/or affidavit pursuant to Family Code section 2336.

2. To obtain entry of default for a judgment of dissolution or legal separation, the Petitioner must complete and file a proof of service of preliminary declaration of disclosure (Declaration Regarding Service of Declaration of Disclosure, Form FL –141) and a Request to Enter Default (Form FL-165) with a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of

the Court clerk as the return address. After default is entered, the Petitioner may apply to the Court for the relief sought in the Petition by filing an original and two copies of a judgment packet. A judgment packet must contain the following documents: Declaration for Default or Uncontested Dissolution or Legal Separation (Form FL-170), Judgment (Family Law) (Form FL-180) on pink paper with or without a written agreement signed by both parties and Notice of Entry of Judgment (Form FL-190) with envelopes with the Court's address as the return address and stamped and addressed to each party. If a default judgment is submitted without a written agreement signed by both parties, the Court will set a default hearing and notify Petitioner of the day and time.

3. If a default judgment is submitted with a written settlement agreement signed by both parties, the judgment packet must also include a Declaration regarding Service of Final Declaration of Disclosure (Form FL-141) from each party unless waived consistent with state law (see Family Code 2105) or included in the original proof of service. If parties did not exchange final Declaration of Disclosure, a Stipulation and Waiver of Final Declaration of Disclosure (Form FL-144) or a *separate* stipulation signed by each party must be included. A waiver included in a marital settlement agreement or stipulated judgment is not sufficient. Respondent's signature on the written settlement agreement or stipulated judgment must be notarized.

4. If the proposed default judgment is not a stipulated judgment and includes division of property, a fully completed current property declaration (Property Declaration, Form FL-160) including values must be filed. The Court cannot divide any assets or debts that are not listed on the petition or property declaration(s) filed with the Court and served on Respondent.

5. If the proposed default judgment is not a stipulated judgment and includes provisions for child support, spousal support or a waiver thereof or attorney's fees or costs, the moving party must also file a current Income and Expense Declaration (Form FL-150) on green paper. Neither child nor spousal support will be granted unless the moving party sets forth an estimate of the other party's income in the Income and Expense Declaration. IF the moving party does not know the other party's present income, this requirement may be met by evidence of the other party's ability to earn, work history or other relevant facts.

B. Nullity

1. A Nullity Judgment may proceed by way of default. Because findings must be made by the Court regarding a nullity, nullity judgments may not be entered by way of stipulation.

2. Requests for a default judgment in a nullity action must be accompanied by a declaration setting forth the factual basis for the request. If there is even minimal doubt that the nullity will be granted, Petitioner can set forth in the original petition a request for a nullity or, in the alternative, a dissolution. If Petitioner requests either the nullity or the dissolution, then all of the requirements for a judgment of dissolution will apply as set forth above.

3. If Petitioner requests only a judgment of nullity, then Petitioner must file a Request to Enter Default (Form FL-165) and a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of the Court clerk as the return address. After default is entered, Petitioner may apply to the Court for the relief sought in the Petition by filing an original and 2 copies of a judgment packet. A judgment packet must contain the following documents: Judgment (Family Law (Form FL-180) on pink paper and Notice of Entry of Judgment (Form FL-190) with envelopes with the Court's address as the return address, stamped and addressed to each party. The Court will set a default haring and notify Petitioner of the day and time.

C. Paternity

1. A Judgment in a paternity action may proceed by way of default or stipulation. The judgment is obtained by testimony at a default prove-up or uncontested hearing or by stipulation and/or affidavit through Declaration for Default or Uncontested Judgment (Uniform Parentage, Custody and Support)(Form FL-230) with attached Advisement and Waiver of Rights Re: Establishment of Parental Relationship (Form FL-235), one signed by each party. Where the parties have a written agreement, the parties can submit a Stipulation for Entry of Judgment Re: Establishment of Parental Relationship (Form FL-240).

2. To obtain a default judgment in a paternity action, the Petitioner must complete and file a Request to Enter Default (Form FL-165) with a stamped envelope bearing sufficient postage addressed to the defaulting party with the address of the Court clerk as the return address. After default is entered, the Petitioner may apply to the Court for the relief sought in the Petition by filing an original and 2 copies of a judgment packet. A judgment packet must contain the following documents: Declaration for Default or Uncontested Judgment (Uniform Parentage, Custody and Support (Form FL-230), Judgment (Uniform Parentage – Custody and Support)(Form FL-250) on pink paper with or without a written agreement/stipulated judgment and Notice of Entry of Judgment (Form FL-190) with envelopes with the Court's address as the return address, stamped and addressed to each party. If a default judgment is submitted without a written agreement/stipulated judgment, the Court will set a default hearing and notify Petitioner of the day and time.

D. Stipulated Judgments

1. Stipulated judgments must contain the following waivers: 1) the matter may proceed on the default or uncontested calendar before a temporary judge; 2) the parties waive their rights to notice of trial, a statement of decision, to move for a new trial and to appeal; and 3) Stipulation and Waiver of Final Declaration of Disclosure signed by each party (Form FL-144), where applicable.

2. Stipulated judgments which contain orders regarding child support must include the following Child Support Acknowledgments:

Each party acknowledges the following:

a) The are fully informed of their rights concerning guideline child support;

b) They have agreed to the child support provisions of this Agreement without coercion or duress;

c) This Agreement is in the best interests of the child involved;

d) The needs of the child will be adequately met by this agreed-upon child support;

e) And they have not assigned the right to support to the county, neither party is receiving public assistance and no public assistance application is pending as required by Family Code section 17404.

3. Stipulated judgments which contain orders regarding child custody and/or visitation must include the following Family Code section 3048 language:

The parties declare and agree to the following:

a) This court has jurisdiction over the minor child as California is the child's home state.

b) Both parties were personally present at the execution of the attached custody/visitation agreement, both have knowledge of their right to a hearing in this matter and both waive their right to the hearing based upon the attached custody and visitation agreement. The parties agree the habitual residence of the child is the U.S.A.

c) Both parties acknowledge being advised that any violation of this order may result in civil or criminal penalties or both.

d) Each party declares under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.11.2

Preparation of Orders and Judgments

A. Counsel for the moving party must prepare a formal order or judgment unless the Court orders the other party to do so. (The party preparing the original proposed order or judgment is referred to in this Rule as the "preparing party".) Findings and Orders After Hearing must be prepared on brown paper and judgments must be on pink paper. The order or judgment must be prepared so that at least 2 lines of text appear on the page which will have the judge's signature, and no text may appear after the judge's signature.

B. The order or judgment must be prepared and submitted to the other party (referred to in this rule as the "responding party") within 5 calendar days of the hearing. The preparing party must forward it to the responding party for approval as to form and content unless the Court authorized the preparer to submit it directly to the Court. The responding party has 10 calendar days from the date the proposed order or judgment was mailed to review the order and either sign it as prepared or notify the preparing party in writing of objections to its content.

C. If the responding party fails to timely approve or object to the order or judgment, the preparing party must send a second letter to the responding party stating that the proposed order or judgment will be submitted to the Court for signature if no written response to the order is received within 5 calendar days of the second letter. If there is no written response to the second letter, the preparing party must submit the following to the Court clerk: (1) the proposed order; (2) copies of both letters to the responding party; and, (3) a declaration explaining the circumstances and requesting that the proposed order be signed by the judicial officer.

D. If the responding party timely objects to the proposed order or judgment and the parties cannot thereafter agree on the language of the order or judgment, the Court will be guided by the transcript of the hearing. Within 10 calendar days of receiving written objections to the proposed order or judgment, the preparing party must request and advance the cost for a transcript. Each party must be responsible for one-half of the cost of the transcript. Upon receipt, a copy of the transcript and a copy of the bill must be immediately provided to the responding party. No later than 25 calendar days after delivery of the copy of the transcript to the responding party (regardless of whether the copy is delivered personally or by mail), the parties must exchange new proposed orders or judgments based on the transcript. If the parties still cannot agree on the language of the order or judgment, then no later than 45 calendar days after delivery of the copy of the transcript to the responding party, the preparing party must submit the following to the judicial officer who made the ruling: (1) both parties' final proposed orders or judgments; (2) a copy of the transcript; (3) all written objections from all parties; and (4) a clear explanation as to how the final proposed orders or judgments differ. Copies of all papers submitted to the Court must be immediately served on the responding party. The proposed order or judgment accepted by the judicial officer will be executed and filed. Failure to comply

with this rule may subject a party or the attorney to sanctions.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 12
MISCELLANEOUS

Rule 5.12.1

Child Support

A. Amount of Support

In any proceeding in which a party seeks to establish or modify child support, whether temporary or permanent, based on State or Federal Law, the amount will be determined pursuant to Family Code sections 4050 *et seq.*

B. Presumptions Used to Calculate Support

Pursuant to Family Code section 4059, subdivision (a), the following rebuttable presumptions will be applied to determine the appropriate income tax filing status and number of withholding exemptions for a party. These presumptions may be rebutted by any relevant factors (such as the fact that the parties are likely to file joint returns for the current tax year) and any material generated by computer programs certified by the Judicial Council:

1. Single Status will be presumed if the party has less than 50 percent time share with the child of the relationship before the Court and does not have any additional dependents. In such an event, the Court will presume there is one exemption for tax withholding purposes.

2. Head of Household Status will be presumed if the party has not remarried and has greater than 50 percent time share with a child of the relationship before the Court or has another dependent that qualifies the party for Head of Household status. The number of exemptions for tax withholding purposes will be one plus the number of other dependents the party is entitled to claim for income tax purposes.

3. Married Status will be presumed if the party is married to someone other than the other party. The total number of exemptions assigned for tax withholding purposes will be that to which the party is entitled for income tax purposes.

4. The Court will apply the "standard deductions" unless sufficient evidence is presented to allow the Court to determine appropriate itemized deductions.

5. Time sharing percentages will be calculated by assigning each parent the number of hours that the child is scheduled to be with that parent or to be under the care, custody or control of that parent. Unless rebutted by competent evidence, it will be assumed that the hours credited to a parent who is not the primary caretaker begin at the time the child is transferred to his or her care and do not extend beyond the end of his or her custodial or visitation time when the child is returned to the other parent or to the child's school or day care provider. "Primary caretaker" refers to the parent who has custody of the child the majority of the time.

C. Income and Expense Declarations

In any proceeding in which a party is seeking child support, both parties must comply with Rule 5.6.2 regarding the filing of current Income and Expense Declarations.

D. Stipulations

1. Mandatory Language – In order to be accepted by the Court, any written stipulation for the payment of child support must include the following language: "The parties declare all of the following:

a) They are fully informed of their rights concerning child support.

b) The order is being agreed to without coercion or duress.

c) The agreement is in the best interests of the children involved.

d) The needs of the children will be adequately met by the stipulated amount.

e) The right to support has not been assigned to any county pursuant to section 11477 of the Welfare and Institutions Code and/or Family Code section 17404, and no public assistance application is pending."

2. Issuance of Wage Assignment Order

A written stipulation for the payment of child support must include the following or similar language: "A wage assignment order will be issued for the payment of support ordered pursuant to this agreement."

3. Stay of Service of Wage Assignment Order

The stipulation may provide for the stay of service of the wage assignment order by including the following or similar language: Pursuant to Family Code section 5260 *et seq.*, the parties agree that they are specifically providing for an alternative arrangement for the payment of the support obligation set forth in this agreement that is acceptable to both parties. The parties further agree to stay the service of the wage assignment order until the stay is terminated pursuant to Family Code section 5261."
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.2

Spousal Support Guideline

San Diego County has declined to adopt any specific spousal support guideline. The Court will consider all relevant factors in setting temporary spousal support including guideline calculations based upon any formulae adopted in other counties of this state.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.3

Attorneys Seeking to be Relieved as Attorney of Record

Absent a properly executed substitution of attorney form, attorneys will not be relieved unless a properly served notice of motion or OSC (using the applicable Judicial Council form) is before the Court. Counsel must comply with California Rules of Court, rule 376. The entry of a status-only judgment may not be a basis for withdrawal pursuant to Code of Civil Procedure section 285.1.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.4

Bifurcation of Marital Status

A request to bifurcate the trial of the marital status from the remaining issues in the case will ordinarily be granted, and the requesting party will be permitted to present jurisdictional testimony to obtain a judgment of dissolution (status only). The motion to bifurcate must be filed on the appropriate Judicial Council form which requires at least 30 days' notice. If appropriate, the Court order for bifurcation must include the language set forth in **Appendix H**. An interim domestic relations order will be issued if there is a community property interest in an ERISA pension plan. If appropriate, the interim order will include the language set forth in **Appendix I**.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.5

Writs of Execution

Writs of execution on judgments or orders in a fixed amount, or based on judgments or orders providing for installment payments, do not require a judicial officer's signature or notice to the opposing party before presentation to the records division of the clerk's office for approval and issuance.

A supporting declaration must be submitted to the clerk. The declaration must allege, under penalty of perjury, the date and amount of the judgment or order, the date and amount of any payments thereon and the current, unpaid balance. For writs based on installment judgments or orders, the declaration must clearly set forth in columns the date and amount of each payment as it came due, the date and amount of any payments received and a running total of the amount owing. The supporting declaration for either type of judgment or order must also state that no other writ on this judgment or order is outstanding in the same county and that the arrearages have accrued within the past 10 years, unless the arrearages relate to child support, spousal support or family support in which case Family Code section 4502 will govern.

The writ may include the fee paid for issuance of the writ. If attorneys' fees are requested, a hearing is required, and a current Income and Expense Declaration must be filed with the application. If the moving party is requesting interest on the arrearages or costs not awarded in the original order, a declaration setting forth the calculation of the amount of interest on the arrearages or a cost bill must be filed.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.6

Elisors

Where one of the parties fails to execute a document necessary to carry out a court order, the Clerk of the Superior Court or the Clerk's authorized representative or designee may be appointed as an elisor to sign the document. An application for appointment of an elisor may be made ex parte. When applying for the appointment of an elisor, the application and proposed order must designate "The Clerk of the Court or the Clerk's Designee" as the elisor. The application must not set forth a specific court employee. The declaration supporting the application must include specific facts establishing the necessity for the appointment of an elisor.

If the Court grants the application for appointment of an elisor, the applicant must contact the business office to make an appointment for the actual signing of the document(s) to ensure the availability of an authorized elisor. If the elisor is signing documents requiring notarization, the applicant must arrange for a notary to be present when the elisor signs the document(s).

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.7

Appointment of Counsel for Children

A child's attorney is charged with the representation of the child's best interests. In addition to the professional requirements of advocacy and the provisions of Family Code sections 3150 and 3151.5, the child's counsel must gather and present to the Court all facts that bear on the best interests of the child, including any preferences of the child. The following rules govern the appointment of counsel for children pursuant to Family Code sections 3150 through 3153.

A. Appointment of Counsel. In any Family Law or other proceeding where 2 or more persons are disputing the division of time with or responsibility for a minor child (i.e. physical or legal custody) or the Court determines that the appointment is justified by the facts of the specific case, the Court should consider the appointment of an attorney to represent the best interests of the child. The appointment may be made if the Court is requested to do so by either party, the attorney for either party, a mediator performing the duties under Family Code *section 3170 et seq., a professional person making a custody recommendation under Family Code sections 3110 et seq.*, a court appointed guardian ad litem or special

advocate, the child or any relative of the child. The appointment may also be made on the Court's own motion, even over the objection of the parties.

B. When Counsel for a Child May Be Appointed.

Counsel for a child may be appointed under the following circumstances:

1. The dispute is highly adversarial, exceptionally intense, protracted or the parties are so embroiled in the dispute that the needs of the child are being neglected.

2. The child is subjected to stress on account of the dispute which might be alleviated by the intervention of counsel representing the child.

3. The parties are without counsel and the Court or Family Court Services has reason to believe that the child may be at risk or that the information provided by the parents is either insufficient or unreliable.

4. There is an allegation of child abuse and there is a pending custody dispute between the parents. The appointment will ordinarily be made as soon as these issues are brought to the attention of the Court or Family Court Services.

5. There are allegations that a parent, stepparent or other person with the parent's knowledge has physically, mentally or sexually abused the child.

6. It appears that neither parent is capable of providing a stable and secure environment for the child.

7. The child is capable of verbally expressing his or her views and/or preferences and no psychological evaluation has been ordered.

8. The parties agree that counsel should be appointed for a child and the Court determines there is good cause to do so. In addition to informing the Court of a joint request for appointment of counsel during a noticed hearing, a written stipulation and declaration in support of a joint request may be presented to the Court during ex parte hours or in a manner designated by the Court.

9. A matter is before the Family Law Court within one year of issuance of an exit order from Juvenile Court. Unless a public defender has been representing the child in Juvenile Court, the child's Juvenile Court attorney, if available, will continue on the case and will be appointed by the Family Law Court so that the attorney's case history, knowledge and experience will not be lost.

10. A matter is calendared in Family Law Court more than one year after Juvenile Court involvement has terminated. If the child was represented by private counsel and not by a public defender while in Juvenile Court, the Court will consider whether the child's Juvenile Court attorney should be appointed by the Family Law Court so that the attorney's case history, knowledge and experience will not be lost.

11. The parties disagree regarding medical treatment for the child and the child's health is at risk.

12. There is an issue whether to waive a privilege on behalf of the child.

13. There are allegations of domestic violence, and the child is the only witness.

14. The best interests of the child appear to require special representation.

C. Procedure for Appointment of Counsel.

1. The Court will determine which of the following methods will be used for the selection of counsel:

a) By the judge's selection of a panel member;

b) By the parties' stipulation to a panel member; or

c) By the parties' selection from one of the next three names on the list of panel members.

2. Upon selection of counsel for a child, the Court clerk will contact the attorney to determine his or her availability to accept the appointment. If the attorney is not available, another panel member will be selected.

3. Once counsel has been selected and has accepted the appointment, the Court will:

a) Advise the parties that a determination will be made as to the method of payment pursuant to Family Code section 3153 at a subsequent hearing; and

b) Order both parties and claimants, if any, to file and serve current Income and Expense Declarations prior to the next hearing.

4. At the Court's discretion, the Court may conduct a hearing within 2 weeks to make the determination for payment and to specify the issues to be addressed by the child's counsel. The court clerk will notify the prospective appointee of the date and time for hearing.

5. Meet and confer requirements: At the hearing at which counsel for the child is appointed, the court will order the parties to meet and confer as follows:

a) Both parties represented: Counsel for the parties must meet and confer on issues to be addressed by counsel for the child. Counsel for the parties must prepare a joint statement of the issues and contentions, including each party's position and a list of all professionals who are or have previously been involved in the case, their role and dates of involvement. The child's counsel must be provided with a copy of this joint statement.

b) One party represented: Counsel for the represented party must meet and confer with the unrepresented party and must prepare a statement of the issues and contentions, including each party's

position and a list of all professionals who are or have previously been involved in the case, their role and dates of involvement. Counsel for the represented party must provide a copy of the statement to the child's counsel.

c) Unrepresented parties: Except in cases with allegations of domestic violence or cases in which the Court believes that a meet and confer would be ineffective, the parties must meet and confer after the Court hearing appointing counsel for the child and prepare a statement of issues and contentions, including each party's position and a list of all professionals who are or have previously been involved in the case, their roles and dates of involvement. This statement must be provided to the Court clerk, who will provide it to the child's counsel with the Order Appointing Counsel for Child.

D. Contents of Order Appointing Counsel for Child; Conduct of Hearing; Distribution of Order Appointing Counsel for Child.

1. The Court will issue an Order Appointing Counsel for Child on Form SDSC D-41 and issue a minute order which will include the following:

a) The scope of counsel's duties with specificity and the issues which gave rise to the appointment of the child's counsel; and

b) Any tasks expected to be performed by the child's counsel to benefit the child.

The clerk will provide a copy of both orders to the appointed counsel.

2. Pursuant to Family Code section 3151(b), the court order will specify whether the child's counsel must prepare a written report to be filed with the Court and served upon the parties in advance of any hearing.

3. Pursuant to Family Code section 3153, the Court will determine:

a) Whether both parties together or individually are financially able to pay all or a portion of the fees for the appointed counsel; and

b) Whether the entire amount or a portion of the child's counsel's fees will be paid by the Superior Court.

4. The Court should determine the method of payment for the attorney fees and costs associated with the child's representation. If the Court determines that payment for services of the child's counsel is to be paid by the Superior Court, the Court will direct the clerk to provide a copy of the Order Appointing Counsel for Child to the San Diego Superior Court.

5. The Court will order the parties to provide information and sign releases to permit all professionals who are or have been involved with the parties and/or the child to provide information as requested by the child's counsel.

6. In the event the child's counsel is not present at the appointment hearing and the child's counsel needs further direction regarding the scope of the appointment beyond that contained in the minute order or Appointment Order, upon ex parte application with notice to all parties, counsel may request direction from the Court.

7. The Court will order that the parties or their attorneys provide the child's counsel with copies of all pleadings, orders, reports, other court documents and correspondence that are relevant to the custody, visitation or other child related issues, unless the child's counsel has requested otherwise. If the child's counsel is being paid by the Superior Court and if the parties do not have copies of the documents, the child's counsel may request copies of relevant documents from the court staff at no cost to the child's counsel.

8. After a hearing, the Court will direct counsel for one of the parties to prepare the order or, in the event neither of the parties is represented, the Court will direct the child's counsel to prepare the order. The order, if prepared by the child's counsel, may be submitted directly to the Court for approval unless otherwise ordered by the Court.

9. The Court will reserve jurisdiction to:

a) Consider payment by the Superior Court;

b) Require the parties to reimburse the Superior Court; or

c) Order the parties to pay the child's counsel at his/her standard hourly rate.

10. The Order Appointing Counsel for Child will be distributed as follows:

a) Child's counsel;
b) Each party;
c) Family Court Services;
d) Court file; and
e) Superior Court (for payment).

E. Appointment for 2 or More Children. If there are 2 or more children, the Court will consider whether there may be such a conflict between the children such that one attorney cannot adequately represent them all.

F. Rights and Obligations Upon Appointment of Counsel.

1. Once counsel for a child has been appointed, he or she must be given notice of all future proceedings and the child must be treated as a party to the action. Accordingly, all written communications and documents regarding child custody/visitation and related issues must be copied to the other attorney and the child's counsel. The child's counsel must participate in any proceeding in which custody, visitation or related matters are at issue. The child's counsel may participate in other proceedings if counsel believes the child's best interests would be served by such participation.

2. The child's counsel must interview or observe the child when the child is living in the County of San Diego.

3. The child's counsel may not be charged for the following:

a) Filing fees including a first appearance fee when filing any motion on behalf of the child;

b) For any photocopies requested from the Court's files concerning the child; or

c) Any court reporter's fees subject to the Court ordering payment of the fees by one or both of the parties. Prior court authorization is required when the child's counsel orders a transcript. The child's counsel must submit a request for the Court to pay for a transcript including a brief description of the reason the transcript is necessary. Child's counsel must maintain a record of fees waived by the Court. The Court reserves jurisdiction to order the parties to reimburse the Court for fees waived by the Court.

4. Without notice, the child's counsel may communicate, either by telephone or by letter, with FCS and/or with any evaluator, including psychological evaluators. However, with respect to other written documents (i.e., from third parties, agencies or institutions) that are provided by the child's counsel to FCS or an evaluator, the child's counsel is subject to the same local rules regarding psychological evaluations and FCS communications as are other counsel, as set forth in Rules 5.10.3 and 5.10.4.

5. The representation of children must be in compliance with Family Code sections 3151 and 3151.5.

6. If counsel for a child files a motion on behalf of the child, counsel may sign the Application for Order and Supporting Declaration which must contain the details of the requested relief and the supporting information for the request. If a motion is filed by a party and counsel for the child wishes to file a response on behalf of the child, counsel may sign the Responsive Declaration to Order to show Cause or Notice of Motion which must contain the details of the child's response and the relevant supporting information.

7. Once the child's counsel has been appointed, the Court generally will not accept any stipulated order concerning custody or visitation or the child's counsel fees unless child's counsel has signed the stipulation. Counsel for the child may not stipulate to waive reimbursement to the Superior Court for payment of counsel's fees.

8. The child's counsel may retain experts or investigators only with prior court approval and notice to the parties.

9. Child's counsel should seek a court hearing to address reimbursement of any fees paid and costs waived by the Superior Court.

10. At such time as counsel is appointed for a child, the parties must complete and sign, under penalty of perjury, the Confidential Information for Minor's Counsel and Accounting Department form attached as **Appendix J** and deliver it to the clerk at the department of appointment at the time of the appointment.

G. Prerequisites for Placement on Court-Appointment Panel. An attorney will be appointed only if he or she is a member of the Court-appointed panel. The list of panel members will be maintained by a person designated by the Supervising Judge of the Family Law Courts.

In order for an attorney to be on the Court-appointed panel, the attorney must:

1. Fill out the application form available from a Family Law judicial secretary;

2. Have attended the most recent training session sponsored by the San Diego County Bar Association or attended a supervised tape showing of that session;

3. Have completed 5 years of practice with at least a 50% concentration in Family Law, juvenile court dependency and/or guardianship proceedings or had other comparable training, including extensive experience with child custody proceedings. The Supervising Judge of the Family Law Courts or the Judge's designee will determine if an attorney has had comparable other training and has had sufficient experience with child custody proceedings. An attorney who has been excluded from representing children in Juvenile Court will be excluded from the panel;

4. Have represented a party in at least 5 contested custody/visitation proceedings in Family Court in the past 3 years;

5. Agree that the application form can be made available for review by the counsel representing the parents or the unrepresented litigants; and

6. Maintain the minimum amount of malpractice insurance required by the State Bar. For cases where the child's counsel is paid by the Superior Court, the minimum amount of malpractice insurance is higher than what is required by the State Bar. Currently, the minimum required in such cases is $250,000/$500,000.

7. The application for participation in the panel must be submitted to the Counsel for Children Subcommittee of the Certified Family Law Specialist Committee of the San Diego County Bar Association which will present the application for consideration at its next meeting and determine whether the applicant will be recommended to the Supervising Judge of the Family Law Courts or the Judge's

designee who will determine whether the application will be accepted.

H. Education Requirements. The Counsel for Children Subcommittee has established education requirements for participation in the Court-appointed panel, and for remaining on the panel. Those requirements include, but are not limited to, domestic violence training.

I. Termination of Appointment. The Court, in its discretion, will consider the termination of the appointment of the child's counsel under the following circumstances:

1. At the time a final order or judgment has been filed, or 90 days thereafter; or

2. If no motions related to custody or visitation issues have been filed within the preceding 6 months, upon the filing of a Notice of Withdrawal, (Form FL-960); or

3. A motion filed by any party for good cause; or

4. A motion to be relieved filed by the child's counsel if the child's counsel does not believe that he or she can effectively represent the child.

The appointment of the child's counsel will not be terminated if the Court, upon a showing of good cause, deems it necessary to extend the appointment, or if the Court requests periodic review or monitoring of the child related issues before the Court. At any hearing for termination of child's counsel, the Court will address the issue of reimbursement of fees paid to child's counsel by the Superior Court. All parties must file a current Income and Expense Declaration at the hearing.

J. Grievance Against Child's Counsel. Any party may file a grievance against the child's counsel on the form prescribed by the Counsel for Children Subcommittee. The scope of the grievance is limited to whether the attorney against whom the grievance is filed may remain on the Court appointment list and be eligible to receive future appointments. Any issues regarding fees charged by the child's counsel or the removal of the child's counsel from the case must be addressed to the judge to whom the Court case is assigned.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.8

Appraisal of Closely Held Business Interests

A. Standard of Value for Business Appraisal

Businesses are appraised in Family Law proceedings to establish the value of the interest to the spouse who is awarded the business. Unless otherwise ordered by the Court, the standard of value will be the "marital value" which means the investment value of the business interest to a hypothetical, objective investor, considering the following factors:

1. Since there will be no change of ownership, there will be no reduction in value to reflect the risk inherent in a transfer of the business interest.

2. Pursuant to Family Code section 771, in establishing sustainable earnings, separate property earnings attributable to the operating spouse's efforts after the date of separation will not be considered.

3. There will be no reduction in value for capital gain or other taxes associated with a sale.

4. A business may have "marital value" even though it is not saleable.

5. The business interest being valued may include assets and liabilities which would not be included in a sale, such as cash, accounts receivable, accounts payable and non-operating assets and/or liabilities.

B. Procedure to be Followed in Appraisal Process

1. Joint Appraiser

a) Before the initial Case Management Conference, the parties must jointly retain a business appraiser.

b) Before contacting a business appraiser for joint retention, the parties or counsel must have agreed on the joint appraiser.

c) If counsel cannot agree on a joint appraiser, a joint appraiser will be appointed by the Court on ex parte motion or at the Case Management Conference.

d) The appraiser must be informed that he or she is retained as a neutral expert working for both parties. Within 14 days of being retained, the appraiser must mail a written request to each counsel for documents and information.

e) Within 30 days of the date the appraiser's request is mailed, each party must provide the requested documents and information, including access to the site and to knowledgeable agents and employees.

f) Counsel must send opposing counsel copies of all correspondence and written documents submitted to the joint appraiser.

g) Neither the parties nor counsel may initial verbal communications with the joint appraiser unless the opposing counsel or the other party participates in the communication. The appraiser may, however, initiate verbal communication with only one attorney.

h) If appraiser initiated communication raises a material issue, the appraiser must communicate such development to the party or attorney who was not consulted.

i) Within 60 days of the appraiser receiving all requested documents and information, the appraiser must submit a draft appraisal report to each party.

j) Within 30 days of issuance of the draft appraisal, a party desiring to do so must, through counsel if represented, submit to the joint appraiser, the party's or his/her consultant's comments on and/or objections to the draft appraisal. The joint appraiser, after the 30th day and before the 60th day after the issuance of the draft appraisal, must submit the final appraisal to both attorneys.

k) Absent a court order to the contrary, the joint appraiser's fee must be paid with community funds, or if there are no undisputed community funds, each party must pay one-half of the joint appraiser's fee. The Court will reserve jurisdiction to the time of trial to reallocate the fees paid.

l) The joint appraisal must be without prejudice to the right of either party to retain a review appraiser at that party's expense. Such expense will be subject to reallocation only upon a showing of good cause. The review appraiser must only consider documents and information provided to or considered by the joint appraiser.

m) If a review appraisal is obtained, the joint and review appraisers must confer and, prior to the settlement conference, must present a joint statement listing the issues on which they agree and disagree and setting forth the basis for their respective positions. Upon submission of the joint statement, the review appraiser will be deemed a designated expert witness.

n) The joint appraisal report will be received into evidence without further foundation. However, this does not preclude either side from calling a review appraiser or from calling the joint appraiser for cross-examination. A $750 witness fee must be tendered to the joint appraiser before trial by the party intending to call the joint appraiser as a witness.

o) These time guidelines may be modified by written agreement of counsel and the appraiser.

2. Date of Valuation

Property will be valued as near as practical to the trial on property division issues, unless the property is a small business which is largely dependent on the operating spouse's skill, industry, reputation and guidance. In this case, the business must be valued at the time of separation. If counsel are unable to agree on the valuation date, the joint appraiser must value the interest at both date of separation and as near as practical to the time of trial.

C. Appraisal Reporting Requirements

The appraisal must state the specific reasons that would justify the use of the appraisal method(s) chosen. The appraisal must state the risk and other factors specific to this business that were considered in selecting the capitalization rate and the nature of the impact each factor had on this rate. If the excess earnings method is chosen, the capitalization rates will normally be within the range of 20% (multiple of 5) to 100% (multiple of 1). If other methods are chosen, such as capitalization of net earnings or capitalization of net cash flows, other ranges of capitalization rates may apply. The appraiser must state the factors considered in arriving at any reasonable compensation estimate used in the appraisal, including compensation studies or other reference materials. The appraisal must state the factors considered in making any other adjustments, assumptions or estimates made in the appraisal process.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.9

Discretionary Dismissal

Pursuant to Code of Civil Procedure section 583.410 and the California Rules of Court, rule 372, cases which a judgment has not been filed or which have not been brought to trial within two years after the action was commenced may be set for a hearing to dismiss the case. The filing of a judgment or a dismissal will vacate the hearing. If the Petitioner/Plaintiff does not appear at the hearing the case will be dismissed without prejudice, subject to the Court's reservation of jurisdiction to set aside the dismissal nunc pro tunc. Cases involving the Department of Child Support Services will be reinstated administratively once service has been obtained.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.10

Family Law Facilitator's Duties

In addition to the services provided by the Family Law facilitator pursuant to Family Code section 10004, pursuant to Family Code section 10005 the Family Law facilitator may:

A. Meet with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, subject to Family Code section 10012;

B. Draft stipulations on any issues agreed to by the parties;

C. Prior to or at the hearing, and at the request of the Court, review the paperwork, examine documents, prepare support schedules, and advise the judge whether the matter is ready to proceed;

D. Assist the clerk in maintaining records;

E. Prepare formal orders after hearing where both parties are unrepresented;

F. Serve as a special master and make findings to the Court, unless the facilitator has served as a mediator in the case;

G. Assist the Court with research and any other responsibilities which will enable the Court to respond to litigants' needs; and

H. Develop bar and community outreach programs that will assist unrepresented and financially disadvantaged litigants to gain meaningful access to the Family Court.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.11
Supervised Visitation Requirements
Providers of supervised visitation, whether the provider is a friend, relative, paid independent contractor, employee, intern or volunteer operating independently or through a supervised visitation center or agency are required to follow the legal requirements and obligations set forth in Standards of Judicial Administration section 26.2 Informational materials about the role of a provider the terms and conditions of supervised visitation, and the legal responsibilities and obligations of a provider are available at all locations of Family Court Services listed in **Appendix A.**
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.12
Communication Between Court Divisions
The Court will develop procedures to facilitate communication between divisions regarding information involving child custody and visitation orders and criminal court protective orders pursuant to California Rules of Court, rule 5.500.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 5.12.13
Appointment of Counsel Under Service Members Civil Relief Act
If the Respondent or responding party is in the military service, the Service Members Civil Relief Act (the "Act") may apply. (50 U.S.C. Appen. 501-594.)

A. If the service member has not made an appearance.

1. The Court may not enter a default judgment until the Court appoints an attorney to represent the Respondent. If the appointed attorney cannot locate the service member, the actions taken by the attorney will not bind the service member or waive any defenses.

2. The Court must grant a minimum 90-day stay of the proceedings if there is a defense to the proceeding which cannot be presented without the presence of the service member, or if appointed counsel has been unable to contact the service member to determine if there is a meritorious defense.

B. If the service member has received notice of the proceeding.

1. The Court may grant a minimum 90-day stay of the proceedings if the service member communicates that military duty requirements materially affect the service member's ability to appear, stating a date when the service member will be available, or if the service member's commanding officer communicates that the service member's military duties prevent an appearance and leave is not authorized at the time of the hearing.

2. The service member may apply for an additional stay in the same manner as the original request. If the Court refuses to grant the additional stay, the Court must appoint counsel to represent the service member in the proceeding.

C. Procedure.

1. Appointments of counsel under the Act are pro bono. The Court may compensate counsel at a rate of $60 per hour up to a maximum of $200 per appointment provided funding is available. In addition, the Court may direct the service member to pay fees incurred to counsel directly.

2. Any individual holding a power of attorney from the service member may appear in court on his or her behalf to request a stay or additional stay.

3. A request for a stay does not constitute a general appearance for jurisdictional purposes or a waiver of substantive or procedural defenses.
(Adopted effective 1/1/2005; Renumbered 1/1/2006)

APPENDIX A

ADDRESSES AND TELEPHONE NUMBERS OF COURTS, CALENDAR CLERKS AND FAMILY COURT SERVICES OFFICERS

CENTRAL DIVISION
Family Court Building
1555 6th Avenue
San Diego, CA 92101-3296

Department F1
Court Clerk (619) 557-2001
IC Clerk (619) 557-2163

Department F2
Court Clerk (619) 557-2003
IC Clerk (619) 557-2196

Department F3
Court Clerk (619) 557-2005
IC Clerk (619) 557-2188

Department F4
Court Clerk (619) 557-2007
IC Clerk (619) 557-2064

Department F5
Court Clerk (619) 557-2009
IC Clerk (619) 557-2157

Department F6
Court Clerk (619) 557-2011
IC Clerk (619) 557-2164

Family Court Services
(619) 236-2681

CENTRAL DIVISION
Madge Bradley Building
1409 4th Avenue
San Diego, CA 92101-3105

Department F9
Court Clerk (619) 687-2004

DOWNTOWN FSD
County Courthouse
220 West Broadway
San Diego, CA 92101-3814

Department 42
Court Clerk (619) 531-3025

Department 43
Court Clerk (619) 531-3025

Department 44
Court Clerk (619) 531-3024

EAST COUNTY DIVISION
250 East Main Street
El Cajon, CA 92020-3941

Business Ofc (619) 441-6770

Department 5
IC Clerk (619) 441-4495

Department 6
IC Clerk (619) 441-6633

EAST COUNTY DIVISION (cont'd)
250 East Main Street
El Cajon, CA 92020-3941

Department 7
IC Clerk (619) 441-3494

Family Court Services
(619) 441-4387

SOUTH COUNTY DIVISION
500 3rd Avenue
Chula Vista, CA 91910-5649

Department 6
IC Clerk (619) 691-4877

Department 7
IC Clerk (619) 691-4877

Family Court Services
(619) 691-4455

NORTH COUNTY
325 South Melrose Drive
Vista, CA 92081-6651

Department 15
Court Clerk (760) 940-4596
IC Clerk (760) 806-6137

Department 16
Court Clerk (760) 940-4800
IC Clerk (760) 806-6139

Department 17
Court Clerk (760) 940-4593
IC Clerk (760) 806-6136

Department 18
Court Clerk (760) 940-4591
IC Clerk (760) 806-6251

Department 19
Court Clerk (760) 940-4587
IC Clerk (760) 806-6138

Family Court Services
(760) 940-4761

(Effective 1/1/05)

APPENDIX B

ALTERNATIVE DISPUTE RESOLUTION INFORMATIONAL NOTICE

Mediation, arbitration, Collaborative Family Law, the use of a Private Judge (Temporary Judge) and judicial case management are methods of Alternative Dispute Resolution which are available to you at any stage of the proceedings in an action for the Dissolution or Annulment of your marriage, or in an action for Legal Separation. The costs associated with any of these Alternative Dispute Resolution methods must be determined directly between you and the professionals you choose to use.

Mediation is a voluntary process in which the parties meet with an impartial mediator. The mediator assists the parties in clarifying issues, facilitation communication and considering options for settlement in order to reach a mutually acceptable agreement. This process is different from the Court controlled litigation process because, in mediation, the parties make the decisions instead of having a judge make them. In mediation, the parties control the division of their assets, the provisions for child and spousal support, and the sharing of their children. Discussions take place in the privacy of the mediator's office and no court appearances are necessary. When mediation is completed, a formal agreement is prepared and filed, and a Judgment is entered by the Court.

Arbitration is a voluntary process in which the parties select an independent third party to hear and consider the facts and evidence in their case and make decisions on their contested issues. These decisions may be final and binding or they may be nonbonding, as determined by the agreement of the parties. Parties can submit all or some of the contested issues in their case for decision by their arbitrator. If binding, the arbitrator's decisions are included in the Judgment entered by the Court.

Collaborative Family Law is a voluntary process in which both parties commit themselves to resolving their issues through a cooperative approach rather than adversarial litigation. This process relies on the commitment of the parties to exercise honesty, cooperation, and integrity in working toward the future well-being of each of the parties, and, if there are children, the family. A team of experts assists the parties in solving problems, developing options, and creating a positive context for settlement. Each party works with a Collaborative Family Law attorney and a communication coach. The parties jointly hire a financial expert and, where appropriate, a child specialist to give the children a voice in the process. All information and documentation is voluntarily shared. The essence of the process is a series of face-to-face meetings between the parties and the relevant members of the professional team. When the process is completed, a written settlement agreement is prepared and filed, and a Judgment is entered by the Court.

Using a Private Judge "Temporary Judge" is a voluntary process in which, with the Court's permission, the parties may agree to use a qualified individual (often a retired judge or an experienced Family Law attorney) to resolve some or all of the substantive or procedural issues in their case. The decisions made by the Temporary Judge in your case will have the same force and effect as decisions made by a regular trial court judge. Parties wishing to use a Temporary Judge must advise the Court as soon as possible by submitting a written stipulation signed by both parties and their attorneys (if they are represented). The name of the Temporary Judge selected by the parties, and the specific issues to be resolved by the Temporary Judge (if less than the entire case) must be included in the written stipulation. Since the Court's case file can never be removed from the Courthouse, it is the responsibility of the parties to provide the Temporary Judge with a duplicate case file. The parties' written stipulation must also set forth their agreement regarding whether a transcript of the proceedings before the Temporary Judge will be created for appellate or any other purposes.

These Alternative Dispute Resolution methods may or may not be appropriate for every case or individual. You should seek the advice of counsel regarding the best way to resolve your issues. If you decide to use one of these Alternative Dispute Resolution methods, it is suggested that you use the services of qualified professionals. If you have a need for emergency restraining orders, Alternative Dispute Resolution may not be appropriate at this time.

You are encouraged to serve a copy of this fact sheet when you serve the Petition for Dissolution/Legal Separation/Annulment in this matter.
(Effective 1/1/05)

APPENDIX C

STIPULATION AND ORDER FOR APPOINTMENT OF TEMPORARY JUDGE

[Attorney's Name]
[Firm name if Applicable]
[Street Address]
[City, State, ZIP]
[Telephone No.]

Attorney for: [Client's Name]

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

In re the Marriage of: Petitioner: And Respondent:	Case No. STIPULATION AND ORDER FOR APPOINTMENT OF TEMPORARY JUDGE; CONSENT AND OATH OF OFFICE; ORDER

In accordance with Article VI, section 21 of the California Constitution and with rule 244 of the California Rules of Court, the parties hereto personally and through their respective undersigned attorneys hereby agree as follows:

1. **Name of Temporary Judge**. [name of Temporary Judge], whose office address is [address] and telephone number [telephone number], is hereby appointed as a temporary judge (hereafter "Temporary Judge") in the above-captioned proceeding.

2. **Parties and Attorneys**. The names, addresses and telephone numbers of the parties and their respective attorneys are as follows:

[Petitioner's name]	[Petitioner's attorney, address, and telephone #]
[Respondent's name]	[Respondent's attorney, address, and telephone #]

3. **Authority of Temporary Judge**. Pursuant to California Code of Civil Procedure section 177, the Temporary Judge is empowered with all the authority allocated to a Judicial Officer of the California Superior Court to do the following:

a. To preserve and enforce order in the Judge's immediate presence and in proceedings before the Judge when the Judge is engaged in the performance of official duties;
b. To compel obedience of the Judge's lawful orders as provided in this code section;
c. To compel the attendance of persons to testify in a proceeding before the Judge in the manner provided in this code section;
d. To administer oaths to persons in a proceeding pending before the Judge and in all cases where it may be necessary in the exercise of the Judge's powers and duties;
e. To oversee discovery and make any orders relative to any of the issues in dispute; and
f. To decide the matters set forth below:
(1) [state the issues to be decided]

4. **Certified Shorthand Reporter**. The services of a certified shorthand reporter ("CSR") [will/will not] be present at all proceedings [optional: except at ex parte hearings]. If a CSR is present at a proceeding, all orders and judgments rendered by the Temporary Judge will be appealable in accordance with applicable California Rules of Court and statures. If a CSR is not present at a proceeding, the parties hereby waive their respective rights to the following:

a. A statement of decision;
b. Motion for a new trial; and
c. Right to appeal.

5. **Restrictions**. The case file may not be removed from the court. The parties are responsible for providing the Temporary Judge with copies of all relevant pleadings, records and documents necessary to adjudicate the case at their own expense.

6. **Compensation**. The Temporary Judge will be paid as follows: [state the terms of compensation]. [optional: The court reporter will be paid as follows: state the terms of compensation]. [optional: The Temporary Judge may allocate the Temporary Judge/court reporter fees between the parties].

7. **Miscellaneous**. Pursuant to California Evidence Code section 703.5, the Temporary Judge will not be compelled to testify as a witness in this proceeding. The Temporary Judge has judicial immunity to the same extent that a Judicial Officer of the California Superior Court.

8. **[optional] Facsimile Signatures**. Signatures may be obtained via facsimile.

Dated: _____ Dated: _____

_____ _____
[name of Petitioner] [name of Respondent]

Dated: _____ Dated: _____

_____ _____
[name of Petitioner's attorney] [name of Respondent's attorney]

Consent

I, [name of Temporary Judge], and active member of the State Bar of California, hereby consent to act as a temporary judge in the above-captioned proceeding in accordance with the terms and provisions of this stipulation.

Dated: _____ Dated: _____

Oath of Office

I, [name of Temporary Judge], do hereby solemnly swear that I am an active member of the State Bar of California and that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear truth and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties upon which I am about to undertake. I certify that I am aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these rules.

Dated: _____ _____
[name of Temporary Judge]
Temporary Judge

Order Appointing Temporary Judge

The stipulation of the parties and their respective attorneys that [name of Temporary Judge] act as a temporary judge in the above-captioned matter is hereby approved. Accordingly, for good cause shown, [name of Temporary Judge] is hereby appointed and designated as the temporary judge in the above-captioned proceeding and to make all orders necessary and proper to bring this case to judgment.

Dated: _____ _____
JUDGE OF THE SUPERIOR COURT

APPENDIX D

Filing Districts (Sorted by zip code)

ZIP CODE	NAME	VENUE	ZIP CODE	NAME	VENUE	ZIP CODE	NAME	VENUE
91901	ALPINE	EAST	92028	FALLBROOK	NORTH	92117	SD, WILLIAM H. TAFT	CENTRAL
91902	BONITA	SOUTH	92029	ESCONDIDO	NORTH	92118	SD, CORONADO	CENTRAL
91903	ALPINE	EAST	92030	ESCN, (ORANGE GLEN)	NORTH	92119	SD, NAVAJO	CENTRAL
91905	BOULEVARD	EAST	92033	ESCN, (ESCONDIDO BL)	NORTH	92120	SD, GRANTVILLE	CENTRAL
91906	CAMPO	EAST	92036	JULIAN	EAST	92121	SD, SORRENTO VALLEY	CENTRAL
91908	BONITA	SOUTH	92037	SAN DIEGO, LA JOLLA	CENTRAL	92122	SD, UNIVERSITY	CENTRAL
91909	CHULA VISTA	SOUTH	92040	LAKESIDE	EAST	92123	SD, SERRA MESA	CENTRAL
91910	CHULA VISTA	SOUTH	92045	ESCONDIDO	NORTH	92124	SD, TIERRASANTA	CENTRAL
91911	CHULA VISTA	SOUTH	92051	OCEANSIDE-(BROOK ST)	NORTH	92126	SD, MIRA MESA	CENTRAL
91912	CHULA VISTA	SOUTH	92054	OCEANSIDE	NORTH	92127	SD, RANCHO BERNARDO	CENTRAL
91913	CHULA VISTA	SOUTH	92055	CAMP PENDLETON	NORTH	92128	SD, RANCHO BERNARDO	CENTRAL
91914	CHULA VISTA	SOUTH	92056	OCEANSIDE	NORTH	92129	SD, RANCHO PENASQUITOS	CENTRAL
91915	CHULA VISTA	SOUTH	92057	OCEANSIDE	NORTH	92130	SD, CARMEL VALLEY	CENTRAL
91916	DESCANSO	EAST	92059	PALA	NORTH	92131	SD, SCRIPPS MIRAMAR	CENTRAL
91917	DULZURA	EAST	92060	PALOMAR MOUNTAIN	NORTH	92133	SD, NAVAL TR. CTR.	CENTRAL
91921	CHULA VISTA	SOUTH	92061	PAUMA VALLEY	NORTH	92134	NAVAL MEDICAL CTR.	CENTRAL
91931	GUATAY	EAST	92064	POWAY	CENTRAL	92135	NAVAL AIR STA-32ND ST	CENTRAL
91932	IMPERIAL BEACH	SOUTH	92065	RAMONA	EAST	92136	32ND ST-NAVAL STATION	CENTRAL
91933	IMPERIAL BEACH	SOUTH	92066	RANCHITA	NORTH	92137	SD, (MIDWAY)	CENTRAL
91934	JACUMBA	EAST	92067	RANCHO SANTA FE	NORTH	92138	SD, (MIDWAY)	CENTRAL
91935	JAMUL	EAST	92068	SAN LUIS REY	NORTH	92139	SD, PARADISE HILLS	CENTRAL
91941	LA MESA	EAST	92069	SAN MARCOS	NORTH	92140	SD, USMC RECRUIT DEPOT	CENTRAL
91942	LA MESA	EAST	92070	SANTA YSABEL	EAST	92142	SD, (TIERRASANTA)	CENTRAL
91943	LA MESA (STA A)	EAST	92071	SANTEE	EAST	92143	SD, (SAN YSIDRO)	SOUTH
91944	LA MESA	EAST	92072	SANTEE	EAST	92145	SD, MIRAMAR	CENTRAL

91945	LEMON GROVE	EAST	92074	POWAY	CENTRAL	92149	SD, (PARADISE HILLS)	CENTRAL
91946	LEMON GROVE	EAST	92075	SOLANA BEACH	NORTH	92153	SD, (NESTOR)	SOUTH
91947	NATC. (LINCOLN ACRES)	SOUTH	92079	SAN MARCOS	NORTH	92154	SD, OTAY MESA	SOUTH
91948	MOUNT LAGUNA	EAST	92082	VALLEY CENTER	NORTH	92155	NAVAL AMPHIBIOUS BASE	SOUTH
91950	NATIONAL CITY	SOUTH	92081	VISTA	NORTH	92159	SD, (NAVAJO)	CENTRAL
91951	NATIONAL CITY	SOUTH	92084	VISTA	NORTH	92160	SD, (GRANTVILLE)	CENTRAL
91962	PINE VALLEY	EAST	92085	VISTA	NORTH	92161	VETERANS ADM. HOSPITAL	CENTRAL
91963	POTRERO	EAST	92086	WARNER SPRINGS	NORTH	92162	SD, (GEORGE WASHINGTON)	CENTRAL
91976	SPRING VALLEY	EAST	92088	FALLBROOK	NORTH	92163	SD, (HILLCREST)	CENTRAL
91977	SPRING VALLEY	EAST	92090	EL CAJON	EAST	92164	SD, (NORTH PARK)	CENTRAL
91978	SPRING VALLEY	EAST	92091	RANCHO SANTA FE	NORTH	92165	SD, (CITY HEIGHTS)	CENTRAL
91979	SPRING VALLEY	EAST	92093	LA JOLLA (UCSD)	CENTRAL	92166	SD, (POINT LOMA)	CENTRAL
91980	TECATE	EAST	92096	SAN MARCOS	NORTH	92167	SD, (OCEAN BEACH)	CENTRAL
92003	BONSALL	NORTH	92101	SAN DIEGO, DOWNTOWN	CENTRAL	92169	SD, (PACIFIC BEACH)	CENTRAL
92004	BORREGO SPRINGS	NORTH	92102	SAN DIEGO	CENTRAL	92170	SD, (SOUTHEASTERN)	SOUTH
92007	CARDIFF-BY-THE-SEA	NORTH	92103	SD, HILLCREST	CENTRAL	92171	SD, (LINDA VISTA)	CENTRAL
92008	CARLSBAD	NORTH	92104	SD, NORTH PARK	CENTRAL	92172	SD, (RANCHO PENASQTS)	CENTRAL
92009	CARLSBAD	NORTH	92105	SD, CITY HEIGHTS	CENTRAL	92173	SAN DIEGO, SAN YSIDRO	SOUTH
92014	DEL MAR	CENTRAL	92106	SD, POINT LOMA	CENTRAL	92174	SD, (ENCANTO)	CENTRAL
92018	CARLSBAD	NORTH	92107	SD, OCEAN BEACH	CENTRAL	92176	SD, (JOHN ADAMS)	CENTRAL
92019	EL CAJON	EAST	92108	SD, MISSION VALLEY	CENTRAL	92177	SD, (WILLIAM H. TAFT)	CENTRAL
92020	EL CAJON	EAST	92109	SD, PACIFIC BEACH	CENTRAL	92182	SAN DIEGO (SDSU)	CENTRAL
92021	EL CAJON	EAST	92110	SD, OLD TOWN	CENTRAL	92190	SD, (GRANTVILLE)	CENTRAL
92022	EL CAJON, (MAIN)	EAST	92111	SD, LINDA VISTA	CENTRAL	92191	SD, (SORRENTO VALLEY)	CENTRAL
92023	ENCINITAS	NORTH	92112	SD, (DOWNTOWN)	CENTRAL	92192	SD, (UNIVERSITY CITY)	CENTRAL

92024	ENCINITAS	NORTH	92113	SD, LOGAN HEIGHTS	CENTRAL	92193	SD, (SERRA MESA)	CENTRAL
92025	ESCONDIDO	NORTH	92114	SD, ENCANTO	CENTRAL	92195	SD , (ANDREW JACKSON)	CENTRAL
92026	ESCONDIDO	NORTH	92115	SD, COLLEGE GROVE	CENTRAL	92198	SD, (RANCHO BERNARDO)	CENTRAL
92027	ESCONDIDO	NORTH	92116	SD, NORMAL HEIGHTS	CENTRAL			

APPENDIX E

MANDATORY TRIAL STATEMENT

<Name of Self-Represented Party or Attorney>
<Address>
<Telephone: (XXX) XXX-XXX
Attorney for <Name of Party>

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

In re the Marriage of: Petitioner: and Respondent:	CASE NO.

I. MEET AND CONFER STATEMENT:

A. Date of Conference:

B. In Person/By Phone:

C. Issues Settled Are: (Be Specific)

1.
2.
3.

D. Issues To Be Litigated Are: (Be Specific)

1.
2.
3.

E. If Counsel Failed To Meet And Confer, Explain Reasons in Detail:

II. STATISTICAL DATA:

A. Date of Marriage:

B. Date of Separation:

C. Length of Marriage:

D. Marital Status Terminated? ____ If so, date:

E. Husband's Age ( ) and Employment:

F. Husband's Monthly Income: Gross: $_____ Net: $_____

G. Husband's Paydays:

H. Cohabitee or New Spouse's Monthly Income: Gross: $_____ Net: $_____

I. Wife's Age ( ) and Employment:

J. Wife's Monthly Income: Gross: $_____ Net: $_____

K. Wife's Paydays:

M. Minor Children:

Name	Birthdate	Age	Gender	Residing With

III. HISTORY OF PROCEEDINGS:(Summarize All Prior Court Proceedings)

DATE	EVENT

IV. HUSBAND'S/WIFE'S PROPOSALS RE ISSUES:
(In Same Order As Issues Are Listed in Part I D Above)

1. Issue: (e.g., Spousal Support)
2. Issue: (e.g., Child Support)
3. Issue: (e.g., Attorney's Fees)

D1. Issue:
Resolution

D2. Issue:
Resolution

D3. Issue:
Resolution:

V. ATTACHMENTS AND EXHIBITS:

A. Where issues include division of assets, counsel must attach relevant schedules of proposed division (See Appendix E - Attachment 1 as example).

B. Other appropriate attachments may be included, and attachments required by rule 5.6.4 (H), (I) and (J) must be included.

Dated: _____ _____
ATTORNEY NAME
Attorney for

(Effective 1/1/05)

APPENDIX E - ATTACHMENT 1

_____'s Proposed Division of Community Property

I. STIPULATED

	Fmv	**Debt**	**Net**	**To H**	**To W**
Residence	$560,000	$460,000	$100,000	$100,000	%0
Furniture	$10,000	$0	$10,000	$3,000	$7,000
2002 Nissan Pathfinder	$28,000	$18,000	$10,000	$10,000	$0
2000 Mazda Millenia	$13,000	$6,000	$7,000	$0	$7,000
1998 Nomad RV	$30,000	$17,000	$13,000	$13,000	$0
Husband's IRA	$4,000	$0	$4,000	$4,000	$0
Wife's IRA	$4,000	$0	$4,000	$0	$4,000
B of A Visa	$0	$734	($734)	($734)	$0

II. DISPUTED

Rental Property	$382,500	$154,980	$227,520	$227,520	$0
Pool Table	$650	$0	$650	$650	$0
Husband's Pension	$29,450	$0	$29,450	$14,725	$14,725
Husband's Epsteins		$5,288	($5,288)	($5,288)	$0
	$1,061,00	**$662,002**	**$399,598**	**$366,873**	**$32,725**

(Effective 1/1/05)

APPENDIX F

FAMILY LAW SETTLEMENT CONFERENCE AT ISSUE FORM

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO ☐ COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 ☐ FAMILY COURT BUILDING, 1555 6TH AVE., SAN DIEGO, CA, 92101-3294 ☐ MADGE BRADLEY BUILDING, 1409 4TH AVE., SAN DIEGO, CA 92101-3105 ☐ NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA, 92083-6651 ☐ EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA, 92020-3941 ☐ SOUTH COUNTY DIVISION, 5000 3RD AVE., CHULA VISTA, CA 91910-5649	*FOR COURT USE ONLY*
PETITIONER(S)	
RESPONDENT(S)	DATE
FAMILY LAW SETTLEMENT CONFERENCE AT ISSUE FORM **(San Diego Superior Court Rules, Division V, rule 5.2.5)**	CASE NUMBER

I. RESOLVED ISSUES:

1. _____ 6. _____
2. _____ 7. _____
3. _____ 8. _____
4. _____ 9. _____
5. _____ 10. _____

II. ISSUES TO BE LITIGATED:

1. _____ 6. _____
2. _____ 7. _____
3. _____ 8. _____
4. _____ 9. _____
5. _____ 10. _____

III. PETITIONER'S WINESSES: _____

1. _____
2. _____
3. _____
4. _____
5. _____

IV. RESPONDENT'S WITNESSES:

1. _____
2. _____
3. _____
4. _____
5. _____

V. EXHIBITS TO BE MARKED AND EXCHANGED BY: _____

VI. TRIAL TIME ESTIMATE: _____

I AM A PARTY TO THIS ACTION, HAVE READ THE FOREGOING AND UNDERSTAND THAT, IN TRYING THIS CASE, I WILL BE LIMITED TO THE ITEMS AND TIME ESTIMATE UNDER PARAGRAPHS II & VI ABOVE.

_____	_____
Petitioner	Respondent
_____	_____
Attorney for Petitioner	Attorney for Respondent
_____	_____
Judge/Temporary Judge	Judge/Temporary Judge

CONFIDENTIAL:

Case Number _____ Case Name _____ vs _____ Date _____

(SDSC D-116)

APPENDIX G

LONG CAUSE TRIAL RULES

For any trial set on the long cause trial calendar (these rules do not apply to long cause OSCs) counsel must:

A. SEVEN COURT DAYS OR MORE BEFORE TRIAL

Personally meet and confer to exchange all of the following documents:
1. Trial statements (see **Appendix E**)
2. Trial briefs
3. Where support or fees are at issue, current Income and Expense Declarations including all required attachments.
4. A list of proposed exhibits (see attachment 1) and copies of actual exhibits. (In custody trials, counsel need not exchange the expert's test data, notes, etc., related to an evaluation previously performed if the data and report were previously provided to each counsel).*
5. A list designating non-party witnesses (including name, address and telephone number) and the subject matter of each witness's testimony (see attachment 2).*

B. FOUR COURT DAYS BEFORE TRIAL

1. Telephonically meet and confer to discuss stipulations on admissibility of exhibits, specifying objections to each exhibit to which admissibility is not stipulated, and discuss all aspects of any intended in limine motions.
2. If objections to exhibits are unresolved, or a motion in limine is to be filed, schedule appointment with court for pretrial conference to be held at least 2 court days before trial.
3. File with the clerk of the trial department and personally serve on opposing counsel any in limine motions (see attachment 3).
4. Arrange with the clerk of the trial department a date and time to pre-mark exhibits and to file original exhibits.
5. File trial statement, trial brief, Income and Expense Declaration and Court's copy of the exhibits with the clerk of the trial department.

C. THREE COURT DAYS BEFORE TRIAL

1. File with the clerk of the trial department and personally serve on opposing counsel a written list of objections to the exhibits of the other party (see attachment 4).

D. TWO COURT DAYS BEFORE TRIAL

1. If there are unresolved objections to exhibits or if motions in limine were filed, both counsel must confer personally with the Court to discuss the objections and motions. At that time, the Court may issue a tentative ruling on the issues presented.

E. DAY OF TRIAL

1. All objections to exhibits and motions in limine will be heard on the record and a ruling will be issued before the presentation of opening argument.
2. Each party must pay the mandated statutory court reporter fee for each half day of trial. It is the duty of counsel to know the amount of that fee before the day of trial so that counsel can deliver this amount to the clerk in the trial department before the start of each half day of trial. The amount must be paid in cash or check. Checks can only be from a party or the attorney's client trust account. Checks must be made payable to the Clerk of the Superior Court.
3. Each day, the morning session of trial will usually begin at 9 a.m. and end at noon with a 15 minute break at approximately 10:30 a.m. The afternoon session will usually begin at 1:30 p.m. and end at 4:30 p.m. with a 15 minute break at approximately 3:15 p.m. At the end of each day of a multi-day trial, counsel and the Court shall (LDS) review the next day's witnesses, examination time and any other calendaring issues.

***Any witnesses not disclosed pursuant to these rules will not be permitted to testify at trial. Any exhibits not exchanged pursuant to these rules will not be introduced at trial. The only exceptions are true impeachment or rebuttal witnesses or exhibits**.
(Effective 1/1/05)

APPENDIX G - ATTACHMENT 1

LIST OF PROPOSED EXHIBITS

<Name of Self-Represented Party or Attorney>
<Address>
Telephone: (XXX) XXX-XXXX
Attorney for: <Name of Party>

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

In re the Marriage of: Petitioner: and Respondent:	CASE NO. **LIST OF PROPOSED EXHIBITS**

Petitioner/Respondent submits the following proposed exhibits:

1.

2.

3.

4.

DATED: _____

_____
ATTORNEY NAME
Attorney for

(Effective 1/1/05)

APPENDIX G - ATTACHMENT 2

LIST OF WITNESSES

<Name of Self-Represented Party or Attorney>
<Address>
Telephone: (XXX) XXX-XXXX
Attorney for: <Name of Party>

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

In re the Marriage of: Petitioner: and Respondent:	CASE NO. **LIST OF WITNESSES**

Petitioner/Respondent intends to call the following witnesses at the time of trial to testify on the subjects stated:

NAME ADDRESS AND TELEPHONE NUMBER – SUBJECT OF TESTIMONY

1.
2.
3.
4.

DATED: _____

_____
ATTORNEY NAME
Attorney for

(Effective 1/1/05)

APPENDIX G - ATTACHMENT 3

NOTICE OF MOTIONS *IN LIMINE*

<Name of Self-Represented Party or Attorney>
<Address>
Telephone: (XXX) XXX-XXXX
Attorney for: <Name of Party>

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

In re the Marriage of: Petitioner: and Respondent:	CASE NO. **NOTICE OF MOTIONS *IN LIMINE***

Petitioner/Respondent requests the Court enter the following in limine orders for the reasons stated:

1.
2.
3.
4.

This motion is based upon the records, files and pleadings in this action, the memorandum of points and authorities submitted with this notice of motion, and any and all other matters which may be timely presented before the time of the hearing on this motion.

DATED: _____

_____
ATTORNEY NAME
Attorney for

(Effective 1/1/05)

APPENDIX G - ATTACHMENT 4

OBJECTIONS TO EXHIBITS OF PETITIONER/RESPONDENT

<Name of Self-Represented Party or Attorney>
<Address>
Telephone: (XXX) XXX-XXXX
Attorney for: <Name of Party>

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

In re the Marriage of: Petitioner: and Respondent:	CASE NO. **OBJECTIONS TO EXHIBITS OF PETITIONER/RESPONDENT**

Petitioner/Respondent objects to the following exhibits for the reasons stated:

EXHIBIT	OBJECTION
1.	
2.	
3.	
4.	

DATED: _____

_____
ATTORNEY NAME
Attorney for

(Effective 1/1/05)

APPENDIX G - ATTACHMENT 5

LONG CAUSE TRIAL RULES CHECKLIST

A. SEVEN COURT DAYS OR MORE BEFORE TRIAL

____ 1. Personally meet and confer with opposing counsel.

____ 2. Exchange trial briefs.

____ 3. Where support or fees are at issue, exchange Income & Expense Declarations with required attachments.

____ 4. Exchange list of exhibits and copies of exhibits.

____ 5. Exchange list designating non-party witnesses (including name, address and telephone number) and the subject matter each will testify to.

B. FOUR COURT DAYS BEFORE TRIAL

_____ 1. Confer with opposing counsel telephonically to discuss objections to the exhibits and in limine motions.

_____ 2. If objections to exhibits unresolved, or motion in limine to be filed, schedule appointment for pre-trial conference.

_____ 3. File with the Court and serve in limine motions.

_____ 4. Arrange with clerk to pre-mark exhibits and file original exhibits.

_____ 5. File trial brief, Income & Expense Declaration and court's copy of the exhibits in trial department.

C. THREE COURT DAYS BEFORE TRIAL

_____ 1. File with clerk of trial department and opposing counsel a written list of objections to the exhibits.

D. TWO COURT DAYS BEFORE TRIAL

_____ 1. If there are unresolved objections to exhibits or if motions in limine were filed, confer personally with the Court.

E. DAY OF TRIAL

_____ 1. All objections to exhibits and motions in limine will be heard and a ruling will be issued.

_____ 2. Each counsel must pay the mandated statutory court reporter fee for each half day of trial.

_____ 3. At the conclusion of each day of trial, the Court and counsel shall review the next days' witnesses, examination time and other calendaring issues.

(Effective 1/1/05)

APPENDIX H

ORDER FOR BIFURCATION OF MARITAL STATUS

<Name of Self-Represented Party or Attorney>
<Address>
Telephone: (XXX) XXX-XXXX
Attorney for: <Name of Party>

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

In re the Marriage of: Petitioner: and Respondent:	CASE NO. **STIPULATION AND ORDER/ORDER – [insert as appropriate] FOR BIFURCATION OF MARITAL STATUS**

[Assumes Petitioner is party requesting bifurcation]
[Insert Appropriate Introductory Provision]

1. STATUS JUDGMENT [If motion filed]: The Petitioner's motion to bifurcate the status of the marriage from the remaining issues in the dissolution of marriage proceeding is granted and Petitioner will be entitled to proceed to obtain a Judgment of Dissolution of Marriage (Status Only).

1. STATUS JUDGMENT [If pursuant to stipulation]: Petitioner will be entitled to proceed to obtain a Judgment of Dissolution of Marriage (Status Only).

2. RESERVATION OF JURISDICTION: The Court severs and reserves jurisdiction over all other issues including, but not limited to, the nature and division of community property, spousal support, child support, attorneys' fees and costs.

3. STATUS OF TEMPORARY ORDERS: All temporary orders presently in effect will remain in effect until the time of trial or further order of the Court.

4. TAX CONSEQUENCES INCURRED: Petitioner must indemnify and hold the Respondent party harmless from any taxes, reassessments, interest, and penalties payable by the Respondent if the dissolution of the marriage before the division of the marriage before the division of the parties' community estate results in a taxable event to either of the parties by reason of the ultimate division of their community estate, which taxes would not have been payable if the parties were still married at the time the division was made.

5. HEALTH AND MEDICAL INSURANCE: Until judgment has been entered on all remaining issues and has become final, the Petitioner must maintain all existing health and medical insurance coverage for the Respondent and the minor children as named dependents, so long as the Petitioner is legally able to do so. At the time the Petitioner is no longer legally eligible to maintain the Respondent as a named dependent under the existing health and medical policies, the Petitioner or the Petitioner's estate must, at the Petitioner's sole expense, purchase and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage. If comparable insurance is not obtained, the Petitioner or the Petitioner's estate is responsible for the health and medical expenses incurred by the Respondent that would have been covered by the insurance coverage, and must indemnify and hold the Respondent harmless from any adverse consequences resulting from the lack of insurance.

(#6. DOESN'T APPLY IF EMPLOYER HAS LESS THAN 20 EMPLOYEES AND IS NOT GOVERNED BY C.O.B.R.A.)

6. ADDITIONAL PROVISIONS RE: HEALTH INSURANCE: Where the Consolidated Omnibus Budget Reconciliation Act (C.O.B.R.A.) applies to health insurance coverage, Petitioner must, unless relieved of this obligation by a writing signed by Respondent or Respondent's counsel, notify Petitioner's employer and do all acts necessary to insure that C.O.B.R.A. coverage is instituted for Respondent and is continued in full force and effect. If Respondent's rights under C.O.B.R.A. are terminated due to Petitioner's failure to institute and maintain proper coverage on behalf of Respondent, Petitioner, or Petitioner's estate, must indemnify, reimburse and hold Respondent harmless from the loss of any and all benefits which would have been provided had Petitioner instituted and maintained C.O.B.R.A. coverage. Respondent will do any act reasonably necessary to facilitate Petitioner instituting coverage.

(#7. OPTIONAL - UNLESS REQUESTED BY EITHER PARTY)

7. PROBATE HOMESTEAD: Until judgment has been entered on all remaining issues and has become final, the Petitioner must indemnify and hold the Respondent harmless from any adverse consequences resulting to the Respondent if the bifurcation results in a termination of the Respondent's right to a probate homestead in the residence in which the Respondent resides at the time the severance is granted.

(#8. OPTIONAL - UNLESS REQUESTED BY EITHER PARTY)

8. PROBATE FAMILY ALLOWANCE: Until judgment has been entered on all remaining issues and become final, the Petitioner must indemnify and hold the Respondent harmless from any adverse consequences resulting to the Respondent if the bifurcation results in the loss of the rights of the Respondent to a probate family allowance as the surviving spouse of the Petitioner.

9. REAL ESTATE: Until a Judgment is entered on all remaining issues and becomes final, or until further court order, whichever occurs first, the parties are restrained and enjoined from transferring any real estate held by either of them personally or through or by any corporation, partnership or other entity in which they had or have any interest, to any person, business, or entity, without first giving the other party 30 days' written notice of any such proposed transfer.

10. SOCIAL SECURITY BENEFITS: The Petitioner must indemnify and hold the Respondent harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent the Respondent would have been entitled to those benefits or elections as the surviving spouse of the Petitioner.

11. PENSION BENEFITS: Until judgment has been entered on all remaining issues and has become final, the Petitioner must indemnify and hold the Respondent harmless from any adverse consequences resulting to the Respondent if the bifurcation results in the loss of the Respondent's rights to pension benefits, elections, or survivors' benefits under the Petitioner's pension or retirement plan to the extent that the Respondent would have been entitled to those benefits or elections as the surviving spouse of the Petitioner.

(#12: THESE ORDERS ARE DESIGNED FOR PLANS THROUGH PRIVATE EMPLOYERS WHICH ARE GOVERNED BY E.R.I.S.A. YOU MUST MAKE MODIFICATIONS IF THE PLAN IS EITHER MILITARY OR GOVERNMENTAL.)

12. RETIREMENT PLAN ORDERS: With regard to any pension plans or other forms of deferred compensation of either party, Petitioner's counsel must file with this order an Interim Qualified Domestic Relations Order re Survivor Benefits in the form of **Appendix __I__** to the San Diego Superior Court Family Law Rules and cause a copy of the proposed Interim Qualified Domestic Relations Order to be served on the Plan by certified mail.

12.1 PLAN JOINDER: The non-employee spouse must immediately join the Plan as a party to these proceedings.

12.2 FINAL ORDERS: Petitioner's counsel must submit to the plan or plans, after all property issues have been entered and become final, a final qualified domestic relations order, or if a plan is awarded entirely to the employee spouse, an order terminating the interim qualified domestic relations order re survivor benefits.

13. ENFORCEMENT AFTER DEATH: If Petitioner dies after the entry of judgment granting a dissolution of marriage, any obligation imposed by this order is enforceable against any asset, including the proceeds thereof, against which these obligations would have been enforceable prior to the Petitioner's death.

14. TAXES, ATTORNEY FEES AND HOLD HARMLESS ORDER: Petitioner, and in the event of Petitioner's death, Petitioner's estate, must reimburse Respondent for all damages and costs incurred as a result of Petitioner or Petitioner's estate's failure to abide by this Order including reasonable attorneys' fees, costs and accountants' fees either incurred in defending an action by any taxing authority or enforcing the provisions of this Order.

15. APPLICABLE LAW: All provisions contained in this Judgment of Bifurcation will be interpreted in conformance with California Family Code section 2337.

[Insert Appropriate Signature Provisions]

DATED: _____

_____
Judge of the Superior Court

(Effective 1/1/05)

APPENDIX I

INTERIM QDRO

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

In re the Marriage of Petitioner: and Respondent:	CASE NO. D INTERIM QUALIFIED DOMESTIC RELATIONS ORDER RE: SURVIVOR BENEFITS

PURSUANT TO THE [STIPULATED] ORDER FOR BIFURCATION OF THE PARTIES' MARITAL STATUS, THE COURT MAKES THE FOLLOWING FINDINGS AND ORDER:

1. The Plan name and address of the Plan Administrator are as follows:

Name of Plan:
Plan Administrator:
Street:
City/State/Zip:

2. Name, address and Social Security Number of Petitioner/Participant:

Participant:
Name of Plan:
Street:
City/State/Zip:
Social Security No.:

3. Name, address and Social Security Number of Respondent/Alternate Payee:

Alternate Payee:
Name of Plan:
Street:
City/State/Zip:
Social Security No.

4. _____ ("Participant") has earned certain benefits under _____ the ("Pension Plan") which are the community property of ("Alternate Payee") and Participant. Pending a final order of the Court, Participant and Alternate Payee intend by this Stipulation and Order to provide for the continuation of surviving spouse benefits to Alternate Payee.

5. This Order is intended to be a Qualified Domestic Relations Order, as defined in Section 414(p) of the Internal Revenue Code of 1986, as amended.

6. If Participant dies before the effective date of Participant's retirement and if Alternate Payee survives participant, then Alternate Payee must be treated by the Pension Plan as a "surviving spouse" of Participant for purposes of any pre-retirement benefit payable to a surviving spouse under the Pension Plan. Alternate Payee must receive all of such pre-retirement survivor benefit.

7. This Order is effective against any successor(s) or transferee plans of Pension Plan, including any plan(s) into which the Pension Plan is merged.

8. This Order is effective following the termination of the Pension Plan and also applies to any benefits payable to Participant by the Pension Benefit Guaranty Corporation in the event of the termination of the Pension Plan with insufficient assets to pay all benefits.

9. Each party is responsible for and must pay any taxes due in connection with his or her receipt of distributions from the Pension Plan.

10. Upon request, each party must perform any act reasonably necessary to carry into effect the terms of this Order.

11. The Court retains jurisdiction to make such further orders to modify, enforce, clarify or revoke the provisions of this Order. The Pension Plan will not be responsible to inquire into any possible changes in the provisions of this Order, but will act in accordance with the most recent form of the Order which has been provided to the Pension Plan.

12. Pending further order of the Court, the Plan is restrained and enjoined from making any distribution to Participant, Alternate Payee, or any other Payee.

APPROVED AS TO FORM:

_____

DATED: _____

_____
JUDGE OF THE SUPERIOR COURT

(Effective 1/1/05)

APPENDIX J

CONFIDENTIAL INFORMATION FOR MINOR'S COUNSEL

Counsel for Minor: _____ Case Name: _____
Case Number: _____

Confidential information for minors counsel and accounting department			
Children's Names	Birth Date	Sex	Name and Relationship of Person with Whom Child Resides

MOTHER'S INFORMATION	FATHER'S INFORMATION	GUARDIAN'S INFORMATION
Name:	Name:	Name:
Address:	Address:	Address:
Phone #:	Phone #:	Phone #:
Place of Employment:	Place of Employment:	Place of Employment:
Work Phone:	Work Phone:	Work Phone:
Cell Phone:	Cell Phone:	Cell Phone:
Social Security #:	Social Security #:	Social Security #:
Driver's License # and State:	Driver's License # and State:	Driver's License # and State:
Date of Birth:	Date of Birth:	Date of Birth:
Attorney's Name:	Attorney's Name:	Attorney's Name:

Restraining Orders in effect? Yes ( ) No ( ) Which Party is Restrained?

_____

Comments:

_____

_____

We each hereby declare under penalty of perjury that the foregoing information is true and correct.
Date: _____ Date: _____

Print your Name: _____ Print your Name: _____

Sign Here: _____ Sign Here: _____

(Effective 1/1/05)

FAMILY LAW FORMS
ALPHABETICAL LISTING

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-066	1-01	1285.80	7-89	Abstract of Support Judgment	M
D-157	1-99	1296.72	1-99	Advisement and Waiver of Rights Re: Establishment of Parental Relationship (Uniform Parentage)	A
D-011B	7-99	1285.61B	7-99	Affidavit of Facts Constituting Contempt (Domestic Violence/Custody and Visitation)	M
D-011A	7-99	1285.61A	7-99	Affidavit of Facts Constituting Contempt (Financial and Injunctive Orders)	M
D-205	7-97	1299.04	7-97	Answer to Complaint or Supplemental Complaint Re: Parental Obligations (Governmental)	M
D-203	1-98	1298.02	7-94	Answer to Gov. Complaint or Supplemental Complaint to Establish Parental Relationship or Child Support or Both	M
D-009	6-00	1282.50	1-99	Appearance, Stipulation and Waivers	A
D-027	1-01	DV-100	1-01	Application and Declaration for Order (DV)	M
D-067	1-01	FJ-200	1-01	Application and Order for Appointment of Guardian Ad Litem of Minor (Family Law/Juvenile)	
D-074	7-99	1285.75	7-99	Application and Order for Health Insurance Coverage	M
D-033	6-00	1296.15	1-85	Application and Order for Reissuance of OSC	M
D-177	1-01	EA-125	1-01	Application and Order for Reissuance of OSC (EA)	
D-095	1-95	1285.29	1-95	Application for Disbursement from Child Support Security Deposit and Order for Disbursement	M
D-058	1-94	1297	1-94	Application for Expedited Child Support Order	M
D-085	1-94	1297.90	1-90	Application for Notice of Support Arrearage	M
D-007	1-99	1285.20	1-99	Application for Order and Supporting Declaration	M
D-042	1-01	1286.75	1-01	Application for Separate Trial (Motion to Bifurcate)	M
D-098	1-01	1296.91	1-01	Application to Determine Arrerages (DV)	M
D-143	7-97	1285.625	7-97	Attachment to Declaration of Support Arrearage	A
D-162	1-00	1285.73	1-00	Attachment to Qualified Domestic Relations Orders for Support	
D-089	7-99	1296.31A	7-99	Child Custody and Visitation Order Attachment	M
D-027A	1-99	DV-100A	1-99	Child Custody, Visitation and Support Attachment to Application and Declaration for Order - DV	M
D-129	1-00	1285.92	1-00	Child Support Case Registry	M
D-090	1-01	1296.31B	1-01	Child Support Information and Order Attachment	M

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-15A	1-80	1285.56	1-80	Continuation of Property Declaration	M
D-137	1-98			Declaration and Order for Payment of Attorney Fees/Costs	
D-112	10-99			Declaration and Order for Service by Mailing and Posting in Lieu of Publication	
D-037	7-00	1286.50	7-99	Declaration for Default or Uncontested Dissolution or Legal Separation	M
D-156	1-99	1296.70	1-99	Declaration for Default or Uncontested Judgment	M
D-065	1-99			Declaration for Issuance of a Writ of Execution	
D-099	7-99	1292	1-94	Declaration of Disclosure	M
D-113	7-98			Declaration of Service by Mailing and Posting in Lieu of Publication	
D-142	4-00	1285.62	7-97	Declaration of Support Arrearage	M
D-099A	7-99	295.05	1-99	Declaration Re: Service of Declaration of Disclosure	M
D-006	1-01	MC-150	1-01	Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act	A
D-093	1-99	1296.31E	1-99	Domestic Violence Miscellaneous Orders Attachment	M
D-032	1-01	DV-150	1-01	Domestic Violence Restraining Orders Instruction Booklet	A
D-096	1-95	1285.76	1-95	Employer's Health Insurance Return	M
D-127	2-98			Employment Efforts Order	
D-046	1-00			Ex Parte Application	
D-228	7-99	1298.56	7-99	Ex Parte App. for Order for Nondisclosure of Address	
D-233	7-00	1298.60	7-00	Ex Parte Application for Transfer and Order (UIFSA)	M
D-020	8-00	1287.50	7-94	Ex Parte Application for Restoration of Former Name After Entry of Judgment and Order	M
D-038	1-01	1285.65	1-98	Ex Parte Application for Wage Assignment Order	M
D-060	1-95	1297.20	1-95	Expedited Child Support Order	M
D-049	2-00			Family Law Certificate of Assignment	
D-116	1-98			Family Law Settlement Conference Issues	
D-014A	1-98	1285.52	7-95	Financial Statement (Simplified)	A
D-088	1-92	1296.31	1-92	Findings and Order After Hearing	M
D-222	1-99	1299.70	1-99	Findings and Recommendations of Commissioner	M
D-014	5-99	1285.50	1-95	Income and Expense Declaration	A
D-014	5-99	1285.50a	1-95	Income Information	A
D-014	5-99	1285.50b	1-95	Expense Information	A
D-014	5-99	1285.50c	1-95	Child Support Information	A
D-141	7-97	1285.33	7-97	Information Sheet - How to Oppose a Request to Change Child, Spousal or Family Support	A

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-151	1-99	1285.79	1-99	Information Sheet on Changing a Child Support Order	A
D-139	7-97	1285.31	7-97	Information Sheet - Simplified Way to Change Child, Spousal or Family Support	A
D-084A	1-91	1295.12	1-91	Information Sobre La Disolucion Sumaria	M
D-054	11-00			Instructions - Family Law Filings	
D-073	6-00			Instructions for Orders Prohibiting Domestic Violence	
D-044	2-97			Job Contacts	
D-134	7-99			Joint Case Management Statement and Order	
D-081	1-01	1295.10	1-95	Joint Petition for Summary Dissolution of Marriage	M
D-018	7-99	1287	7-99	Judgment	M
D-159	8-00	1296.75	1-99	Judgment (Uniform Parentage)	M
D-232	7-00	1298.58	7-00	Judgment Re: Parental Obligations (UIFSA)	M
D-039	10-95			Memorandum that Family Law Case is At Issue	
D-090A	1-99	1296.31B	1-99	Non-Guideline Child Support Attachment	M
D-211	7-97	1299.19	7-97	Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income and Proposed Answer	M
D-026	1-95	1291.25	1-95	Notice of App./Resp. of Employee Pension Benefit Plan	M
D-176	1-01	1299.77	1-01	Notice of Consolidation	
D-097	1-95	1296.90	1-95	Notice of Delinquency	M
D-021	1-99	1290	1-99	Notice of Entry of Judgment	M
D-053	1-99	1285.10	1-99	Notice of Motion	M
D-022	1-01	1291.10	1-95	Notice of Motion and Declaration for Joinder	M
D-219	7-98	1299.61	7-98	Notice of Motion and Declaration for Joinder of Other Parent in Governmental Action	A
D-138	7-97	1285.30	7-97	Notice of Motion and Motion for Simplified Modification of Order for Child, Spousal or Family Support	M
D-110	1-01	1296.95	1-93	Notice of Motion for Judicial Review of License Denial	M
D-223	1-99	1299.72	1-99	Notice of Objection (Governmental)	M
D-152	1-99	1285.88	1-99	Notice of Registration of Out-of-State Support Order	A
D-083	1-00	1295.30	1-95	Notice of Revocation of Petition for Summary Dissolution	M
D-080	1-95	1285.78	1-95	Notice of Rights and Responsibilities - Health Care Cost Reimbursement Procedures	A
D-086	7-98	1297.92	1-90	Notice of Support Arrearage	M
D-045	1-99	1290.5	1-99	Notice of Withdrawal of Attorney of Record	M
D-216	7-97	1299.49	7-97	Notice to District Attorney on Intent to Take Independent Action to Enforce Support Order (Governmental)	M

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-210	1-99	1298.07	1-99	Order After Hearing (Governmental)	M
D-175	1-01	1296.89	1-01	Order After Hearing on Motion to Set Aside Support Order	
D-172	7-00	1296.79	7-00	Order After Hearing on Motion to Set Aside Voluntary Declaration of Paternity	
D-111	1-01	1296.95	1-93	Order After Judicial Review of License Denial (Child Support)	M
D-041	7-99			Order Appointing Counsel for Minor(s)	
D-215	7-97	1299.46	7-97	Order Determining Claim of Exemption or 3rd Party Claim (Governmental)	M
D-094	1-95	1285.28	1-95	Order for Child Support Security Deposit and Evidence of Deposit	M
D-072	1-00			Order for Removal from Residence	
D-230	7-00			Order/Notice to Withhold Income for Child Support - Federal	
D-231	1-00			Order/Notice to Withhold Income for Child Support - Instructions	
D-050	9-00			Order Setting Aside Judgment of Dissolution of Marriage/Order for Dismissal (Parties Reconciled)	
D-008	6-00	1285	1-99	Order to Show Cause	M
D-226	7-99	1298.52	7-99	Order to Show Cause (UIFSA)	
D-011	7-99	1285.60	7-99	Order to Show Cause and Affidavit for Contempt	M
D-028	1-01	DV-110	1-01	Order to Show Cause and Temporary Restraining Order - DV (CLETS)	M
D-166	1-01	EA-120	1-01	Order to Show Cause and Temporary Restraining Order - EA (CLETS)	A
D-001	1-01	1281	1-01	Petition	M
D-160	1-01	1296.80	1-01	Petition for Custody and Support of Minor Children	
D-164	1-01	EA-100	1-01	Petition for Protective Orders - EA (CLETS)	
D-048	1-01	1296.60	1-01	Petition to Establish Parental Relationship (Uniform Parentage)	A
D-052	6-96			Plea of Guilt/Contempt	
D-063	1-01	1291.35	1-95	Pleading on Joinder - Employee Pension Benefit Plan	M
D-117	7-00			Pre-Read Request for Hearing	
D-149	10-99	1285.84	7-98	Proof of Personal Service	A
D-168	1-01	EA-140	1-01	Proof of Personal Service - EA (CLETS)	A
D-150	7-98	1285.85	7-98	Proof of Service by Mail	A
D-031	1-01	DV-140	1-01	Proof of Service - DV (Uniform Parentage)	M
D-169	1-01	EA-141	1-01	Proof of Service by Mail - EA (CLETS)	A
D-004A	1-91	1283.5	1-91	Proof of Service of Summons	M
D-015	7-99	1285.55	1-80	Property Declaration	M
D-092	1-95	1296.31D	1-95	Property Order Attachment	M
D-163	1-00	1285.74	1-00	Qualified Domestic Relations Order for Support (Earnings Assignment Order for Support)	A
D-154	8-00	1296.45	1-99	Registration of Foreign DV Restraining Order (CLETS)	M
D-019	1-80	1288	1-80	Request and Declaration for Final Judgment of Dissolution of Marriage	M

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-082	1-00	1295.20	1-95	Request for Final Judgment, Final Judgment of Dissolution of Marriage and Notice of Entry of Judgment	M
D-173	1-01	1296.87	1-01	Request for Hearing and Application to Set Aside Support Order	
D-170	7-00	1296.77	7-00	Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity	
D-153	7-99	1285.90	7-99	Request for Hearing Re: Registration of Support Order	
D-213	7-99	1299.28	7-99	Request for Hearing Re: Wage and Earnings Assignment Order	M
D-057	1-01	1291.15	1-95	Request for Joinder of Employee Pension Benefit Plan and Order	M
D-214	7-97	1299.40	7-97	Request for Judicial Determination of Support Arrearages (Governmental)	
D-064	1-94	1292.15	1-94	Request for Production of an Income and Expense Declaration After Judgment	M
D-017	3-00	1286	1-99	Request to Enter Default	M
D-002	1-01	1282	1-01	Response	M
D-059	1-94	1297.10	1-94	Response to Application for Expedited Child Support Order and Notice of Hearing	M
D-161	1-01	1296.81	1-01	Response to Petition for Custody and Support of Minor Children	A
D-165	1-01	EA-110	1-01	Response to Petition for Protective Orders - EA (CLETS)	A
D-051	3-00	1296.65	1-99	Response to Petition to Establish Parental Relationship (Uniform Parentage)	A
D-227	7-99	1298.54	7-99	Response to Uniform Support Petition	
D-174	1-01	1296.88	1-01	Responsive Declaration to Application to Set Aside Support Order	
D-171	7-00	1296.78	7-00	Responsive Declaration to Application to Set Aside Voluntary Declaration of Paternity	
D-023	9-00	1291.20	1-20	Responsive Declaration to Motion for Joinder Consent Order of Joinder	M
D-220	7-98	1299.64	7-98	Responsive Declaration to Motion for Joinder of Other Parent - Consent Order of Joinder (Governmental)	M
D-140	1-98	1285.32	1-98	Responsive Declaration to Motion for Simplified Modification of Order for Child, Spousal or Family Support	M
D-029	1-01	DV-120	1-01	Responsive Declaration to Order Show Cause - DV	M
D-010	8-00	1285.40	1-99	Responsive Declaration to Order to Show to Cause or Notice of Motion	M
D-087	7-00	DV-130	1-01	Restraining Order After Hearing - DV (CLETS)	M
D-167	1-01	EA-130	1-01	Restraining Order After Hearing - EA (CLETS)	A
D-224	1-99	1299.74	1-99	Review of Commissioner's Findings of Fact and Recommendation (Governmental)	M

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-015B	7-90	1292.11	7-90	Schedule of Assets and Debts	M
D-091	1-99	1296.31C	1-99	Spousal or Family Support Order Attachment	M
D-148	7-98	1285.82	7-98	Statement for Registration of California Support Order	A
D-034A	6-00	1285.72	7-90	Stay of Service of Wage Assignment Order and Order	M
D-221	7-98	1299.67	7-98	Stipulation and Order for Joinder of Other Parent (Governmental)	M
D-036	7-98			Stipulation and Order on Order to Show Cause	
D-035	4-00			Stipulation and Order on Order to Show Cause (Courtroom Use Only)	
D-158	1-99	1296.74	1-99	Stipulation for Entry of Judgment Re: Establishment of Parental Relationship	M
D-056	1-95	1285.57	1-95	Stipulation to Establish or Modify Child Support and Order	M
CIV-014	4-99	MC-050	1-96	Substitution of Attorney	A
D-084	1-81	1295.11	1-81	Summary Dissolution Information	M
D-084(1)	1-93	1295.11A	1-93	Summary Dissolution Information Insert	M
D-004	1-01	1283	1-01	Summons	M
D-076	4-00	1291.40	1-79	Summons (Joinder)	M
D-155	7-99	1296.605	7-99	Summons (Uniform Parentage - Petition for Custody and Support)	M
D-229	7-99	1298.50	7-99	Summons (UIFSA)	
D-089A	1-99	1296.31A(1)	1-99	Supervised Vistation Order	A
D-079	4-00			Superior Court Local Rules (Short Cause Trial)	
D-016	3-00	1285.05	1-99	Temporary Orders	M
D-043	8-00			Trial Readings Procedures for Long Cause Trial	
D-034	1-00	1285.70	1-00	Wage and Earnings Assignment Order for Spousal Support	M
CIV-262	4-99	EJ-130	1-97	Writ of Execution	A

Revised 7/1/99; 7/1/2001, 10/22/2004

DIVISION VI
JUVENILE

Former Rule No.		New Rule No.
CHAPTER 1. JUVENILE RULES		
6.1	Preliminary Provisions	6.1.1
6.2	Definitions, Construction of Terms, Nature of Hearings	6.1.2
6.3	Standing, Rights and Levels of Participation in Dependency Cases	6.1.3
6.4	Peremptory Challenge	6.1.4
6.5	Objection to the Sufficiency of the Petition	6.1.5
6.6	Amendment of the WIC § 300 Petition	6.1.6
6.7	Pre-Hearing Discovery in Dependency Matter	6.1.7
6.8	Pretrial Status Conference	6.1.8
6.9	Settlement Conference	6.1.9
6.10	Mediation	6.1.10
6.11	Use of Social Worker's Report at the Jurisdictional Hearing	6.1.11
6.12	Findings at Jurisdictional Hearing	6.1.12
6.13	Court Appointed Special Advocates (CASAs)	6.1.13
6.14	Ex Parte Applications and Orders	6.1.14
6.15	Presence of Child at Court Hearing	6.1.15
6.16	Procedure for Establishing Paternity; Blood Tests	6.1.16
6.17	Confidentiality of Foster Homes (WIC § 308)	6.1.17
6.18	CASA Reports	6.1.18
6.19	Substance Abuse Recovery Management System (SARMS)	6.1.19
CHAPTER 2. ADOPTION RULES		
6.20	Adoption Calendar in Juvenile Court	6.2.1
CHAPTER 3. ATTORNEY SCREENING AND STANDARDS OF REPRESENTATION IN DEPENDENCY COURT		
6.30	General Competency Requirement	6.3.1
6.31	Screening for Competency	6.3.2
6.32	Minimum Standards of Education and Training	6.3.3
6.33	Standards of Representation	6.3.4
CHAPTER 4. PROCEDURES FOR REVIEWING AND RESOLVING COMPLAINTS REGARDING DEPENDENCY ATTORNEYS		
6.40	Reviewing and Resolving Complaints	6.4.1
CHAPTER 5. PROCEDURES FOR INFORMING THE COURT OF OTHER INTERESTS OF A DEPENDENT CHILD (WIC §§ 317, 317.6; CRC 1438(F))		
6.50	Informing the Court of Other Interests of a Dependent Child	6.5.1

Former Rule No.		New Rule No.

CHAPTER 6. ACCESS TO CONFIDENTIAL INFORMATION

6.60	Disclosure of Information Relating to Children and their Families - Preliminary Provisions	6.6.1
6.61	Disclosure of Juvenile Court Records to Persons and Agencies Not Designated in Welf. & Inst. Code § 827 - Petition for Disclosure (JV-570) Required	6.6.2
6.62	Cross-Designation of Other Courts to Sit as Juvenile Courts for Purposes of Welf. & Inst. Code § 827	6.6.3
6.63	Disclosure of Dependency Records to Persons and Agencies Not Designated in Welf. & Inst.Code § 827 - Petition to View Records (JUV-4) Required	6.6.4
6.64	Disclosure of Dependency Records to Counsel for the Child in a Delinquency Proceeding	6.6.5
N/A	Disclosure of Probation Records to Counsel for the Child in a Delinquency Proceeding	6.6.6
6.65	Disclosure of Law Enforcement Reports Regarding Juveniles to Persons and Agencies Not Designated in Welf. & Inst. Code § 828	6.6.7
6.66	Disclosure of Medical Information to Foster Parents and Other Care Providers	6.6.8
6.67	Disclosure of IEPs, Immunization Records and Other Health Records to HHSA Social Workers and Children's Attorneys	6.6.9
6.68	Disclosure of School Records to Suicide Homicide Audit Committee (SHAC)	6.6.10
6.69	Disclosure of Delinquency Records to Victims of Crime	6.6.11

CHAPTER 7. PROCEDURES FOR APPOINTING COUNSEL

6.70	Attorneys for Children	6.7.1
6.71	Attorneys for Parents or Guardian(s)	6.7.2

CHAPTER 8. PROCEDURES FOR DETERMINING APPROPRIATE CASELOADS FOR CHILDREN'S COUNSEL

6.80	Determining Appropriate Caseloads for Children's Counsel	6.8.1

CHAPTER 9. JUVENILE DELINQUENCY PROCEEDINGS

6.90	Preliminary Provisions	6.9.1
6.91	Definitions, Construction of Terms	6.9.2
6.92	Assignment of Cases and Peremptory Challenges	6.9.3
6.93	Continuances	6.9.4
6.94	Ex Parte Applications and Orders	6.9.5
6.95	Requirements for Noticed Motions	6.9.6
6.96	Fax Filing	6.9.7
6.97	Warrants	6.9.8
6.98	Reciprocal Discovery	6.9.9
6.99	Public and Media Access	6.9.10
6.100	Competence and Mental Health Evaluations	6.9.11
6.101	Administration of Psychotropic Medications	6.9.12
6.102	Initial Health Screening	6.9.13
6.103	Immunizations	6.9.14

Former Rule No.		New Rule No.
6.104	Sex Education	6.9.15
6.105	Off-Site Counseling	6.9.16
6.106	Travel Out of San Diego County	6.9.17

DIVISION VI
JUVENILE

CHAPTER 1
JUVENILE RULES

Rule 6.1.1

Preliminary Provisions

(a) These rules, together with the rules promulgated by the Judicial Council for the juvenile courts, the Welfare and Institutions Code, those sections of other codes specifically made applicable to juvenile proceedings by the Welfare and Institutions Code, and relevant case law, are the controlling body of law which governs proceedings in the San Diego Superior Court Juvenile Division.

(b) Insofar as these rules are substantially the same as existing statutory provisions relating to the same subject matter, they are to be construed as restatements thereof.

Insofar as these rules may add to existing statutory provisions relating to the same subject matter, they are to be construed so as to implement the purposes of the juvenile court law.

(c) To the extent that these rules may affect or declare substantive rights, these rules are intended to be a reflection of existing constitutional, statutory, case law, and Judicial Council rules of court, and are to be interpreted consistent with such law.

(d) These rules are intended to be applied in a fair and equitable manner consistent with the best interest of the children and families appearing before the juvenile court.

(e) Severability clause:

If a rule or subdivision thereof in this division is invalid, all valid parts that are severable from the invalid part remain in effect. If a rule or subdivision thereof in this division is invalid in one or more of its applications, the rule or subdivision thereof remains in effect in all valid applications that are severable from the invalid applications.

(f) These rules have prospective application only.

(Adopted Effective 1/1/90; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.1.2

Definitions, Construction of Terms, Nature of Hearings

(a) As used in these rules, unless the context or subject matter otherwise requires:

1. "CASA" means a court-appointed special advocate;

2. "Child" means a person under the age of 18 years;

3. "Clerk" means the clerk of the juvenile court;

4. "Court" means the juvenile court, and includes any judge or referee or referee pro tem of the juvenile court;

5. "CRC" means California Rules of Court;

6. "Foster Parent" means an adult relative or non-relative with whom a dependent child is placed;

7. "Guardian" means the legal guardian of the child;

8. "HHSA" means the Health and Human Services Agency of San Diego County (formerly called "Department of Social Services, Children's Services Bureau");

9. "Notify" means to inform, either orally or in writing;

10. "Petitioner" means the San Diego County Health and Human Services Agency ("HHSA") or its employees.

11. "WIC" refers to the California Welfare and Institutions Code.

(b) Construction of terms

1. "Shall" or "must" is mandatory; "may" is permissive.

2. The past, present, and future tense includes the others.

3. The singular and plural numbers include the other.

(c) Nature of Hearings

1. A jurisdictional settlement conference is a jurisdiction hearing on the uncontested calendar.

2. A contested jurisdiction hearing is a trial where testimonial and documentary evidence may be submitted on the issue of jurisdiction.

(Adopted Effective 1/1/90; Amended Effective 1/1/97, 1/1/2002; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 6.1.3

Standing, Rights and Levels of Participation in Dependency Cases

Unless otherwise expressly granted by constitutional, statutory, or case law, or rule of court, the standing, rights, and levels of participation of the following persons in dependency cases are limited to those provided in this rule.

(a) Parents and/or guardian(s):

The biological parents, adoptive parents, guardian(s), and/or person(s) having legal custody of a child who is the subject of a dependency action have standing as parties to the proceedings.

(b) Child:

The child who is the subject of a dependency action has standing as a party to the proceedings.

(c) De facto parent:

For purposes of this rule, a de facto parent is a person who has been found by the court to have assumed, on a day-to-day basis, the role of a parent to the child, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period of time. No person will be granted de facto parent status who has inflicted or allowed to be inflicted serious harm on the child, including but not limited to physical, sexual, or emotional harm.

De facto parent status will be granted by the court only upon a written application. Notice of such application and hearing date will be given to the parties or their counsel of record by the court clerk. At the hearing on such application, the court will consider the contents of the dependency file, any report filed by the social worker or the CASA for the child, and any other relevant and admissible evidence presented by the parties. The court may consider the declarations filed in support of or in opposition to such application if the declarants are made available for cross-examination. Before granting de facto parent status, the court must find, by a preponderance of the evidence, that the moving party meets the criteria set forth in this rule. An application for de facto parent status will not, in and of itself, constitute good cause for continuing any other hearing in the dependency action.

The de facto parent of a child who is the subject of a dependency action has standing as a party to the proceedings to the degree that the proceedings directly affect the de facto parent's legally recognizable interest in the child.

A de facto parent's right to discovery in the dependency proceeding is pursuant to WIC § 827. Upon granting de facto parent status, the court may make such discovery orders pursuant to that section as are necessary and appropriate.

Upon granting de facto parent status, the court may appoint counsel on a pro bono basis for the de facto parent. No right to the appointment of counsel exist for the bringing of this application.

In any case in which a child is removed from the physical custody of his or her parents or legal guardians pursuant to WIC § 361, a de facto parent, if a relative or licensed foster care provider, will also receive preferential consideration for placement of the child over all other relatives and foster parents if such placement is in the best interest of the child and is conducive to any reunification efforts ordered by the court.

De facto parent status will continue only so long as the psychological bond continues to exist between the de facto parent and the child. De facto parent status automatically terminates upon the termination of dependency jurisdiction.

(d) Relative:

For purposes of this rule, a "relative" includes a grandparent, aunt, uncle, first cousin, adult sibling (including full-, half-, and step-siblings), or current stepparent of the child who is the subject of a dependency proceeding.

A relative whose presence is known to the court will receive notice of juvenile court proceedings as otherwise provided by law, and may be present at such proceedings if the court finds that his or her presence would not disrupt the orderly court process and would be consistent with the best interests of the child.

Participation in the court process for relatives is limited to the submission of a written or oral statement regarding their interest in the child, any information they might have that relates to the child or the dependency action, and their recommendation regarding the child. The court may not consider such unsworn statements as evidence, but may consider such statements as a basis for ordering further investigation or services.

At the detention and disposition hearings, the home of a relative will be given preferential consideration for placement of the child, as provided in WIC § 361.3.

(e) Foster parent:

A foster parent of a child who is the subject of a dependency action will receive notice of proceedings as otherwise provided by law, and may be present at such proceedings if the court finds that such presence would not disrupt the orderly court process and would be consistent with the best interests of the child.

Participation in the court process for such foster parents is limited to the submission of a written or oral statement regarding their interest in the child, any information they might have that relates to the child or the dependency action, and their recommendation regarding the child. The court may not consider such unsworn statements as evidence, but may consider such statements as a basis for ordering further investigation or services.

(Adopted effective 1/1/90; Amended Effective 1/1/94, 1/1/97; Renumbered 7/1/2001; Amended effective 1/1/2002, 1/1/2005; Renumbered 1/1/2006)

Rule 6.1.4

Peremptory Challenge

This court strictly follows the timing requirements for peremptory challenges set forth in California Code of Civil Procedure § 170.6 and California Government Code § 68616(i).

(Adopted Effective 1/1/90; Renumbered 7/1/2001; Amended Effective 1/1/2002, 1/1/2005; Renumbered 1/1/2006)

Rule 6.1.5

Objection to the Sufficiency of the Petition

A party may file an objection to challenge the sufficiency of a WIC § 300 petition on the ground that the petition alleges facts which, even if determined to be true, (a) are not sufficient to state a cause of action, or (b) are not stated with sufficient clarity and precision to enable the party to determine what must be defended against. (For purposes of this rule, "petition" includes amended petitions and subsequent petitions filed under WIC § 342, 360(c), or 364.)

Such an objection may be made orally or in writing. However, it must be made at either: (a) the detention hearing or (b) the intial appearance after the filing of a petition but before the court makes a true finding. The court may entertain the objection by oral argument when made or may set it for further hearing.

If the court sets a hearing on the objection, counsel for the moving party may file a supporting memorandum of points and authorities. To be considered timely, the memorandum must be filed at least 48 hours before the hearing. Petitioner may file a responsive memorandum of points and authorities. To be considered timely, the responsive memorandum must be filed by 8:30 a.m. on the day of the hearing.

When an objection to the sufficiency of a petition is overruled and no plea has been filed, the court will allow the plea to be entered at the conclusion of the hearing or upon such terms as may be just.

When an objection to the sufficiency of a petition is sustained, the court may grant leave to amend the petition upon any terms as may be just and will fix the time within which the amended petition must be filed.

(Adopted Effective 1/1/90; Amended Effective 7/1/91, 1/1/2002; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 6.1.6

Amendment of the WIC § 300 Petition

(a) Petitioner may amend the petition once without leave of court, either: (1) before a plea is entered or an objection is filed, or (2) after a denial is entered but before the trial on the issue of jurisdiction, by filing the amended petition and serving a copy on all parties at the jurisdictional settlement conference.

(b) The court may, in furtherance of justice, and on such terms as may be proper, allow the petitioner to amend the petition or any allegation in the petition by adding or striking the name of any party or by correcting statistical information, clerical mistake(s), or typographical error(s). (CRC 1430(f).)

(c) The court may, upon noticed motion or upon stipulation of all parties, and in furtherance of justice, amend the petition.

(d) The court may, upon a finding that the variance is not material, amend the petition to conform to the evidence received by the court at the jurisdiction hearing.

(e) Except as otherwise provided by law, the court may not amend the petition over the objection of petitioner.

(Adopted Effective 1/1/90; Amended Effective 1/1/97, 1/1/2002; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 6.1.7

Prehearing Discovery in Dependency Matter

(a) Prehearing discovery will be conducted informally. Except as protected by statute, claim of privilege, or other good cause, all relevant material held by any party must be disclosed in a timely fashion to all parties to the litigation or made available to the parties upon request.

(b) Only after all informal means have been exhausted may a party move the court for an order requiring disclosure.

The motion must identify with specificity the information sought, state the efforts which have been made to obtain the information through informal means, and explain why the information is relevant and material.

The original of the motion, with supporting declaration(s) and a memorandum of points and authorities, must be filed with the clerk of the assigned department. No motion will be accepted for filing or heard unless accompanied by a declaration by the movant or the movant's counsel, setting forth the following:

1. That the informal request for discovery was made at least five court days before the motion was filed;

2. The response, if any, to the informal request by the party to whom the request was directed or that party's counsel;

3. That the movant has met and conferred with the party to whom the request was directed or that party's counsel, or the facts showing that movant has attempted in good faith to meet and confer with the party to whom the request was directed or that party's counsel.

The clerk will assign a hearing date within 10 court days of the date the informal request was made, but not less than five days before the next hearing, whichever is sooner. Responsive pleadings must be filed and served at least two court days before the assigned hearing date.

(c) Materials released by the HHSA pursuant to an informal request for discovery, or after a formal motion to compel discovery has been granted, will

be subject to the following conditions unless the conditions are modified by a judicial officer:

1. All records and information obtained through discovery and any copies thereof be in the constructive possession and custody of the court and must be returned to the court at the conclusion of the court proceedings, including all appeals and writs brought in the case.

2. Use of records and information obtained through discovery for use in a juvenile court proceeding is limited to that proceeding only.

3. Counsel for the parties may make such copies of the records and information obtained through discovery as are necessary for the preparation and presentation of the case. Counsel is responsible for returning all such copies to the court at the conclusion of the proceeding.

4. Records and information obtained through discovery must be kept in a confidential manner and must not be released, directly or indirectly, to members of the media or any other individuals not directly connected with the court proceeding.

5. Records and information may be reviewed by the parties, their counsel, and any investigator or expert witness retained by counsel to assist in the preparation of the case. Any such person reviewing the records or information must be made familiar with the terms of this rule.

6. All reasonable costs incurred in the reproduction of records under this rule will be the responsibility of the party seeking the records.

(d) Any discovery matters not addressed here by this rule or CRC 1420 will be treated as a Petition for Disclosure of Juvenile Court Records pursuant to WIC § 827 and CRC 1423, upon a noticed motion showing good cause as set forth in subdivision (b) above.

(Adopted Effective 1/1/90; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.1.8

Pretrial Status Conference

(a) At the discretion of the court, a pretrial status conference may be heard in the trial-setting department at least 10 calendar days before the date set for trial. Upon stipulation of all parties, the pretrial status conference may be heard within 10 calendar days before the date set for trial.

(b) At the status conference, all attorneys must be prepared to address pretrial matters such as the continuing necessity for trial, the identification of contested and uncontested issues, the time estimated for trial, the exchange of witness lists, the filing of motions, the presentation of stipulated and documentary evidence, and requests for judicial notice. The court will establish a date and time certain for trial if one has not been previously set.

(Adopted Effective 1/1/90; Amended Effective 7/1/90, 1/1/97, 1/1/2002; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 6.1.9

Settlement Conference

(a) The court need not follow the procedures outlined in this rule where there is clear evidence that a settlement conference will not resolve the matter.

(b) If a matter is set for a contested hearing, the court may order the parties and their counsel to appear at a settlement conference, and may schedule dates for both the settlement conference and the hearing. (The hearing will proceed as scheduled only if the matter does not settle.) HHSA social workers may be on telephone stand-by. Unless expressly excused by the court, if any other party fails to appear at the settlement conference, the court may issue a bench warrant for that party.

(c) Before the settlement conference, each attorney must conduct a comprehensive interview with his or her client, and make any further investigations that he or she deems necessary to ascertain the facts.

(d) At the settlement conference, the attorney for each party must be prepared to discuss the legal and factual issues and must negotiate the case in good faith. Each attorney must be prepared to submit, if approprate:

1. a list of issues to be litigated;

2. a list of proposed documentary evidence;

3. a list of intended witnesses;

4. a written request for judicial notice (Evidence Code § 450 et seq.);

5. a list of stipulated evidence which will be presented at the time of trial.

(e) If a matter is not resolved at the settlement conference, the court will address pretrial issues. Counsel should be prepared to submit pretrial worksheets addressing the issues described in rule 6.1.8(b).

(Adopted Effective 1/1/97; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.1.10

Mediation

At the discretion of the court, a case may be referred to mediation. If referred, the court will identify the mediator and set the fee for the mediator's services. The parties and all attorneys will be ordered to appear at the mediation.

(Adopted Effective 1/1/97; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.1.11

Use of Social Worker's Report at the Jurisdiction Hearing

At a jurisdiction hearing, the court will receive into evidence any social worker's report or screening summary. If the jurisdiction hearing is a contested hearing, the receipt of the report into evidence will be subject to the following requirements:

(a) The report must be filed with the court and made available to the parties or their counsel at least 10 calendar days before the jurisdiction hearing.

(b) The social worker or supervisor who prepared or supervised the preparation of the report must be available to testify at the jurisdiction hearing if counsel for the petitioner intends to offer the report into evidence.

(c) For purposes of the jurisdiction hearing only, the court will strike any portion of the report containing anonymous information.

(d) Upon request of the parent, guardian, child, or their counsel made at least five court days before the jurisdiction hearing, the social worker must either (1) provide the address and/or telephone number, if known, of any person whose statement is included in the social worker's report, or (2) make such person available, if requested, for cross-examination at the jurisdiction hearing. If, upon request, the social worker has not disclosed the address or telephone number, if known, of any witness, and a request is made to interview such witness before the hearing, the social worker must make such witness available for interview if practicable and if the witness is willing.

(e) If the social worker, pursuant to subdivision (d) of this rule, has provided the address of a witness to the parent, guardian, child, or their counsel, and if such parent, guardian, child, or counsel presents evidence of unsuccessful attempts and due diligence to subpoena such witness for the jurisdiction hearing, and if the court finds there has been due diligence, the court will strike, for purposes of the jurisdiction hearing only, the statements of such witness from the social worker's report. In the alternative, the court may grant a continuance for a period up to 10 court days for the parties, including the social worker, to attempt to subpoena or make such witness available for testimony at the jurisdiction hearing. The court will not grant more than one such continuance in any dependency matter.

(f) If the social worker, pursuant to subdivision (d) of this rule, has indicated that he or she will make such witness available at the jurisdiction hearing but fails to make such witness available, the court shall strike, for purposes of the jurisdiction hearing only, the statements of such witness from the social worker's report. In the alternative, the court may grant a continuance for a period of up to 10 court days for the parties, including the social worker, to attempt to subpoena or make such witness available for testimony at the jurisdiction hearing. The court will not grant more than one such continuance in any dependency matter.

(g) For purposes of this rule, an attachment to a social worker's report is considered part of the social worker's report and will be received into evidence if: (1) such attachment is relevant to the jurisdictional issues, (2) the social worker has referred to the significant portions of such attachment in the body of the report, (3) the social worker used the attachment as part of the basis of any conclusion or recommendation made in the report, and (4) the requirements of subdivisions (a) through (f) of this rule have been met.

(Adopted Effective 1/1/90; Renumbered & Amended Effective 1/1/97; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.1.12

Findings at Jurisdiction Hearing

(a) Procedure

At a jurisdiction hearing, the court may make a finding on the allegations in the petition by way of one of the following procedures:

1. Admission of allegations. The court may accept an admission from a party that all or part of the allegations in the petition are true.

Before accepting an admission, the court must satisfy itself that the party understands the nature of the allegations in the petition and understands and waives the trial rights enumerated in CRC 1449. The court must also find that there is a factual basis for the admission. The child may object to the finding of a factual basis and may request a contested hearing on that issue.

2. No contest. The court may accept a plea of "no contest" to the allegations in the petition from a party.

Before accepting a "no contest" plea, the court must satisfy itself that the party understands the nature of the allegations in the petition and understands and waives the trial rights enumerated in CRC 1449. The court must also find that there is a factual basis for the "no contest" plea. The child may object to the finding of a factual basis and may request a contested hearing on that issue.

3. Submission on reports. The court may allow a dependency matter to be submitted on available written reports upon a stipulation by all parties. The reports received by the court for purposes of a determination of jurisdiction may include the screening summary, police reports, and any other reports submitted by the social worker

along with any attachments thereto. The court may make a finding that the allegations in the petition are true or not true, in whole or in part, based upon the information contained in the submitted reports.

Before allowing a party to submit the matter for decision based upon these reports, the court must satisfy itself that the party understands the nature of the allegations in the petition and understands and waives the trial rights enumerated in CRC 1449.

The party may make a closing argument before the court renders a decision.

4. Contested hearing. The court may hear the matter as a contested hearing and receive testimonial or documentary evidence properly submitted by the parties. The court will make findings on the allegations in the petition based upon such evidence.

(b) Jurisdictional Findings

Inasmuch as a jurisdictional finding is as to the child, and not as to the parent or guardian, the court may make a finding that the child is a person described by WIC § 300 only after following the procedures of this rule or after making a finding that reasonable efforts have been made and failed to locate the parent or guardian, as to each and every parent and guardian.

(Adopted Effective 1/1/90; Renumbered & Amended Effective 1/1/97; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.1.13

Court-Appointed Special Advocates (CASAs)

In any action pursuant to WIC §§ 300-399, the court may, in an appropriate case and in addition to any counsel appointed for a child, appoint a court-appointed special advocate (CASA) to represent the best interests of the child who is the subject of the proceedings. If the court determines that a child would not benefit from the appointment of counsel pursuant to WIC § 317 and CRC 1438, the court may appoint a CASA for the child to serve as guardian ad litem, as required by WIC § 326.5. The CASA has the same duties and responsibilities as a guardian ad litem and must meet the requirements set forth in CRC 1438. CASA volunteers must be trained by and function under the auspices of Voices for Children, the court-appointed special advocate program formed and operated under the guidelines established by the National Court Appointed Special Advocate Association, WIC §§ 100-109, and CRC 1424.

(Adopted Effective 1/1/90; Amended Effective 1/1/97, 1/1/2002; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 6.1.14

Ex Parte Applications and Orders

(a) Any party making an ex parte request for an order from the court in a dependency matter must give 24 hours' notice to all other parties or their counsel. A declaration that such notice has been given to all other parties or their counsel must be set forth in the moving papers.

The court may waive such notice only upon a showing of good cause that is set forth by clear facts in a supporting declaration or declarations.

(b) Except in emergency matters requiring immediate action, all ex parte applications and proposed orders must be delivered during regular business hours to the clerk of the judicial officer assigned to the case, for presentation to that judicial officer.

(Adopted Effective 1/1/90; Renumbered Effective 1/1/97, 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.1.15

Presence of Child at Court Hearing

(a) This rule governs the attendance of children at court hearings unless the child is present by subpoena, the desire to be present, or by other order of the court.

(b) Children under four years of age are excused from attending all court hearings.

(c) Children four years of age and over must attend if:

1. Directed to attend by the court.

2. Requested to attend by a party or their counsel, and the court finds that:

a. Attending would not be detrimental to the child.

b. The child is not otherwise unable to attend due to disability, physical illness, or medical condition.

(d) No child is to be brought to court solely for the child to confer with the child's attorney or to visit parents.

(e) If the child is present, the judicial officer in the assigned court may view and speak with the child. If the child is represented by counsel, counsel will also be present.

(Adopted Effective 1/1/90; Amended Effective 7/1/91; Renumbered & Amended Effective 1/1/97; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.1.16

Procedure for Establishing Paternity; Blood Tests

(a) The juvenile court is a proper forum to determine the parentage of a child when such a finding becomes necessary during a dependency proceeding.

(b) Any action to determine the biological parentage of a child who is the subject of a dependency proceeding must conform to the provisions of Family Code §§ 7620 and 7630 et seq., except that either the petitioner or counsel for the child may also bring the action. Only approved Judicial Council forms may be used in all such actions.

(c) Except on stipulation by the parties and agreement of the court, any motion for blood, HLA, or DNA, or similar tests must be properly noticed, in writing, accompanied by a memorandum of points and authorities in support of the motion and a declaration by counsel which specifies the type of test to be conducted, the entity that will perform the test, and the cost of the procedure.

The court must enter appropriate orders for payment of the cost of the test, including but not limited to, apportionment among or between the parties.

(d) Any action to determine parentage may be assigned to a referee of the juvenile court upon the filing of a fully executed stipulation that the referee will act in the capacity of a superior court judge. If the parties do not so stipulate, the matter will be transferred to a superior court judge for the sole purpose of hearing the parentage issue.

(e) At the conclusion of any such action, the court will enter judgment(s) accordingly.

(f) Nothing in this rule will extend any statutory time limits for hearings, including disposition or review. Nor will any provision of this rule preclude the court from issuing any proper interim orders or findings to promote the best interest of the child.

(Adopted Effective 1/1/90; Renumbered & Amended Effective 1/1/97; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.1.17

Confidentiality of Foster Homes (WIC § 308)

(a) For purposes of this rule, "foster family home" means the home of any person certified or licensed as a foster parent for the detention or placement of children pending or during juvenile dependency proceedings.

(b) For purposes of this rule, placement of a child includes the placement or detention of a child by the HHSA or the court pending or during juvenile dependency proceedings.

(c) The address of any foster family home in which a child has been placed must be kept confidential at all times except as provided by this rule and any other provisions of law directly applicable to the confidentiality of foster family homes. Nothing in this rule prohibits, where appropriate, the release of the first name of the foster parent and a telephone number at which the foster parent can be reached so as to facilitate contact with the child. Further, nothing in this rule may be construed to restrict the right or ability of the parent or guardian to visitation and contact with the child at a location other than the foster family home where such visitation and contact is in the child's best interest.

(d) The safety and protection of the foster family and the safety, protection, physical and emotional well-being of all children placed in the foster family home will be the primary considerations in any decision or ruling made pursuant to this rule.

(e) A foster parent may at any time authorize the release of his or her address, thereby waiving the confidentiality of that foster family home.

1. Any such authorization must be in writing, be personally signed and dated by the foster parent, identify the specific individual(s) the foster parent is authorizing release of the foster family home address to, and include a statement that the foster parent is aware of the confidentiality provisions of the law and is voluntarily waiving them.

2. Any such authorization must be provided to the social worker who must maintain the authorization in the HHSA file. The social worker must advise the attorney for the child, if any, and any CASA of the authorization within three court days. The authorization will not go into effect for a period of seven days unless both the social worker and the attorney for the child, if any, concur that waiver of the confidentiality of the foster family home will not endanger the child's safety, protection, physical or emotional well-being. At any time before the expiration of the seven days, the social worker or the attorney for the child, if any, may apply to the juvenile court, with notice to all parties, for an order directing that the address of the foster family home be kept confidential and the reasons therefor.

3. Any such authorization may be withdrawn by the foster family at any time before the actual release of the address of the foster family home. Such withdrawal will not be effective unless communicated to and received by the social worker handling the case before the actual release by the social worker of the address of the foster family home.

(f) At the detention hearing the court will make an order that the address of the foster family home must be kept confidential as required by law.

(g) Except as provided in subdivision (e) of this rule, the confidentiality of the address of a foster family home must be maintained at all times before the disposition hearing or the expiration of 60 days

from the date the child was ordered removed or detained, whichever comes first.

(h) At the disposition hearing and at any regularly scheduled review hearing, any party to the proceeding may request the court to issue an order releasing the address of the foster family home. No WIC § 388 petition will be required at such hearings, but the procedures and standards set forth in subdivision (i) of this rule for the consideration and issuance of such an order must be followed. Notice to the foster family home may be made orally, however.

(i) Following the disposition hearing or the expiration of 60 days from the date the child was ordered removed or detained, whichever comes first, any interested person may petition the court pursuant to WIC § 388 for an order releasing the address of the foster family home.

1. The court will follow the procedures for the determination of a WIC § 388 petition, including the summary denial of the petition, but will not grant the petition without a noticed hearing.

2. The foster parent and all parties or their counsel must be noticed for the hearing. The foster parent must be noticed through the HHSA. The foster parent has the right to be present, to be represented by retained counsel, and to participate in the proceedings.

3. The court will not grant the petition unless the person seeking release of the address has met his or her burden to show that new evidence or a change of circumstance establishes good cause for the release of the address and that the release is in the best interest of the child. For purposes of this determination, the best interest of the child includes, but is not limited to, the safety, protection, physical and emotional well-being of the child, as well as the safety and protection of the foster family with which the child is placed.

4. Any order of the court releasing the address of the foster family home will be stayed for a period of 10 days, and may be stayed for a period in excess of 10 days, to allow any party, including the foster parent, to seek review of the decision through rehearing or petition for extraordinary writ relief.

(Adopted Effective 7/1/98; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.1.18

CASA Reports

In any case in which the court has ordered the appointment of a CASA (court-appointed special advocate), the CASA must submit reports to the court at least two days before each of the following hearings: six-month review; twelve-month review (permanency hearing); eighteen-month review (permanency review hearing); selection and implementation hearing (366.26 hearing); and post-permanency planning reviews. The CASA may submit reports for any special hearings noticed to Voices for Children. If the CASA was appointed before the establishment of jurisdiction, the CASA may submit a report to the court at least two days before the jurisdiction/disposition hearing. The content of the report must be limited to the current condition of the child and needed services; jurisdictional issues must not be addressed (see CRC 1424(f)(2)).

Only parties and their counsel are entitled to receive copies of CASA reports. Relatives, de facto parents, foster parents, and service providers are not entitled to receive copies of CASA reports.

CASA reports will be copied and distributed by Voices for Children staff.

(Adopted effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.1.19

Substance Abuse Recovery Management System (SARMS)

At the detention or initial hearing, if the HHSA report informs the court that a parent has alcohol and/or drug issues, the court will refer that parent to the Substance Abuse Recovery Management System ("SARMS") for an assessment. If the court subsequently assumes jurisdiction and the parent has not been assessed voluntarily, the court will order that parent to report to SARMS for assessment within 48 hours. If the assessment indicates a need for treatment, the SARMS Recovery Specialist will develop a Recovery Services Plan (RSP) with the parent. The RSP will state the requirements for successful completion of the treatment program (e.g., submission to random urine testing, attendance at treatment program meetings, participation in individual and/or group therapy, et al.) and will be incorporated by reference into the court-ordered reunification case plan. Once the RSP has been developed, the parent must begin treatment immediately.

SARMS shall submit all biweekly progress reports to the court and HHSA. Upon request by counsel, the court will make copies of the progress reports available. SARMS also shall submit reports of noncompliance to the parent's attorney. The progress reports must state whether the parent is actively participating in treatment, the number of sessions or meetings missed, if any, whether those absences were excused, and the results of each urinalysis. After the court has ordered participation in SARMS, review hearings are held after 30 days and 60 days to review the parent's progress.

Noncompliance with the RSP (i.e., a "noncompliant event" as defined in the court's Order to Participate in SARMS, Form SUPCT JUV-131) will result in the following sanctions: For

the first violation, the parent will receive a judicial reprimand. For each subsequent violation, the parent will be cited for contempt of court for disobeying a court order; a finding of contempt may result in a fine and/or incarceration for up to five days. If and when the parent is found in contempt of court and ordered to jail, the dependency judge will also order that the parent report for a Dependency Drug Court screening hearing after his or her release from jail.
(Adopted effective 7/1/2003; Renumbered 1/1/2006)

CHAPTER 2
ADOPTION RULES

Rule 6.2.1

Adoption Calendar in Juvenile Court

All San Diego Superior Court adoption proceedings must be calendared in either the Juvenile Division at 2851 Meadow Lark Drive, San Diego, or the North County Division at 325 S. Melrose, Vista. Unless expressly ordered otherwise, all proceedings filed at the juvenile court will be heard in the first available department of the juvenile court on Fridays at 1:30 and 2:30 p.m.

For all adoption proceedings filed at the North County Division, the decree of adoption and agreement of adopting parents should be submitted no later than the Monday before the desired hearing date on Friday. See clerk's adoption guide. Requests for continuances should be directed to the calendar clerk before presentation to the court.
(Renumbered Effective 1/1/1990; North County Court provisions formerly Div. VII; Amended Effective 1/1/91, 1/1/2002; Renumbered 7/1/2001, 1/1/2002; Renumbered 1/1/2006)

CHAPTER 3
ATTORNEY SCREENING AND STANDARDS OF REPRESENTATION

Rule 6.3.1

General Competency Requirement

Absent a knowing and intelligent waiver by the party represented, all attorneys appearing in juvenile dependency proceedings must be members in good standing of the State Bar of California and must meet the minimum standards of competence set forth in these rules. These rules apply to attorneys representing public agencies, attorneys employed by public agencies, attorneys appointed by the court to represent any party in a dependency proceeding, and attorneys who are privately retained to represent a party in a dependency proceeding.
(Adopted Effective 1/1/97; Renumbered 7/1/2001; Renumbered & Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.3.2

Screening for Competency

(a) Absent a knowing and intelligent waiver by the party represented, all attorneys who represent parties in juvenile dependency proceedings must meet the minimum standards of training and/or experience set forth in these rules.

No attorney will be appointed by the court to represent a party in a dependency proceeding who has not submitted to the court and had approved a Certification of Competency as set forth in Appendix A of these rules. Further, no retained counsel will be allowed to appear on behalf of a party in a dependency proceeding without having submitted to the court and had approved a Certification of Competency or a knowing and intelligent waiver by the party of such certification.

(b) Attorneys who meet the minimum standards of training and/or experience set forth in rule 6.3.3, as demonstrated by the information contained in the Certification of Competency submitted to the court, are deemed competent to practice before the juvenile court in dependency cases, except as provided in subdivision (c) of this rule.

(c) Upon submission of a Certification of Competency which demonstrates that the attorney has met the minimum standards for training and/or experience, the court may determine, based on conduct or performance of counsel before the court in a dependency case, that a particular attorney does not meet minimum competency standards. Further, the court retains the authority to review the general conduct and performance of an attorney and to decertify such attorney for good cause at any time. The court may order denial of certification and decertification only after the attorney has been given notice of the intended action and an opportunity to be heard.

(d) Any attorney appearing before the court in a dependency case who does not meet the minimum standards of training and/or experience must notify the court to that effect. The clerk of the court must notify the represented party by first-class mail to the party's last known address and the attorney at least 10 days before the hearing date of the following: (1) a hearing date, time, and location; (2) that at that hearing the court will consider the issue of whether to relieve counsel for failing to complete the requisite training and to provide a Certification of Competency; and (3) that failure to appear for the hearing will be deemed a waiver of any objection and acquiescence to the relief of appointed counsel. At that hearing, absent a knowing and intelligent

waiver by the party represented, the court must relieve such appointed counsel and must appoint certified counsel for the party whose attorney failed to complete the required training. If the attorney relieved is a member of a public agency, the agency has the right to transfer the case to a certified attorney within that agency. In the case of retained counsel, the court must notify the party that his or her counsel has failed to meet the minimum standards required by these rules. The determination whether to waive certification or obtain substitute private counsel is solely within the discretion of the party so notified.

(e) If a retained attorney maintains his or her principal office outside of this county, proof of certification by the juvenile dependency court of the California county in which the attorney maintains an office will be sufficient evidence of competence to appear in a juvenile dependency proceeding in this county.

(Adopted Effective 1/1/97; Renumbered 7/1/2001; Renumbered & Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.3.3

Minimum Standards of Education and Training

(a) No attorney appearing in a dependency matter before the juvenile court may be certified by the court as competent until the attorney has completed the following minimum training and educational requirements.

1. Before certification, the attorney must have either:

i. At least six months of experience in dependency proceedings in which the attorney has demonstrated competence in representing his or her clients. To qualify for certification under this paragraph, the attorney must have made a substantial number of appearances and handled a variety of dependency hearings, including contested hearings. In determining whether the attorney has demonstrated competence, the court will consider, among other things, whether the attorney has demonstrated knowledge and understanding of the topics listed in paragraph (ii) of this subdivision.

ii. Obtained at least 12 hours of training or education in juvenile dependency law, which included applicable case law and statutes, rules of evidence, state and local rules of court, Judicial Council forms, motions, trial techniques and skills, writs and appeals, child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, reasonable efforts, the educational rights of children, the Uniform Child Custody Jurisdiction and Enforcement Act, the Interstate Compact on the Placement of Children, and the Indian Child Welfare Act.

2. If an attorney has obtained in the required training or education but has not represented parties in a substantial number of dependency cases as determined by the juvenile court, the court must grant a provisional certification pending satisfactory completion of a mentor program within three months. While under the mentor's supervision, the attorney must try at least three contested hearings and handle at least one detention hearing, one jurisdiction hearing, one disposition hearing, one pre-permanency planning review, one supplemental petition, and one petition to modify a prior order. The attorney and the mentor must consult at least weekly regarding the handling of the attorney's cases. The mentor must be present and observe the attorney handle at least one contested hearing and such other hearings as are necessary and appropriate.

While serving under a provisional certification, an attorney may be appointed to represent parties in dependency cases and to receive compensation for such representation. For purposes of this program, a "mentor" is an attorney who has been approved to serve as a mentor by the supervising judge of the dependency court, has at least three years' experience handling dependency cases, has a current competency certification, and has agreed to serve without compensation as a mentor under this program. If the provisionally certified attorney is employed by a public agency, the mentor must be the supervising attorney of that agency or his/her designee.

(b) Each attorney who has been certified by the court will submit a new Certification of Competency to the court on or before January 31st of the same year in which the attorney must certify his or her MCLE credits to the State Bar of California. The new Certification must be accompanied by evidence of 18 hours of continuing dependency education or training which were completed in the three years after the previous Certification was issued.

If the training or education was not presented by a California MCLE provider, the documentation of attendance is subject to the approval of the juvenile court. Evidence of training or education may include: a copy of a certificate of attendance issued by a California MCLE provider; 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; a copy of the training or educational program schedule together with evidence of attendance at such program; proof of attendance at a court-sponsored or court-approved program; or such other documentation that demonstrates the relevance of the program and the attorney's attendance at such program.

(c) At least one-half of the attorney's continuing training or education hours must be in the areas set forth in subdivision (a)(1)(ii) of this rule. The remaining hours may be in other areas related to juvenile dependency practice, including, but not limited to, special education, mental health, health care, immigration, adoption, guardianship, parentage, the Parental Kidnapping Prevention Act, state and federal public assistance programs, client interviewing and counseling techniques, case investigation, and settlement negotiations and mediation.

(d) When a previously certified attorney fails to submit evidence that he or she has completed the minimum required training and education for recertification to the court by the due date, the court will notify the attorney in writing by first-class mail that he or she will be decertified unless the attorney submits, within 20 days of the date of the mailing of the notice, evidence of completion of the required training or education. If the attorney fails to submit evidence of the required training or education, the court shall proceed as set forth in rule 6.3.2(d).

(Adopted Effective 1/1/97; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.3.4

Standards of Representation

(a) Basic Attorney-Client Obligations

All attorneys appearing in dependency proceedings must advise their clients of the legal and factual aspects of the client's case and must represent their clients' interests vigorously within applicable legal and ethical boundaries.

In performing these duties, each attorney is expected to:

1. Thorughly and completely investigate the accuracy of the allegations, explore any possible defenses, and consider alternatives to court action;

2. Meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally;

3. Advise the client of the risks and benefits of the possible courses of action, including the taking of writs and appeals;

4. Determine the client's desires and interests;

5. Advocate the client's desires and interests to the court and other parties;

6. Contact social workers and other professionals associated with the client's case;

7. Work with other counsel and the court to resolve disputed aspects of a case without contested hearings;

8. Adhere to mandated timelines;

9. Inform the client of the procedure for lodging a complaint against the attorney;

10. Be familiar with relevant constitutional, statutory, and case law; and

11. Possess fundamental legal skills and a rudimentary understanding of relevant interdisciplinary topics.

In addition to the duties listed above, counsel for the child or counsel's agents are expected to:

1. Have sufficient direct, personal contact with the child to establish and maintain an adequate and professional attorney-client relationship;

2. Explain fully, consistent with the child's ability to understand, the nature and consequences of the court proceedings;

3. Have sufficient contact with the child's caregiver, CASA, if any, and/or therapist, if any, to accurately assess the child's well-being and needs;

4. Monitor the child's development throughout the course of the proceedings and advocate for sevices that will provide a safe, healthy, and nurturing environment for the child;

5. Maintain a caseload that allows the attorney to perform the duties required by WIC § 317(e) and CRC 1438, and to otherwise adequately counsel and represent the child; and

6. Immediately inform the court of any interest or right of the child which may need to be protected or pursued in other judicial or administrative forums and seek instructions from the court as to appropriate procedures to follow.

(b) Relevant Laws and Programs

All attorneys practicing in dependency proceedings must have a working knowledge of the following statutes and rules, as well as the cases interpreting and applying them:

1. WIC sections 200-399, 825-830, 900-903.5, 10850, 11400 et seq. [AFDC-FC], and 16000 et seq.

2. CRC 39-39.2A, 1400-1499;

3. Code of Civil Procedure sections 128, 170, 170.6, 917.7, and 1209;

4. Education Code sections 56000 et seq. and Government Code section 7579.5 [educational rights of children];

5. Evidence Code;

6. Family Code sections 3400 et seq. [Uniform Child Custody Jurisdiction and Enforcement Act], 7500 et seq. [Parental Rights; Paternity Presumptions, Blood Testing, and Voluntary Declarations], 7600 et seq. [Uniform Parentage Act], 7800 et seq. [Freedom from Parental Custody and Control], 7900 et seq. [Interstate Compact on Placement of Children], and 7950 et seq. [Foster Care Placement Considerations];

7. Penal Code sections 11165 et seq. [Child Abuse and Neglect Reporting Act];

8. Title 25, United States Code, sections 1901-1963 [Indian Child Welfare Act] and Indian

Child Custody Guidelines published at 44 Fed. Reg. 67,584 (1979);

9. San Diego Superior Court Rules, Division VI-Juvenile.

The following areas of the law and local programs are critical in many dependency cases, and counsel must develop a working knowledge of them as they become applicable to individual cases.

1. The Substance Abuse Recovery Management System ("SARMS") and Dependency Drug Court.

2. Special immigrant juvenile status under Title 8, United States Code section 1101;

3. Title 28, United States Code section 1738A [Parental Kidnapping Prevention Act];

4. Criminal law, juvenile delinquency law, and the San Diego Juvenile Court protocol regarding dual jurisdiction cases;

5. Mental health law (WIC sections 4500 et seq. [Lanterman Developmental Disabilities Services Act], 5000 et seq. [Lanterman-Petris-Short Act], 5850 et seq. [Children's Mental Health Services Act], and 6000 et seq. [Admissions and Judicial Commitments];

6. Family Code sections 6200 et seq. [Domestic Violence Prevention Act];

7. San Diego County Child Victim-Witness Protocol;

8. Other relevant portions of federal and California law relating to the abuse or neglect of children and to children's mental and physical welfare.

(c) Legal Skills

In addition to basic legal knowledge, counsel must have and continue to develop the following basic legal skills:

1. Basic trial skills (e.g., proper and succint direct and cross-examination, proper objections);

2. Basic advocacy skills (e.g., client interviewing and counseling, case investigation, settlement negotiation, witness preparation, use of experts);

3. Relevant motion practice (e.g., motions pursuant to WIC §§ 350, 388, 390);

4. Sufficient understanding of writ and appellate practice to advise a client whether and how to seek such remedies and to arrange for a specialist to pursue them when necessary.

(d) Relevant Interdisciplinary Skills

The dependency system is complex in that it frequently involves issues arising from a variety of disparate and highly specialized areas. A collaborative problem-solving approach usually imporves outcomes for children and families. Attorneys appearing in dependency court cannot effectively represent their clients without a fundamental understanding of the interdisciplinary issues listed below and the ability to obtain more detailed insight as the demands of individual cases require. Attorneys should have a general familiarity with and receive ongoing training in the following areas:

1. Dynamics of child abuse and neglect

2. Child development

a. Interviewing children

b. Children as witnesses

c. Developmental milestones as they relate to the identification and consequences of child abuse and neglect

3. Risk assessment

4. Substance abuse - the addiction and recovery process

5. Mental health issues

a. Purposes and uses of psychological and psychiatric evaluations

b. Purposes and expectations of various modalities of therapy

c. Psychotropic medications

6. Medical issues

a. Traumatic injuries

b. Nutritional deficits

c. Drug toxicity in children

7. Government payment issues

a. AFDC-Foster Care

b. CalWORKS and TANF

c. Medi-Cal

d. County Treasury funds

e. Supplemental Security Income (SSI)

f. Social Security Administration (SSA)

g. Adoption Assistance Program (AAP)

h. Kin-GAP funds

8. Cultural issues

9. Poverty issues

10. Education issues

11. Domestic violence

12. Family reunification and preservation

13. Reasonable efforts

(Adopted Effective 1/1/97; Renumbered 7/1/2001; Renumbered & Amended Effective 1/1/2002; Renumbered 1/1/2006)

CHAPTER 4
PROCEDURES FOR REVIEWING AND RESOLVING COMPLAINTS

Rule 6.4.1

Reviewing and Resolving Complaints

(a) Written notice of the procedure for resolving complaints will be provided in each courtroom at the adult client's first appearance. The child's attorney must provide written notice of the procedure to a child 10 years of age or older or to the caregiver of a child under 10 years of age.

Information regarding the procedure will be available in the clerk's office.

(b) Any participant who has a complaint about the performance of a juvenile court attorney may lodge a written complaint with the court hearing the matter (hereinafter, the court).

(c) Upon receipt of a written complaint, the court will notify the attorney in question and his or her supervisor, if any, provide the attorney with a copy of the complaint and give the attorney 20 days from the date of the notice to respond to the complaint in writing. The attorney should attempt to obtain an informal resolution of the matter before responding to the complaint.

(d) After the attorney has responded to the complaint or the time for submission of a response has passed, the court will review the complaint and the response, if any, to determine whether the attorney acted contrary to local rules or policies of the court or has acted incompetently. The court may ask the complainant or the attorney for additional information before making a determination on the complaint.

(e) If, after reviewing the complaint, the response, and any additional information, the court finds that the attorney acted contrary to the rules or policies of the court, the court may reprove the attorney, either privately or publicly, and may, in cases of willful or egregious violations of local rules or policies, issue such reasonable monetary sanctions against the attorney as the court may deem appropriate.

(f) If, after reviewing the complaint, the response, and any additional information, the court finds that the attorney acted improperly, the court may order that the attorney practice under the supervision of a mentor attorney for a period of at least six months, that the attorney complete a specified number of hours of training or education in the area in which the attorney was found to have acted improperly, or both. In cases in which the attorney's conduct caused actual harm to his or her client, the court may order additional hearings to determine whether that attorney should be relieved. The court may refer the matter to the State Bar of California for further action.

(g) The court will notify the attorney at the attorney's address of record and the complaining party in writing of its determination of the complaint. If the court makes a finding of improper conduct, incompetence, or harm to the client under subdivision (e) or (f), the attorney may request a hearing in writing concerning the court's proposed action. If the attorney does not request a hearing within 10 days from the date the notice was sent, the court's determination will become final.

(h) If the attorney requests a hearing, the hearing will be held as soon as practicable after the attorney's request therefor, but in no case will it be held more than 30 days after it has been requested except by stipulation of the parties. The complainant and the attorney will each be given at least 10 days' notice of the hearing. The hearing may be held in chambers. The hearing will not be open to the public. The court may designate a commissioner, referee, judge pro tempore, or other member of the bar to act as hearing officer.

(i) At the hearing, each party will have the right to present arguments to the hearing officer with respect to the court's determination. Such arguments must be based on the evidence before the court at the time the determination was made. No new evidence may be presented unless the party offering such evidence can show that it was not reasonably available to the party at the time that the court made its initial determination with respect to the complaint. Within 10 days after the hearing, the court or hearing officer will issue a written determination upholding, reversing, or amending the court's original determination. The hearing decision will be the final determination of the court with respect to the matter. A copy of the hearing decision will be provided to both the complainant and the attorney.

(j) Nothing in these rules preclude any person or public agency from pursuing rights afforded them by any other statute or rule of law.

(Adopted Effective 1/1/97; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

CHAPTER 5
PROCEDURES FOR INFORMING THE COURT OF OTHER INTERESTS OF A DEPENDENT CHILD
(WIC §§ 317, 317.6; CRC 1438(d))

Rule 6.5.1

Informing the Court of Other Interests of a Dependent Child

(a) At any time while a dependency proceeding is pending, any interested person may notify the court that the child who is the subject of the proceeding may have an interest or right which needs to be protected or pursued in another judicial or administrative forum.

(b) 1. Notice to the court may be given by filing Judicial Council form JV-180 (Modification Petition Attachment), by filing a declaration, or, in the case of an individual who is not a party to the action, by sending a signed letter addressed to the court.

2. The person giving notice must set forth the nature of the interest or right which needs to be protected or pursued, the name and address, if known, of the administrative agency or judicial

forum in which the right or interest may be affected, the nature of the proceedings being contemplated or conducted there, and any case number or other identifying information regarding the proceeding.

3. If known to the person giving notice, the notice must also set forth what action on the child's behalf the person believes is necessary, whether counsel on a pro bono or contingency basis may be necessary or appropriate to take action on behalf of the child in the other forum, whether the nomination of a guardian ad litem to initiate or pursue a proposed action may be appropriate, whether joinder of an administrative agency to the juvenile court proceedings pursuant to WIC § 362 may be appropriate or necessary to protect or pursue the child's interest, and whether further investigation may be necessary.

(c) A copy of the notice must be served on the child's social worker and on the child's attorney and/or CASA before the notice is filed with the court. Such service may be effected by personal service, first-class mail, or the equivalent, and must be indicated on a proof of service filed with the notice. If the child is not represented by separate counsel, the notice must so state. In the case of an individual who is not a party to the action who files a letter with the court, the clerk of the court will serve a copy of the letter on the child's social worker and on the child's attorney and/or CASA.

(d) The court may set a hearing on the notice if the court deems it necessary in order to determine the nature of the child's right or interest and whether steps need to be taken to protect or pursue that right or interest in another forum.

(e) If the court determines that further action on behalf of the child is required, the court may do one or more of the following:

1. If the child is unrepresented, appoint an attorney for the child in the dependency proceedings and direct that such attorney investigate the matter and report back to the court pursuant to WIC § 317(e).

2. Authorize an attorney to pursue the matter on the child's behalf in the other forum on a pro bono or contingency basis.

3. Nominate a guardian ad litem for the child for appointment by the other forum for the purposes of initiating or pursuing appropriate action on behalf of the child in that forum.

4. Notice a joinder hearing pursuant to WIC § 362(a), compelling a responsible agency to report to the court as to whether it has fulfilled its legal obligation to provide services to the child.

5. Take such other action the court may deem necessary or appropriate to protect the welfare, interests, and rights of the child.

(f) County treasurer funds will not be used to fund legal or other services in another forum outside the juvenile dependency proceedings.

(Adopted Effective 1/1/97; Renumbered 7/1/2001; Amended Effective 1/1/2002; Renumbered 1/1/2006)

CHAPTER 6
ACCESS TO CONFIDENTIAL INFORMATION

Rule 6.6.1

Disclosure of Information Relating to Children and their Families–Preliminary Provisions

For purposes of this rule, "juvenile court records" include:

(a) those records defined in CRC 1423;

(b) records kept in Health & Human Services Agency ("HHSA") files pursuant to WIC § 10850 and Penal Code § 11165 et seq., regardless of whether a WIC § 300 petition was filed in the case;

(c) records kept in Probation Department files, regardless of whether a WIC § 601 or 602 petition was filed in the case; and

(d) testimony from HHSA or Probation personnel regarding any information contained in juvenile court records (cf. City of San Diego v. Superior Court (1981) 136 Cal.App.3d 236, 239).

For purposes of this rule, "juvenile court records" do **not** include:

(a) records sealed pursuant to WIC § 389 or § 781;

(b) records maintained by the Department of Motor Vehicles; and

(c) records regarding offenses that were tried in the criminal division of the court because the minor was found unfit to be tried in the juvenile division.

For purposes of this rule, "disclosure" or "access" provides for inspection, but not photocopying, at the court's business office or the HHSA or Probation office where the records are maintained, unless otherwise ordered by the court.

If the court authorizes photocopying, it must be done by court or HHSA or Probation personnel as appropriate, unless otherwise ordered by the court or agreed to by the parties. The person or agency obtaining photocopies must pay for the copying (in accordance with the current San Diego Superior Court Schedule of Fees, citing Gov. Code § 26831).

Juvenile court records may not be obtained by civil or criminal subpoena. A waiver of confidentiality by any person identified or described in the requested records does not automatically confer a right of access to those records.

(Adopted Effective 1/1/99; Renumbered 7/1/2001; Renumbered & Amended Effective 1/1/2002; Amended Effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.6.2

Disclosure of Juvenile Court Records to Persons and Agencies Not Designated in WIC § 827 - Petition for Disclosure (JV-570) Required

(For procedures relating to prehearing discovery of dependency records by the parties to a dependency proceeding and their counsel, see rule 6.1.7.)

Except as otherwise provided in Chapter Six of these rules, if a person or agency not designated in WIC § 827 seeks access to juvenile court records, including documents and information maintained by the court, the Probation Department, or the HHSA, that person or agency must file a Petition for Disclosure of Juvenile Court Records on Judicial Council form JV-570. The petition must be filed with the clerk in the Juvenile Court Business Office or other clerk designated to receive such petitions, unless the court has made an order cross-designating another court to sit as a juvenile court (see rule 6.62). The petition must comply with CRC 1423 and with these rules.

Petitioner must give notice as required by CRC 1423(d). Service must be to the subject of the juvenile records if he or she is no longer a minor or, if still a minor, upon a person authorized to act on his or her behalf (e.g., parent, guardian, attorney, etc.). This notice is not required if a written waiver of such notice is obtained from the minor (if now an adult) or a person authorized to act on the minor's behalf. For good cause shown, the court may waive such notice.

If the records are sought for use in a legal action which is not a juvenile court proceeding, petitioner must also give notice by personal service or first-class mail to all parties in that action.

The petition should be prepared as follows:

1. Enter petitioner's name and address.

2. Enter petitioner's relationship to the child whose records are sought.

3. Mark the appropriate boxes.

4. Describe in detail the records sought (e.g., entire court file, specific documents in court file, information in HHSA/Probation files, social worker/probation officer testimony regarding file).

- State that the petition is "based on knowledge, information, and belief that such records exist and are relevant to the purpose for which they are being sought." (CRC 1423(c).)

- Specify the type of disclosure requested (e.g., inspection, photocopies, or both).

5. Mark the appropriate boxes.

- Describe in detail the reasons the records are being sought and their relevancy to the proceeding or purpose for which petitioner seeks access to the records. (CRC 1423(c).)

- Explain why disclosure is necessary, i.e., why petitioner has no other method to obtain this information other than through disclosure of the requested records. (CRC 1423(b).)

- Explain how the records sought are reasonably likely to disclose "information or evidence of substantial relevance to the pending litigation, investigation, or prosecution." (CRC 1423(b).)

- Explain how petitioner will use the records if the court grants the petition.

6. Mark the appropriate boxes and enter the information requested. (See CRC 1423(d) for notice requirements.)

7. Mark the appropriate boxes.

8. Mark the box if appropriate.

The petition may be supported by a declaration of counsel and/or a memorandum of points and authorities.

If the petition is granted, the court will issue a protective order specifying the records to be disclosed and the procedure for providing access and/or photocopying. (CRC 1423(b).) Persons or agencies obtaining records under such authorization must abide by the terms of the protective order. Any unauthorized disclosure or failure to comply with the terms of the order may result in vacation of the order and/or may be punishable as contempt of court. (See WIC § 213.)

This rule is not intended to replace, nullify, or conflict with existing laws (including Pen. Code § 11167(d)) or the policies of the HHSA, the Probation Department, or any other public or private agency. This rule does not prohibit the release of general information on Juvenile Court policies and procedures.

(Adopted Effective 1/1/99; Renumbered 7/1/2001; Amended Effective 1/1/2002, 1/1/2005)

Rule 6.6.3

Cross-Designation of Other Courts to Sit as Juvenile Courts for Purposes of WIC § 827

(a) Family Court Proceedings

If juvenile court records are sought for a pending action in the San Diego Superior Court Family Law Division and the action involves the child or the child's family, the judicial officer presiding in that court may be cross-designated by this rule as a judge of the San Diego Superior Court Juvenile Division for the purpose of determining which records, if any, should be disclosed to the requesting party and the terms of any appropriate protective orders. The judicial officer will make this determination in accordance with WIC § 827, CRC 1423, Evidence Code §§ 915(b) and 1040(b), and Penal Code § 11167(d).

(b) Civil and Criminal Proceedings

If juvenile court records are sought for a pending civil or criminal action in San Diego Superior Court and the action involves the child or

the child's family, the judicial officer presiding in that court may be cross-designated as a judge of the San Diego Superior Court Juvenile Division for the purpose of determining which records, if any, should be disclosed to the requesting party and the terms of any appropriate protective orders. The judicial officer will make this determination in accordance with WIC § 827, CRC 1423, and Evidence Code §§ 915(b) and 1040(b).

Requests for cross-designation may be made by counsel in the civil or criminal action, or by the civil or criminal court on its own motion, and should be directed to the Presiding Judge of the San Diego Superior Court Juvenile Division.

(Adopted Effective 1/1/99; Renumbered 7/1/2001; Renumbered & Amended Effective 1/1/2002; Amended effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.6.4

Disclosure of Dependency Records to Persons and Agencies Not Designated in WIC § 827 - Petition to View Records (JUV-4) Required

(a) In addition to the persons and agencies designated in WIC § 827, the following may have access to dependency records and/or obtain photocopies of dependency records without a prior court order, subject to the conditions specified, on the basis that [1] disclosure will be in the best interest of the child whose records are sought and [2] the information contained in those records is necessary and relevant to:

- a juvenile dependency or delinquency proceeding;
- a civil or criminal investigation or proceeding;
- a proceeding involving child custody or visitation;
- a proceeding involving adoption, guardianship, or emancipation of a minor;
- an action to establish paternity;
- an administrative proceeding regarding foster home licensure;
- a proceeding involving probate or conservatorship; or
- a proceeding involving domestic violence.

1. Judicial officers of the San Diego Superior Court Family Division, when the child who is the subject of the records, or his or her sibling, is also the subject of custody or visitation proceedings under Family Code § 3000 et seq. (See Fam. Code §§ 3011(b), 3020). In such cases, the Family Law judicial officer will be cross-designated pursuant to rule 6.6.3 for the purpose of determining which records, if any, should be disclosed to the parties in the family law proceeding and the terms of any appropriate protective orders.

2. Judicial officers of the San Diego Superior Court, upon cross-designation to sit as judicial officers of the Juvenile Division pursuant to rule 6.6.3(b) for the purpose of determining which records, if any, should be disclosed to the parties in the civil or criminal proceeding and the terms of any appropriate protective orders.

3. County Counsel, for the purpose of representing HHSA in a dependency case or civil action.

4. San Diego County Juvenile Probation Officers, when the child who is the subject of the records is also the subject of juvenile court proceedings under WIC § 601 or 602. In such cases, which are subject to the court's Protocol for Coordination in Dual Jurisdiction Matters, the following persons may have access to the child's delinquency records, including minutes orders, and/or may obtain photocopies of the delinquency records without a prior court order: [1] HHSA social workers, [2] all dependency attorneys actively participating in juvenile proceedings involving the child, and [3] the child's CASA, if any. Copies of any joint assessment report, prepared pursuant to WIC § 241.1 and filed with the court, must be provided to the DA, the child's defense attorney and dependency attorney, County Counsel, the HHSA social worker, the probation officer, any CASA, and any other juvenile court having jurisdiction over the child.

5. CASAs (Voices for Children, Inc.), as provided under WIC §§ 105, 107.

6. An Indian child's tribe, as provided under Title 25, United States Code chapter 21 [Indian Child Welfare Act].

7. Employees or agents of San Diego Superior Court Family Court Services and members of the Family Court Case Consultation Team.

8. Employees or agents of San Diego County Mental Health Services (Health & Human Services Agency).

9. Any licensed psychiatrist, psychologist, or other mental health professional ordered by the San Diego County Superior Court, Family Division, to examine or treat the child or the child's family.

10. Any hospital providing inpatient psychiatric treatment to the child, for purposes of treatment or discharge planning.

11. Any government agency engaged in child protection.

12. The San Diego County Victim-Witness Assistance Program and the State Board of Control Victims of Crime Program, for the purpose of providing services to a victim of or a witness to a crime.

13. The Parole Services Division of the California Department of Corrections.

14. The California Board of Prison Terms, as provided under Penal Code § 11167.5(b)(9).

15. Members of the San Diego County Grand Jury.

16. Members of the San Diego County Juvenile Justice Commission.

17. The San Diego County Board of Supervisors or their agent(s), for the purpose of investigating a complaint from a party to a dependency proceeding.

18. Public and private schools, for the sole purpose of obtaining the appropriate school placement for a child with special education needs pursuant to Education Code § 56000 et seq.

19. Investigators and investigative specialists employed by the San Diego County District Attorney and assigned to the Child Abduction Unit, when seeking the records of a child who has been reported as detained or concealed in violation of Penal Code §§ 278 and 278.5, for the sole purpose of investigating and prosecuting persons suspected of violating Penal Code §§ 278, 278.5, and related crimes.

20. Investigators employed by attorneys who represent parties in dependency proceedings, when seeking records that may be released to the attorney without a court order under WIC § 827.

21. The Mexican Consulate, when seeking the records of a child who is in protective custody and/or is before the court for a dependency action, and either: [a] is a Mexican national, or [b] has relatives (as defined in WIC § 319) who are Mexican nationals.

22. The U.S. Social Security Administration, for the purpose of determining a child's eligibility for benefits.

23. Choice Program staff, for the purpose of providing intensive supervision and support to wards and dependents of the court, children with active HHSA files who are at high risk for group home or institutional placement, and the families of these children, including access to electronic data to assist in research and evaluation of the Choice Program.

24. The San Diego County Regional Center for the Developmentally Disabled.

25. The San Diego County Probation Department, when performing its duty under Penal Code § 1203.097 to certify treatment programs for domestic violence offenders, for purposes of documenting a treatment program's failure to adhere to certification standards and identifying serious practice problems in such treatment programs, provided that in any proceeding for the suspension or revocation of a treatment provider's certification or in any document related thereto, the Probation Department must not disclose any child's name.

Persons seeking access to and/or photocopies of dependency records under this rule must fill out, sign, and submit to the clerk in the Juvenile Court Business Office (or other clerk designated to receive such petitions) a "Petition to View Records and/or Request for Copies" (SUPCT form JUV-4). The completed form will be kept in the file that is the subject of the Petition and/or Request.

(b) In addition to the persons and agencies designated in WIC § 827, the following may inspect or receive verbal information regarding dependency records without a prior court order (but must file a Petition for Disclosure [JV-570] to obtain photocopies), subject to the conditions specified, on the basis that [1] disclosure will be in the best interest of the child whose records are sought and [2] the information contained in those records is necessary and relevant to the proceeding or purpose for which the records are sought:

1. U.S. Department of Justice prosecutors or their agents.

2. U.S. military prosecutors or their agents.

3. Federal Bureau of Investigation agents.

4. California Attorney General's Office prosecutors.

5. Any other agency or office authorized to investigate or prosecute criminal or juvenile cases under state or federal law.

6. Any attorney appointed to represent the child in Family Court proceedings pursuant to Family Code § 3150.

Persons seeking access to and/or photocopies of dependency records under this subdivision must present a photo I.D. and proof that they are entitled to access and/or photocopies (e.g., law enforcement badge or Bar card).

Persons seeking access (but not photocopies) to dependency records under this subdivision must fill out, sign, and submit to the clerk in the Juvenile Court Business Office (or other clerk designated to receive such petitions) a "Petition to View Records and/or Request for Copies" (SUPCT form JUV-4). The completed form will be kept in the file that is the subject of the Petition and/or Request.

Persons seeking photocopies of dependency records under this subdivision must file a Petition for Disclosure [JV-570] (see rule 6.6.2).

(c) Persons or agencies obtaining records under this rule must not disclose such records to another person or agency unless authorized to do so by the Juvenile Court. Any unauthorized disclosure may be punishable as provided by applicable laws.

(d) This rule is not intended to replace, nullify or conflict with any existing policies of the HHSA, the Probation Department, or any other public or private agency. This rule does not prohibit the release of general information on Juvenile Court policies and procedures.

(Adopted Effective 1/1/99; Renumbered 7/1/2001; Renumbered & Amended 1/1/2002; Amended Effective 7/1/2003, 1/1/2005; Renumbered 1/1/2006)

Rule 6.6.5

Disclosure of Dependency Records to Counsel for the Child in a Delinquency Proceeding

(a) Counsel appointed by the court or privately retained to represent a child in a delinquency proceeding (WIC § 601 et seq., including WIC § 707) may have access to the child's dependency records, as defined in rule 6.6.1, without a prior court order, subject to the following:

1. Counsel must give notice to the HHSA social worker assigned to the child's case (or the HHSA Legal Procedures Liaison, if there is no assigned social worker) at least five days before counsel will inspect records maintained by the HHSA.

2. Counsel will not have access to any information which would tend to identify a reporter of child abuse or neglect, as prohibited under Penal Code §§ 11167 and 11167.5.

3. Counsel will not have access to any information regarding HIV testing or HIV infection, as prohibited under Health & Safety Code § 120975 (formerly § 199.20) et seq.

4. Counsel will not have access to any confidential or privileged information regarding persons other than his or her child client.

5. Persons seeking access to dependency records under this rule must fill out, sign, and submit to the clerk in the Juvenile Court Business Office (or other clerk designated to receive such petitions) a "Petition to View Records and/or Request for Copies" (SUPCT form JUV-4). The completed form will be kept in the file that is the subject of the Petition and/or Request.

For purposes of this rule, "access" provides for inspection, but not photocopying, of dependency records at the court's business office or the HHSA office where the records are maintained, unless otherwise ordered by the court.

(b) Counsel appointed by the court or privately retained to represent a child in a delinquency proceeding (WIC § 601 et seq., including WIC § 707) must file a Petition for Disclosure of Juvenile Court Records on Judicial Council form JV-570 (see rule 6.6.2), with a request for a protective order (see CRC 1423(b)), in order to:

1. Obtain photocopies of the child's dependency records.

2. Obtain testimony from a HHSA representative regarding any information contained in the child's dependency records.

3. Disseminate information obtained from inspection of the child's dependency records to any persons or agencies not authorized to obtain such information under WIC § 827.

Notice of the filing of the Petition for Disclosure must be given as required by CRC 1423(d).

If the court authorizes photocopying, it must be done by court or HHSA personnel as appropriate, unless otherwise ordered by the court or agreed to by the parties. The person or agency obtaining photocopies must pay for the copying (in accordance with the current San Diego Superior Court Schedule of Fees, citing Gov. Code, § 26831).

Dependency records may not be obtained by civil or criminal subpoena. A waiver of confidentiality by any person identified or described in the requested dependency records does not automatically confer a right of access to those records.

(Adopted Effective 1/1/99; Renumbered 7/1/2001; Renumbered & Amended Effective 1/1/2002; Amended Effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.6.6

Disclosure of Probation Records to Counsel for the Child in a Delinquency Proceeding

The attorney representing a child in a delinquency proceeding may view the child's probation file after obtaining a judge's signature on the JUV-4 Petition to View Records. The probation file may only be copied if the attorney successfully brings a Petition for Disclosure of Juvenile Court Records (JV-570) pursuant to WIC § 827.

(Adopted effective 1/1/2006)

Rule 6.6.7

Disclosure of Law Enforcement Reports Regarding Juveniles to Persons and Agencies not Designated in WIC § 828

If a person or agency not designated in WIC § 828 seeks access to unsealed records held by a law enforcement agency, including reports regarding children who are the subject of juvenile court proceedings, that person or agency must file a Petition to Obtain Report of Law Enforcement Agency/Juvenile (Judicial Council form JV-575) with the clerk in the Juvenile Court Business Office or other clerk designated to receive such petitions. The petition must set forth with specificity the reasons for the request, the information sought, and its relevancy to the proceeding or purpose for which petitioner seeks the information.

(Adopted Effective 1/1/99; Renumbered 7/1/2001; Renumbered & Amended Effective 1/1/2002; Amended Effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.6.8

Disclosure of Medical Information to Foster Parents and Other Care Providers

Upon discharge of an infant, who is a dependent of the court or who is on a "hospital hold" pursuant to WIC § 309(b) or § 16525.14

[Options for Recovery], and the release of such infant to a foster parent designated by the HHSA pursuant to WIC § 16525.30 (or other care provider as permitted by law), the health care provider discharging the infant may provide to the foster parent or other care provider a written summary of the infant's medical history, diagnosis, and treatment, if necessary for the proper treatment of the infant after discharge.
(Adopted Effective 1/1/99; Renumbered 7/1/2001; Renumbered & Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.6.9

Disclosure of IEPs, Immunization Records, and Other Health Records to HHSA Social Workers and Children's Attorneys

In any case where a child is under the dependency jurisdiction of the court (WIC § 300 et seq.) or under informal supervision pursuant to WIC § 360, the HHSA social worker assigned to the child's case and the attorney representing the child in dependency proceedings (see WIC § 317(f)) may receive, upon request, copies of any written individualized education programs (IEPs), immunization records, and any other school or health records maintained by [1] a public school district or private school in which the child is or was enrolled, [2] a hospital to which the child is or was admitted, or [3] a health care provider who is or was providing medical, dental, psychiatric, or psychological treatment for the child.
(Adopted Effective 1/1/99; Renumbered 7/1/2001; Renumbered & Amended Effective 1/1/2002; Renumbered 1/1/2006)

Rule 6.6.10

Disclosure of School Records to Suicide Homicide Audit Committee (SHAC)

As established by the HHSA Violence and Injury Prevention Program, the Suicide/Homicide Audit Committee (SHAC) conducts multi-agency case reviews to develop policy and program recommendations based on trends in the causes of violence and on agency interaction with youth and families. Upon a request by SHAC for specified school records and/or information, a public school district, private school, or community college district located in San Diego County may release the records or information requested to the SHAC member(s) designated to receive such records or information, unless otherwise prohibited by law, agency policy, or an applicable canon of professional ethics and responsibility. Any school records or information obtained under this rule, including discussions and consultations among SHAC members regarding such records or information, must be kept confidential and must not be released, directly or indirectly, to nonmembers.
(Adopted Effective 1/1/99; Renumbered 7/1/2001; Renumbered & Amended Effective 1/1/2002; Amended Effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.6.11

Disclosure of Delinquency Records to Victims of Crime

Unless otherwise ordered by the court, the DA may release the following information to the victim(s) of a crime committed by a juvenile offender:

1. information regarding the status of the case;

2. name(s) of the minor(s) ordered to pay restitution to the victim;

3. name(s) of the parent(s) or guardian(s) of any minor(s) ordered to pay restitution to the victim; and

4. the address of the minor and/or the parent or guardian, if the victim states that the address is necessary to collect restitution or to file a civil action.

The information is to be used by the victim only to collect restitution ordered by the juvenile court. Before receiving any information, the victim, or his or her representative, must sign the form entitled "Warning to Victims of Crimes by Juvenile Offenders."
(Adopted Effective 1/1/2005; Renumbered 1/1/2006)

CHAPTER 7
PROCEDURES FOR APPOINTING COUNSEL

Rule 6.7.1

Attorneys for Children

At the earliest possible stage of proceedings, the court must appoint counsel for the child as provided in WIC § 317 and CRC 1438. Appointed counsel and/or the court (CASA) appointed special advocate must continue to represent the child at all subsequent proceedings unless properly relieved by the court.

For the purposes of the Child Abuse Prevention and Treatment Act grants to states (Public Law 93-247), in all cases in which a dependency petition has been filed and counsel has been appointed for the child, the attorney for the child will be the guardian ad litem for the child in the dependency proceedings unless the court appoints another adult to serve as the child's guardian ad litem. If no counsel is appointed for the child, or if at any time the court determines a conflict exists between the role and responsibilities of the child's attorney and that of a guardian ad litem, or if the court

determines it is best for the child to appoint a separate guardian ad litem, the court will appoint another adult as the guardian ad litem for the child. The guardian ad litem for the child may be any attorney or a CASA.
(Adopted Effective 1/1/2002; Amended Effective 7/1/2003; Renumbered 1/1/2006)

Rule 6.7.2

Attorneys for Parents or Guardian(s)

At the detention or initial hearing, the court must appoint counsel for the mother and counsel for a presumed father as provided in WIC § 317 and CRC 1438. Appointed counsel will continue to represent the client at all subsequent proceedings unless properly relieved by the court.
(Adopted Effective 1/1/2002; Renumbered 1/1/2006)

CHAPTER 8
PROCEDURES FOR DETERMINING APPROPRIATE CASELOADS FOR CHILDREN'S COUNSEL

Rule 6.8.1

Determining Appropriate Caseloads for Children's Counsel

The attorney for the child must have a caseload that allows the attorney to perform the full range of duties required by WIC § 317(e) and CRC 1438, and to otherwise adequately counsel and represent each child.

Pursuant to WIC § 317(g), if counsel is to be appointed for a child, the court must first utilize the services of the Public Defender. If there is a conflict of interest, then appointments are made to first- and second-level conflict offices.

The Public Defender utilizes a team approach which includes the use of skilled investigators who are trained and/or experienced in social work and child protection, paralegals who assist attorneys with routine legal work, and other clerical support. The Public Defender provides a team of professionals to represent children in each dependency court. Each court team consists, at a minimum, of an equal number of attorneys and investigators, legal assistants, and other clerical support. In addition, the Public Defender utilizes the assistance of law clerks from local law schools. With this structure, the Public Defender may carry an average attorney caseload of 400 children.

Conflict offices that do not utilize a team approach similar to that of the Public Defender may carry an average attorney caseload of 150 children unless a support structure is developed that will enable the conflict offices to carry a larger caseload.
(Adopted Effective 1/1/2002; Renumbered 1/1/2006)

CHAPTER 9
JUVENILE DELINQUENCY PROCEEDINGS

Rule 6.9.1

Preliminary Provisions

Rule 6.1.1, in the chapter entitled "Juvenile Dependency Proceedings," applies equally to juvenile delinquency proceedings.
(Adopted Effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.9.2

Definitions, Construction of Terms

(a) As used in these rules, unless the context or subject matter otherwise requires:

1. "Clerk" means the clerk of the juvenile court;

2. "Court" means the juvenile court, and includes any judge, referee, or referee pro tem of the juvenile court, unless otherwise specified;

3. "CRC refers to the California Rules of Court;

4. "D.A." means District Attorney;

5. "JPD" means the Juvenile Probation Department of the County of San Diego;

6. "Law Enforcement Agency" includes the San Diego County Sheriff's Department, all city police departments in San Diego County, and all school district police or security departments in San Diego County;

7. "Minor" or "child" means a person under the age of 18 years;

8. "PC" refers to the California Penal Code;

9. "P.O." means Probation Officer;

10. "WIC" refers to the California Welfare and Institutions Code.

(b) Construction of terms:

1. "Shall" or "must" is mandatory; "may" is permissive;

2. The past, present, and future tenses include the others;

3. The singular and plural numbers include the other.
(Adopted Effective 1/1/2005; Renumbered and revised effective 1/1/2006)

Rule 6.9.3

Assignment of Cases and Peremptory Challenges

This court strictly follows the timing requirements for peremptory challenges set forth in California Code of Civil Procedure 170.6 and California Government Code 68616(i).
(Adopted Effective 1/1/2005)

Rule 6.9.4

Continuances

Continuances of hearings will be granted only upon a showing of good cause and in accordance with the procedural requirements of WIC § 682 and CRC 1422 and 1486. A continuance may be granted following a time waiver by the minor.

(Adopted Effective 1/1/2005; Renumbered and revised effective 1/1/2006)

Rule 6.9.5

Ex Parte Applications and Orders

(a) No party may submit an ex parte application to the court for an order unless it appears by affidavit or declaration that one of the following is true:

1. Within a reasonable time before the application, the party informed all other parties or their attorney(s) when and where the application would be made and provided a copy of the application and proposed order to the attorney(s).

2. The party in good faith attempted to inform all other parties or their attorney(s) of the application but was unable to do so, describing with particularity the efforts made to inform each party.

3. The party should not be required to inform all other parties or their attorney(s) for the reasons specified. The court in its discretion may choose to inform the other parties of the reasons specified in the ex parte application.

(b) If the JPD files an ex parte application for an order terminating jurisdiction, the JPD must also serve notice thereof on the D.A. and minor's counsel. Any objection(s) must be submitted in writing to the court within ten court days of the filing of the application. Failure to timely submit a written objection constitutes a waiver of the objection. If a written objection is timely filed, the court will set a hearing on the application and serve notice of the hearing on all parties.

(c) An ex parte report may be used to request modifications of previous orders that have been so stipulated, to correct or clarify orders, to get permission from the court to proceed in a certain manner with a case, to update information to the court, or to give the court additional information. Examples of matters that are appropriate for ex parte handling: funding orders that were not included in the original court order but that are essential to carry out the order; vacate orders that are no longer needed; 15-day reviews; permission for travel outside the county; termination of jurisdiction when it was previously stipulated that jurisdiction would terminate once the minor complied with specific orders.

(Adopted Effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.9.6

Requirements for Noticed Motions

(a) All motion papers, opposition papers, and reply papers must be in writing and must display on the first page the motion hearing date, time, and department and a time estimate for the motion hearing.

(b) Time for service when the minor is detained: Unless a different briefing schedule is set by the court,

1. All moving papers must be filed and served on the opposing party at least 5 court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least 2 court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least 1 court day before the time appointed for the hearing.

(c) Time for service when the minor is not detained: Unless a different briefing schedule is set by the court,

1. All moving papers must be filed and served on the opposing party at least 10 court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least 5 court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least 2 court days before the time appointed for the hearing.

(d) Time for service of motion to suppress evidence: Unless a different briefing schedule is set by the court,

1. All moving papers must be filed and served on the opposing party at least 5 court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least 2 court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least 1 court day before the time appointed for the hearing.

(e) Points and Authorities:

1. All moving and opposing papers must be accompanied by supporting points and authorities.

2. A memorandum of points and authorities must include a statement of the case and a statement of facts setting forth all procedural and factual matters relevant to the issue presented.

3. The memorandum of points and authorities must clearly specify the factual and legal issues raised and the specific legal authority relied upon for the motion.

4. Only the factual and legal issues set forth in the memorandum will be considered in the ruling on the motion unless it is established that the

new issues were not reasonably discoverable before the motion was filed.

5. Failure of the moving party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is without merit.

6. Failure of the responding party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is meritorious.

7. In case of a failure of either party to serve and file points and authorities within the time permitted, the court may find good cause to continue the hearing.

(f) Abandonment of Motions: Any party intending to abandon a motion already filed must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard, and must also notify the clerk immediately if the case is disposed of by plea prior to the hearing or if the proceedings are suspended pursuant to Penal Code section 1368.

(g) Concession That Motion is Meritorious: If the responding party elects not to oppose the motion, respondent must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard.

(h) Length of Points and Authorities: No opening or responding memorandum of points and authorities exceeding 15 pages may be filed, absent an order from the judge of the court in which the motion is calendared. Such an order will be granted only upon a written application including a declaration setting forth good cause for the order.

(Adopted effective 1/1/2005; Renumbered and revised 1/1/2006)

Rule 6.9.7

Fax Filing

Any document in a delinquency case may be filed by fax between 8:30 a.m. and 4.30 p.m. Monday through Friday. The fax number may be obtained by contacting the Juvenile Court Business Office. Fax filings must comply with the requirements of CRC 1406.5.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.9.8

Warrants

All warrants of arrest and juvenile detention orders, including those stored in electronic form, are deemed authenticated at the time a Juvenile Court judge issues an order authorizing the issuance of the arrest warrant or juvenile detention order.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.9.9

Reciprocal Discovery

The discovery provisions of Penal Code section 1054 et seq. apply to juvenile delinquency cases.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.9.10

Public and Media Access

In most cases, juvenile delinquency proceedings are presumed to be confidential and closed to the public. However, any person whom the court deems to have a direct and legitimate interest in a particular case or in the work of the court may be admitted. Furthermore, hearings concerning petitions that include any of the offenses listed in WIC § 676(a) are presumptively open to the public. A request for media coverage must be submitted on form SUPCT ADM-20 at least five court days before the hearing unless good cause for noncompliance is shown. Forms and copies of the Juvenile Court Media Policy are available from Juvenile Court Administration, which is in room 254 at the Meadow Lark courthouse. This rule is not meant to affect the rights of any victim or other person entitled by statute to be present. (See Welf. & Inst. Code, §§ 676.5, 679.)

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.9.11

Competence and Mental Health Evaluations

Whenever a minor's competence or mental health is in doubt, an evaluation must be done as soon as possible after the delinquency case is initiated to determine whether the minor is incompetent or in need of emergency inpatient mental health services. When indicated, services must be provided in a timely manner. Requests for such evaluations must comply with the Juvenile Court's protocols for competence evaluations and court-ordered inpatient mental health evaluations.

(Adopted effective 1/1/2005; Renumbered and revised 1/1/2006)

Rule 6.9.12

Administration of Psychotropic Medications

After a child is declared a ward of the court under WIC § 601 or 602 and removed, either temporarily or permanently, from the physical custody of his/her parent or guardian, only a Juvenile Court judicial officer is authorized to make orders regarding the administration of psychotropic medication to the child. The procedures and forms described in CRC 1432.5 apply in delinquency cases. Requests for orders for psychotropic medications for 601 and 602 wards must comply with the requirements of CRC 1432.5.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.9.13

Initial Health Screening

Prior medical authorization will not be required for the initial health screening of minors at Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. Initial health screenings must be performed within 72 hours of detention and will include a physical examination, laboratory tests, immunizations, and X-rays. The Probation Department will attempt to obtain parental consent for medical care. If such consent cannot be obtained, the Probation Department will seek a court order authorizing medical care. In an emergency situation, medical care may be delivered to minors in detention without parental consent or a court order. (See Welf. & Inst. Code, § 739.)

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.9.14

Immunizations

All minors detained in the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility, where medical records are unavailable and/or due diligence efforts are unsuccessful in locating a parent, guardian or other responsible adult relative, will receive all necessary immunizations against poliomyelitis, diphtheria, pertussis, tetanus, measles, rubella and mumps. Such immunizations are reasonable and necessary under section 120335 of the Health and Safety Code to enable attendance in school programs operated by Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. All immunizations must be performed by a licensed health care provider.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.9.15

Sex Education

The Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility, in conjunction with the County Office of Education, the Department of Public Health, and approved community-based organizations, may conduct sex education classes as part of the education curricula for all minors detained in the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. These classes may include information on AIDS and its transmission.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.9.16

Off-Site Counseling

Any minor detained in the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility pending acceptance by and delivery to a 24-hour institution may be transported from the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility to the 24-hour institution for counseling or other rehabilitative treatment, provided the assigned probation officer consents to the off-site treatment.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

Rule 6.9.17

Travel Out of San Diego County

The Probation Department is authorized to grant permission to wards to travel out of the County of San Diego but within the State of California for trips of up to 72 hours. An ex parte order from the Juvenile Court is required for trips over 72 hours and/or outside the State of California.

(Adopted effective 1/1/2005; Renumbered 1/1/2006)

APPENDIX A

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JUVENILE DIVISION

CERTIFICATION OF COMPETENCY

I, _____,
Name office address telephone number

and an attorney at law licensed to practice in the State of California. My State Bar Number is _____.
I hereby certify that I meet the minimum standards for practice before a Juvenile Dependency Court set forth in California Rules of Court, rule 1438, and local rule Section Three, and that I have completed the minimum requirements for training, education and/or experience as set forth below. This is a [ ] new certification [ ] recertification.

[ ] Education and Training
(Attachment to explain and/or document)

[ ] Experience
(Attachment to explain and/or document)

[ ] Other
(Attachment to explain and/or document)

_____ _____
Dated Attorney Signature

_____ _____
Dated Approved by
Presiding Dependency Judge

DIVISION VII
APPELLATE

Former Rule No.		New Rule No.
CHAPTER 1. GENERAL POLICIES AND PROCEDURES		
7.1	Policy	7.1.1
7.2	Adoption of Rule 187.5 of the California Rules of Court	7.1.2
CHAPTER 2. WRIT PROCEDURES, POLICIES, AND PROTOCOL IN LIMITED CIVIL AND CRIMINAL CASES		
7.3	Application of the California Rules of Court	7.2.1
7.4	Filing Requirements	7.2.2
7.5	Request for Stay	7.2.3
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DIVISION VII - APPELLATE

CHAPTER 1
GENERAL POLICIES AND PROCEDURES

Rule 7.1.1

Policy

The business of the Appellate Division of the San Diego Superior Court will be conducted in conformity with the applicable provisions of article VI, section 4 of the California Constitution, the California Rules of Court, applicable statutes, and the decisions of the California Supreme Court and Courts of Appeal.

(Effective 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 7.1.2

Adoption of Rule 187.5 of the California Rules of Court

Notwithstanding any other rule, rule 187.5 of the California Rules of Court applies to every appeal in a misdemeanor case in which all or part of the proceedings were officially recorded electronically and in which the notice of appeal is filed after December 31, 1999.

This rule does not limit the court's power or the trial judge's authority to order corrections, changes, additions, or deletions to a stipulated settled statement.

(Effective 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

CHAPTER 2
WRIT PROCEDURES, POLICIES, AND PROTOCOL IN LIMITED CIVIL AND CRIMINAL CASES

Rule 7.2.1

Application of the California Rules of Court

For all petitions for extraordinary relief in limited civil, misdemeanor, and infraction cases which name San Diego Superior Court as respondent, wherever the San Diego Superior Court Rules do not provide specific guidance regarding the proper writ petition procedures, the provisions of the California Rules of Court, Title I, Appellate Rules, will apply.

(Effective 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 7.2.2

Filing Requirements

A. All such petitions must be filed in the Central Division business office on the third floor of the Hall of Justice at 330 West Broadway, San Diego, California. No such petitions will be accepted for filing anywhere else. Unless otherwise ordered, any subsequent pleadings and papers in the same matter must be filed in the same office.

B. All such petitions will be assigned civil case numbers.

C. No filing fee will be required when a petition arises from a criminal case.

D. The petitioner or counsel for the petitioner is required to submit one original and five copies of the petition. Each copy of the petition must include all declarations, exhibits and/or other permissible attachments.

E. If the underlying action is civil, petitioner must also include envelopes bearing sufficient postage for service of the court's orders and addressed to petitioner, respondent(s), and real party/parties in interest.

(Effective 1/1/2000; Rev. effective 1/1/2001; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 7.2.3

Request for Stay

If a stay of the trial court proceeding is requested in the writ petition, the petition must so state prominently on the title page. The petition must set forth all time constraints which are relevant to the request for stay.

If petitioner is seeking a stay of the underlying proceeding in a civil action, petitioner must include envelopes bearing sufficient postage for service of the court's orders. Two envelopes should be addressed to petitioner, respondent(s), and real party/parties in interest.

(Effective 1/1/2000; Renumbered 7/1/2001; Renumbered 1/1/2006)

Rule 7.2.4

Disposition of Petition

Within 15 days of the filing of the writ petition, the court will either summarily deny the petition or issue an alternative order to show cause why the relief requested should not be granted. If the alternative writ or order to show cause is issued, the court will allow at least 5 days for the court to act or the party to file a responsive pleading, except as herein provided. If the court grants petitioner’s request for stay, the court will allow at least 10 days for a response. On the motion of any party for good cause shown, or on the court’s own motion, the court may shorten or extend time for doing any act under this rule.

(Effective 1/1/2000; rev. effective 1/1/2001; Renumbered 7/1/2001; Renumbered 1/1/2006)

DIVISION VIII
MENTAL HEALTH COURT

CHAPTER 1
COURT, LOCATIONS, VENUE, PROCEDURES

Rule 8.1.1

Mental Health Court

The Mental Health Court is located in one of the departments in the Central Division of the San Diego Superior Court and constitutes the Mental Health Division of the Superior Court. The Mental Health Court hears the categories of matters addressed in these rules and such other categories of matters as may be assigned by the Presiding Judge. Generally, a matter set for trial will not be assigned to the Mental Health Court.

Rule 8.1.2

Mental Health Court Judge

(A) All references in these rules to the Mental Health Court judge means the judge designated to preside over the Mental Health Division of the San Diego Superior Court.

(B) Upon a showing of good cause, the Mental Health Court judge may issue orders at variance with these rules.

Rule 8.1.3

Addresses and Telephone Numbers of the Mental Health Court

San Diego Superior Court:
Mental Health Court, Department 36 (as designated by the Presiding Judge)
220 West Broadway
San Diego, California 92101

Mental Health Desk:
Clerk, San Diego Superior Court, Room 2005
220 West Broadway
San Diego, California 92101
(619) 531-4050

Public Conservator:
3851 Rosecrans St., Room G-32
San Diego, California 92110
(619) 692-5664

Attorney for Public Conservator
Office of the County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101, USA
(619) 531-4860

Public Defender's Office
233 A Street, Suite 800
San Diego, CA 92101
(619) 338-4700

Rule 8.1.4

Venue

(A) Addressed in Moving Papers. To be accepted for filing with the court, a petition or motion subject to the rules of this division must present facts that show that San Diego Superior Court is the proper venue for hearing the petition or motion.

(B) Change of Venue. A motion for a change of venue must be filed with the Mental Health Desk clerk. The request must include a declaration of counsel presenting the reasons why a change of venue is required.

Rule 8.1.5

Pleadings

(A) Caption. The caption of a petition and all other papers must be all-inclusive regarding the relief sought in the petition or papers so that the matter may be properly calendared. The court clerk at the Mental Health Desk is not required to read the body of the petition or other papers to determine the scope of the filed petition or other papers.

(B) Use of Printed Forms. The court prefers that counsel use the latest version of the printed forms approved by the Judicial Council. If a form cannot be used, counsel must prepare their own documents using a preferred form as a guide. Forms are available through the court clerk at the Mental Health Desk.

(C) Verification. All papers which require verification must be verified in substantially the following manner:

> I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this (name of document) is executed on (date).
>
> (signature)
> (name typed)

(D) A petition, motion, and all other papers concerning the matters for the Mental Health Court must be filed with the court clerk at the Mental Health Desk.

Rule 8.1.6

Notice, Written

(A) Required. Unless specifically excepted by these rules, all matters presented to the Mental Health Court must be preceded by written notice served on the party affected and the attorney of record of the party affected.

(B) Form of Notice. All written notices must substantially comply with the requirements of

Probate Code section 1200 et seq. The notice must contain the time, date and place of hearing.

(C) Timing of Written Notices. All written notices, except as otherwise required by this division, must be served in accordance with the time limits prescribed by Probate Code section 1460.

(D) Service of Notice – General. A declaration of service for any written notice required by statute must be completed and filed with this court. The declaration must comply with Code of Civil Procedure section 1013, subdivision (a), but need not be accompanied by a copy of the notice so long as the original notice is on file and is clearly identified in the declaration of service.

Rule 8.1.7

Notices Other than Written

(**A)** Except as to written notices required by statute or these rules, verbal notice must be provided to affected parties or their attorney and expert witnesses (if appearance is required) for any of the following actions:

(1) Waiver of the presence of the expert;

(2) Forensic examination by County-employed psychiatrists;

(3) Inability or unwillingness of any conservatee to attend;

(4) Termination of a temporary conservatorship.

(5) Any ex parte matter other than the establishment of a temporary conservatorship.

(**B)** The notice required by this rule may be given by any means, including telephone. This notice must be given not less than one working day before the matter will be submitted to the court or the forensic examination is to occur. Where a decision to file for an appointment or termination of a temporary conservator is made less than one day before filing, notice must be given immediately after the decision to file. When a conservatee is unable or unwilling to attend a hearing and such inability or unwillingness is not made apparent in adequate time to allow for one working day notice, then notice must be given immediately after the conservatee is found to be unable or willing to attend.

Rule 8.1.8

Hearing Once Notified Cannot be Advanced

When a hearing on a Mental Health 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, either by means of a new petition, an amended petition, or by a new notice, unless so ordered by the court.

Rule 8.1.9

Preparation of Order or Judgment.

A copy of any proposed order or judgment must be submitted to opposing counsel before presentation to the judge rendering the order or judgment. A conformed copy of such order must be sent to opposing counsel.

CHAPTER 2
LPS CONSERVATORSHIP

Rule 8.2.1

"Conservator"

(A) As used in this Division, "conservator" is a reference to the person appointed by the Mental Health Court to serve as conservator, and includes a person appointed as a temporary conservator, an interim conservator, or a successor conservator.

(B) The conservator is responsible for ensuring that the conservatee appears in court for any scheduled hearings requiring the conservatee's presence. This responsibility includes obtaining the necessary transportation.

Rule 8.2.2

"Conservatee"

As used in this Division, "conservatee" is a reference to the person subject to LPS proceedings and includes a proposed conservatee and a conservatee under a temporary conservatorship.

Rule 8.2.3

Calendar Call

(A) Subject to court discretion, conservatorship cases on the regular calendar will be heard in the following order:

(1) Stipulation matters read into the record;

(2) Uncontested matters;

(3) Contested conservatorships;

(4) Writs of habeas corpus; and

(5) Petitions to authorize medical treatment, medication (Riese) hearings or appeals, and electroconvulsive treatment.

(B) A matter is considered to be contested if an issue is in question.

Rule 8.2.4

Service-Proof of Service

Service of any notice on a conservatee must be done in accordance with Welfare and Institutions Code sections 5000 et seq., or Probate Code section 1200 et seq. where no method appears in the Welfare and Institutions Code. Service on any attorney may be made in accordance with Code of Civil Procedure section 1011 or 1012.

Rule 8.2.5

Subpoenas

Subpoenas and subpoenas duces tecum regarding LPS conservatorships and related matters must be issued in accordance with Code of Civil Procedure section 1985, et seq., provided the provisions for maintaining confidentiality, as contained in Welfare and Institutions Code section 5328, are not violated.

Rule 8.2.6

Establishment of Conservatorship – A Referral Initiates The Establishment Procedure

(A) To initiate the procedure for establishing a conservatorship, a psychiatrist and/or a licensed clinical psychologist must prepare a report (referral) which presents a factually supported conclusion that the proposed conservatee is a proper subject of a Lanterman-Petris-Short Act conservatorship.

(B) The preparer of the referral must submit the referral to the Public Conservator.

Rule 8.2.7

Establishment of Conservatorship – Preparation and Filing of Petition

If, after reviewing the referral, the Public Conservator determines to initiate the procedures for establishing a conservatorship, the Public Conservator must:

(A) prepare and file with the court clerk at the Mental Health Desk a petition for establishment of an LPS conservatorship and obtain a hearing date; and

(B) serve a copy of the petition on the counsel for the proposed conservatee no less than 15 court days prior to the hearing on the petition.

Rule 8.2.8

Establishment of Conservatorship - Temporary Conservatorship

(A) At the time of filing a petition for establishment of an LPS conservatorship, the Public Conservator may, in accordance with Welfare and Institutions Code section 5352.1, request an order of the Mental Health Court establishing a temporary conservatorship which includes the appointment of a temporary conservator.

(B) Good cause for establishing a temporary conservatorship can be based on declarations of professional persons recommending the conservatorship.

Rule 8.2.9

Establishment of Conservatorship - Notice of Temporary Conservatorship

Within five working days of the establishment of the temporary conservatorship, the Public Conservator must mail to the temporary conservatee a copy of the order appointing a temporary conservator.

Rule 8.2.10

Establishment of Conservatorship – Term of Temporary Conservatorship

(A) All temporary conservatorships expire automatically at the conclusion of 30 days.

(B) When a hearing to establish a permanent conservatorship is continued, the temporary conservatorship will automatically continue to be in effect until the date of continuance, subject to one of the parties presenting an objection to the court and the court ruling otherwise.

Rule 8.2.11

Establishment of Conservatorship – Preparation of Conservatorship Investigation Report

(A) If the Public Conservator determines to initiate the procedures for establishing a conservatorship, the Public Conservator:

(1) Shall, as the Welfare and Institutions Code section 5352 "officer providing conservatorship investigation," prepare the conservatorship investigation report; and

(2) Shall serve the conservatorship investigation report on the counsel for the proposed conservatee no less than five court days prior to the hearing on the petition.

(B) If the conservatorship investigation report refers to any written evaluation or report prepared by a physician, psychologist, social worker, nurse or other professional person, the conservatorship investigation report must identify such evaluation or report with sufficient specificity to allow the attorney of record for the proposed conservatee the opportunity to view or subpoena such document. Identification may be accomplished by specifying such things as: the date of the report; the name and title of the person preparing the report; or the facility/organization with which the preparer is affiliated.

Rule 8.2.12

Establishment of Conservatorship – Hearing - Waiver of Presence of Physician

The presence of a physician at the hearing on the petition to establish a conservatorship may be excused in advance of the date of the hearing by stipulation between the Public Conservator and the attorney for the proposed conservatee. Thereafter, if it is determined that the presence of the physician is required, the Mental Health Court will continue the hearing.

Rule 8.2.13

Establishment of Conservatorship - Hearing - Conservatee Unable or Unwilling to Attend Hearing

At any conservatorship hearing conducted under Division 8, Chapter 2, the Mental Health Court may, in its discretion, proceed in the absence of the conservatee if counsel for the conservatee: (1) requests the court to waive the conservatee's presence, (2) represents to the court that there has been contact with the conservatee, and (3) states that, in the attorney's opinion, it is not in the best interests of the conservatee-client to be present in court or for the court to convene where the conservatee is then housed.

Rule 8.2.14

Establishment of Conservatorship - Hearing – Evidence (Conservatorship Referral Document)

Upon stipulation of the parties, the written conservatorship referral prepared by a psychiatrist and/or a licensed clinical psychologist who is on the staff of a Lanterman-Petris-Short Act approved facility may be received into evidence.

Rule 8.2.15

Establishment of Conservatorship – Hearing – Evidence (Conservatorship Investigation Report)

Under the Welfare and Institutions Code, the conservatorship investigation report is admissible into evidence at the hearing.

Rule 8.2.16

Establishment of Conservatorship - Hearing - Appointment of Conservator

(A) The order imposing a conservatorship must include the appointment of a conservator.

(B) The Mental Health Court will appoint co-conservators only under unusual circumstances where it has been demonstrated to the court that the appointment of a co-conservator is necessary and is in the best interests of the conservatee.

(C) Within ten working days of the appointment, the conservator must send notice to the conservatee of the establishment of the conservatorship. The notice must include the name, address and telephone number of the conservator. Where the conservator is a public official, the notice must include the name and telephone number of the social worker assigned to the case.

Rule 8.2.17

Establishment of Conservatorship - Preparation of Orders

The petitioner must prepare all necessary orders required in the establishment of the conservatorship and appointment of a conservator.

Rule 8.2.18

Conservator – Request To Be Relieved

When, for any reason, a conservator seeks to be relieved, the court may appoint a successor conservator pursuant to section 2680 et seq. of the Probate Code. The successor conservator must notify the conservatee of the appointment.

Rule 8.2.19

Conservator – Successor By Operation of Law

Where the Public Conservator is appointed to serve as conservator, a successor to the office will, by operation of law, be deemed the successor conservator.

Rule 8.2.20

Conservator, Private – Relief For Non-Performance - Appointment of Interim Conservator

(A) Where there is evidence that a private conservator is not able to perform the duties or responsibilities of conservator, the Public Conservator may petition the court: **(1)** to relieve temporarily the current conservator; and **(2)** to make an interim appointment of the Public Conservator to serve as conservator pending further investigation of the conservatorship.

(B) If good cause is shown and the court temporarily relieves the private conservator, the court will (1) direct the Public Conservator to conduct an investigation; and (2) set a hearing date to consider the Public Conservator's report and take necessary action concerning the conservatorship.

Rule 8.2.21

Rehearing - Time for Filing

(A) An initial petition requesting a rehearing may be filed by the conservatee or the conservatee's attorney at any time.

(B) Pursuant to Welfare and Institutions Code section 5364, after the filing of the first petition for rehearing, no further petition for rehearing may be submitted for a period of six months.

Rule 8.2.22

Rehearing – Issues Raised – Burden Of Proof

(A) Grave Disability. A rehearing on the issue of whether the conservatee remains "gravely disabled" is governed by Welfare and Institutions

Code section 5364**.** The burden of proof is upon the conservatee to establish, by a preponderance of the evidence, that the conservatee is no longer gravely disabled as defined in Welfare and Institutions Code section 5008, subdivision (h).

(B) Rights of Conservatee. Rehearings on the issue of the powers conferred on the conservator or the rights denied the conservatee under Welfare and Institutions Code sections 5357 and 5358 are governed by Welfare and Institutions Code section 5358.3. The burden of proof is on the conservatee to show by a preponderance of the evidence why a right should be restored.

(C) Conservator's Authority Over Routine Medical Treatment.

Under the terms of the conservatorship, where the conservatee has retained the right to make medical decisions unrelated to remedying or preventing the recurrence of the conservatee being gravely disabled, the conservator may petition the court for a rehearing on this issue where the treating physician and the conservator have reason to question the ability of the conservatee to give informed consent to medical treatment.

Rule 8.2.23

Rehearing - Procedure

(A) Form and Content of Petition. The petition for rehearing must: (1) specifically state whether it is brought pursuant to Welfare and Institutions Code section 5364 or section 5358.3, or both; and (2) specifically state the basis for the proposed change; and (3) the present the filing and hearing dates of all previous rehearing petitions filed on behalf of the conservatee during the current one year term of the conservatorship.

(B) Setting Date For Hearing. The court clerk at the Mental Health Desk will set the date for hearing the petition for rehearing within 30 days of the filing of the petition, as required by Welfare and Institutions Code section 5365.

(C) Notice. The petitioner for rehearing must: (1) obtain from the court clerk at the Mental Health Desk the date set for hearing the petition for rehearing; and (2) at least 15 days prior to the hearing, serve the petition and notice of the hearing date on the conservator and all relatives of the conservatee within the second degree.

(D) No Right To Jury. There is no right to a jury trial for a rehearing.

Rule 8.2.24

Rehearing – Order – Preparation

(A) The order will be prepared by the Public Conservator. If the matter involves a private conservator, the order will be prepared by the petitioner for rehearing.

(B) If the order restores the right to vote (Elec. Code, § 2210, subd. (c)), the order will expressly identify the restoration of the right to vote and a copy of the order must be served on the Registrar of Voters.

Rule 8.2.25 – 8.2.30 [reserved]

Rule 8.2.31

Re-Establishment of Conservatorship – Notice Of Expiration

No less than 60 days prior to the expiration of the one-year period of the conservatorship, the court clerk at the Mental Health Desk will send notice of the pending expiration to: (1) the conservator, (2) if a private conservator, then also the Public Conservator, (3) the conservatee, (4) the conservatee's attorney, and (5) the facility wherein the conservatee resides.

Rule 8.2.32

Re-Establishment of Conservatorship - Petition

(A) Filing. To re-establish a conservatorship, the conservator must, no less than 30 days prior to the date of scheduled termination, (1) prepare and file with the court clerk at the Mental Health Desk a petition to re-establish the conservatorship, and (2) obtain a hearing date.

(B) Calendaring of Hearing. Upon receipt of the original and two copies of the request for hearing, the court clerk at the Mental Health Desk will immediately calendar a hearing on the matter to be heard no less than 21 days nor more than 30 days from the date of filing of the written request.

(C) Service of Petition. No less than 15 days prior to the date of the hearing to re-establish the conservatorship, the conservator must serve, personally or by first class mail, postage prepaid, a copy of the petition and notice of the hearing date on: (1) if a private conservator, then on the Public Conservator, (3) the conservatee, (4) the conservatee's attorney, and (4) the facility wherein the conservatee resides.

Rule 8.2.33

Re-Establishment of Conservatorship - Consent to Re-Establishment

The conservatee, or the attorney for the conservatee, may stipulate to the re-establishment of the conservatorship.

Rule 8.2.34

Re-Establishment of Conservatorship – Hearing Procedures

The hearing on the petition to re-establish the conservatorship will be conducted in accordance with the rules applicable to a hearing on a petition to establish a conservatorship.

Rule 8.2.35

Re-Establishment of Conservatorship – Termination of Conservatorship

(A) By Expiration or Denial Of Petition. The conservatorship is terminated: (1) if no petition to re-establish the conservatorship is timely filed; or (2) the court denies the petition to re-establish the conservatorship.

(B) Order. If the conservatorship is terminated, the Public Conservator must prepare the order terminating the conservatorship and file it with the court. If the matter involves a private conservator, the private conservator must prepare the order terminating the conservatorship and file it with the court.

(C) Notice of Order. The court clerk at the Mental Health Desk will, by first class mail, send a copy of the order of termination to the conservator, the conservatee, and the conservatee's attorney.

Rule 8.2.36 – 8.2.40 [reserved]

Rule 8.2.41

Early Termination of Conservatorship – By Conservator's Request

The conservator may file a request for early termination of conservatorship prior to expiration of the one-year expiration date when:

A. The conservatee has reached treatment goals; and /or

B. The conservatee is no longer considered gravely disabled; and/or

C. The conservatee's whereabouts are unknown.

Rule 8.2.42

Early Termination of Conservatorship – By Conservatee's Request

The conservatee may move the court for an order terminating conservatorship prior to expiration of the one-year expiration date by scheduling a hearing and noticing the conservator of same in accordance with the provisions in the Rehearing section of these rules.

Rule 8.2.43

Early Termination of Conservatorship – Procedure

(A) By Ex Parte Order. Termination may be effected by ex parte order upon proper notice as herein provided and Probate Code section 1862.

(B) Hearing upon Notice. Early termination for reasons other than those stated above require a noticed hearing in accordance with the procedures outlined in the sections of these Rules related to "Notices" and "Reappointment of Conservator".

(C) Service of Notice. The attorney must be given verbal notice of any early termination of conservatorship, and if objection to the termination is raised, the matter will be calendared for hearing, and notice will be given in accordance with the procedures outlined in "Notices" and "Reappointment of Conservator" in these rules.

(D) Termination Without Objection. If no objection to termination is made, then the conservatorship may be terminated by the court.

Rule 8.2.44 - 8.2.50 [reserved]

Rule 8.2.51

Jury Trial - Request

(A) Verbal Request for Jury Trial. When requesting a jury trial, the conservatee's attorney must give verbal notification to the conservator and conservator's attorney. Such notice must be either in open court when the request is made at the hearing or telephonically on the date the request is filed. If notice is to County Counsel it may be made to the deputy assigned to the Mental Health Court, Office of County Counsel, (619) 531-4860, and to the Calendar Division of the San Diego Superior Court.

(B) Written Notice of Trial Date. On the date that a jury trial is requested, the conservatee's attorney must serve, by mail, a copy of a written notice of jury trial date form on the conservator's attorney. The notice of jury trial date form must include the conservatee's name, the case number, the attorney's name, address, telephone number, the date of the request and the scheduled date of the jury trial.

(C) Setting Trial Date. The date of the jury trial will not be set beyond the 10 plus 15 day limit set forth in Welfare and Institutions Code section 5350, subdivision (d). However, if the written demand for jury trial contains written approval of the requested trial date by the person for whom the conservatorship is sought, petitioner for the conservatorship, or his or her attorney, then the trial may be set beyond the 10 plus 15 day limit set forth in Welfare and Institutions Code section 5350, subdivision (d).

Rule 8.2.52

Jury Trial – Request Withdrawn

(A) By Conservatee. When a jury trial request is to be withdrawn by the conservatee, the conservatee's attorney must make the request either (1) in open court or (2) by a written declaration filed with the court and served on the conservator's attorney. Telephone notification that the request is to be withdrawn must be given to the conservator's attorney as soon as possible and to the Calendar Division of the San Diego Superior Court.

(B) By Conservator. When a petition is to be withdrawn by the conservator, the regular procedures for terminating conservatorships will be

followed. Conservator's attorney must give telephonic notification to the conservatee's attorney as soon as possible.

Rule 8.2.53

Post Verdict Matters

(A) For Conservatee. If the verdict favors the conservatee, the conservatorship, if any, will be terminated forthwith.

(B) For Conservator Imposing Disabilities and Setting Placement.

(1) If a prior hearing was held, a conservator appointed, disabilities imposed and placement set and not vacated, then that order will remain in effect after the jury trial.

(2) If there is no prior valid order appointing a conservator, fixing disabilities and placement, then the trial judge will appoint the conservator and fix the disabilities and placement in accordance with the recommendations of the Public Conservator, in the absence of evidence to the contrary.

If the conservatee requests the presence of the treating psychiatrist, forensic psychiatrist or conservator for the hearing on appointment of a conservator, the conservatee may at any time within five court days after the hearing, file a written hearing request in accordance with these rules. The hearing will be held in the Mental Health Division of the San Diego Superior Court; and the order of the trial court will remain in effect unless modified or vacated at that hearing.

(C) Judgment. The prevailing party will prepare and submit a proposed judgment to the trial court.

CHAPTER 3 AUTHORIZATION FOR CONSERVATOR TO CONSENT TO MEDICAL/SURGICAL TREATMENT FOR CONSERVATEE

Rule 8.3.1

Authority For Conservator

(A) General Authority – Routine Treatment. Pursuant to section 5358, subdivision (b) of the Welfare and Institutions Code, the court may authorize the conservator to consent to any treatment for the conservatee which the treating physician recommends as being "routine medical treatment." With this general authority, the conservator has the right to consent to, and thus require the conservatee to receive, the recommended, routine treatment.

(B) Specific Authority - Routine Treatment. If the conservator does not have general authority pursuant to section 5358, subdivision (b) of the Welfare and Institutions Code, and the treating physician has recommended a routine treatment to which the conservatee has not consented, then, to obtain authority to consent to conservatee receiving the recommended, routine treatment, the conservator must file a petition.

(C) Specific Authority - Non-Routine Treatment. In all cases, when the treating physician is recommending treatment that is more invasive or intrusive than "routine medical treatment," such as surgery or amputation or a procedure that poses a substantial risk to the life of the conservatee, and the conservatee has not consented to the treatment, then, to obtain authority to consent to conservatee receiving the recommended, non-routine treatment, the conservator must file a petition.

(D) Specific Authority – Questioned Treatment. In discharging the duty to protect the welfare of the conservatee, the conservator may file a petition to obtain authorization to consent to a recommended medical treatment when:

(1) the conservatee, relatives, or other persons the conservator has previously identified expressed opposition to the proposed procedure; or

(2) the conservator has substantial questions as to whether the procedure should be performed.

Rule 8.3.2

Obtaining Authority For Medical Treatment

(A) Petition. Authorization for the conservator to consent to specific medical/surgical treatment must be sought by the conservator filing a petition. The Petition must be accompanied by

(1) a written statement signed under penalty of perjury by the treating physician which identifies the recommended treatment and the basis for the recommendation; or

(2) a form which includes the information as referenced in Probate Code section 2357.

(B) Submission of Petition *Ex Parte*. Where the conservator already possesses general authority to consent to routine, medical treatment, the petition may be submitted ex parte to the court under the following circumstances:

(1) the conservator, in good faith, based on medical advice, determines that the proposed procedure is required;

(2) the conservatee personally or through counsel, has expressly **(a)** waived a hearing and **(b)** declared non-opposition to the proposed procedure; and

(3) relatives, friends or other persons the conservator has previously identified have expressly supported the proposed procedure.

(C) Submission of Petition. Except as provided herein, the petition must be filed with that

clerk at the Mental Health Desk who will calendar the motion. The conservator must provide notice to the conservatee.

Rule 8.3.3

Hearing on Petition

The court may convene the hearing at the facility providing treatment and care of the conservatee when the conservator or conservatee provide evidence to the court that:

(A) Transporting the conservatee to court would **(1)** be physically injurious for the conservatee; or **(2)** create a substantial threat of harm to the conservatee or others; or

(B) It would be in the best interests of the conservatee to have the hearing conducted at the facility providing the treatment and not at the courthouse.

Rule 8.3.4

Notice

As referenced in section 5358.2 of the Welfare and Institutions Code, notice to the conservatee means verbal notice.

Rule 8.3.5

Transportation

The conservator is be responsible for all necessary notice and arrangements for court hearings, and must coordinate transportation of the conservatee to said hearings.

Rule 8.3.7

Emergency Treatment

Nothing in these rules in any way impedes or affects other provisions of the law relating to emergency medical treatment, or emergency cases in which the conservatee faces loss of life or serious bodily injury. Under such cases, treatment may be provided as stipulated elsewhere in the law.

CHAPTER 4
ELECTROCONVULSIVE TREATMENT

Rule 8.4.1

Conditions for Administering

Electroconvulsive treatment may be administered to an involuntary patient pursuant to section 5326.7 of the Welfare and Institutions Code and to a voluntary patient pursuant to section 5326.75 of the Welfare and Institutions Code consistent with these rules.

Rule 8.4.2

Attorney's Consent to Patient's Capacity

The patient's attorney is authorized to agree to the patient's capacity or incapacity to give written informed consent pursuant to section 5326.7 of the Welfare and Institutions Code. If the patient's attorney and physician agree that the patient has the capacity to give written informed consent, such agreement must be documented in the patient's records. The attorney's consent must be obtained for additional treatments in number or time, not to exceed 30 days.

Rule 8.4.3

Filing Petition

If either the attending physician or the attorney believes that the patient does not have the capacity to give informed consent, either the attorney or the attending physician must file a petition in the Mental Health Court to determine the patient's capacity to give consent.

Rule 8.4.4

Patient’s Attorney – Declaration Concerning Conflict of Interest

The attorney representing the patient may file a declaration with the court, prior to or at the time of the hearing, stating the reasons why the court should find that there is no conflict of interest in the attorney's representation of the patient. A copy of said declaration must be made available to county counsel by the attorney filing the declaration.

Rule 8.4.5

Treating Physician - Declaration Concerning Treatment

The physician recommending the treatment must submit to the court a declaration that states the conditions for administering electroconvulsive treatment as referenced by section 5326.7 of the Welfare and Institutions Code have been satisfied.

Rule 8.4.6

Change of Patient's Condition

If the court determines that the patient does have the capacity to give written informed consent, a subsequent petition may not be filed unless it can be shown by facts stated in the petition that the patient's condition has changed since the court made the finding and that as a result of the changed condition, the patient does not have capacity to give a written informed consent.

Rule 8.4.7

Appointment of Temporary Conservator

If the court determines that the patient does not have the capacity to give written informed consent and there is no responsible relative or conservator of the patient available, the court may appoint the Public Counselor as temporary conservator. Such appointment may be made on the basis of testimony of the professional person representing the LPS

approved facility, that the patient has a mental disorder and is gravely disabled and that said professional person intends to file a conservatorship referral recommending conservatorship. In cases where the patient is found to be a danger to self and/or others but not gravely disabled, the court may appoint the Public Counselor as guardian ad litem for purpose of giving consent to convulsive treatment.

CHAPTER 5
DETERMINATION OF CAPACITY OF MENTAL HEALTH PATIENTS TO GIVE OR WITHHOLD INFORMED CONSENT TO ADMINISTRATION OF ANTISYCHOTIC MEDICATION (RIESE HEARING)

Rule 8.5.1

Scope and Purpose

The following procedures are intended to implement the requirements of *Riese v. St. Mary's Hospital* (1988) 209 Cal. App.3d 1303, and Welfare and Institutions Code section 5332 et seq. They apply to patients, both adults and minors, who are being treated in public or private hospitals, and are being detained pursuant to Welfare and Institutions Code sections 5150 (72-hour hold), 5250 (14-day hold) or 5350 et seq. (temporary conservatorship).

Generally, the hearing is conducted at the facility where the patient is being treated; and any appeal of the hearing officer's decision in heard by the Mental Health Court.

Rule 8.5.2

Petition

When the treating physician has determined that treatment of the patient's condition requires the administration of antipsychotic medication and the patient has refused to consent to the medication, the treating physician may petition the court for a legal determination as to whether the patient is capable of giving or withholding informed consent.

Rule 8.5.3

Required Documents

To obtain determination of the patient's capacity to give or withhold informed consent to treatment by antipsychotic medication, the treating physician must complete, sign and date the "Petition of Treating Physician Regarding Capacity to Consent or Refuse Antipsychotic Medication." If the physician will not be present for the hearing, the petition must have attached to it a "Treating Physician's Declaration Regarding Capacity to Consent to or Refuse Antipsychotic Medication" form. These forms must be delivered to, faxed to the Office of Counselor in Mental Health in order to calendar a hearing.

Rule 8.5.4

Calendaring Hearings

It is assumed that time is of the essence in each Riese hearing. The physician or treating facility must deliver or fax the required documents in order to calendar a hearing. The Office of the Counselor in Mental Health will calendar all hearings upon receipt and filing of the requisite forms. Whenever possible, the hearing will be set within two court days. The physician or treating facility must notify the Office of the Counselor in Mental Health of the need for an interpreter when one is needed at the hearing.

Rule 8.5.5

Attorney Duties

The patient's attorney must meet with the patient as far in advance of the hearing as possible to determine the patient's position with respect to the proposed antipsychotic medication. If the patient consents to the administration of antipsychotic medication prior to the hearing, it is the responsibility of the patient's attorney to notify the office of the Counselor in Mental Health promptly so the hearing may be canceled and unnecessary travel and expense may be avoided.

Rule 8.5.6

Appointment of Hearing Officers

The San Diego Superior Court Executive Officer will appoint attorneys as Hearing Officers to conduct the evidentiary hearings.

Rule 8.5.7

Treating Physician/Facility Representative

Physicians and treating facilities may, but need not be formally represented by counsel. The physician or a facility representative must present the petition and declaration as well as any verbal or documented evidence at the time of the hearing. The facility representative must be a psychiatrist, psychologist, registered nurse, or a social worker with at least a master's degree. Although it is not required that the treating physician testify, it should be recognized that the absence of the treating physician may leave insufficient evidence of incapacity in the event the petition and declaration are deficient.

Rule 8.5.8

Surroundings of Hearing

Hearings must be held in surroundings which allow for quietness and a reasonable degree of confidentiality and safety. Whenever possible, the hearings will be held at the facility where the

patient is located. In any event the hearing will be held as close to the facility as is practicable under the circumstances. Hearings will be electronically recorded.

Rule 8.5.9
Burden of Proof
The burden is on the physician or treating facility to establish by clear and convincing evidence that the patient is incapable of giving or withholding informed consent to the administration of antipsychotic medication.

Rule 8.5.10
Determination of Capacity
In determining the patient's capacity to give or withhold informed consent, the judge or hearing officer will consider (1) whether the patient is aware of their mental condition, (2) whether the patient has been informed of and is able to understand the benefits and the risks of, as well as the alternatives to, the proposed medication and (3) whether the patient is able to understand and to knowingly and intelligently evaluate the information required to be given patients whose informed consent is sought (Welf. & Inst. Code § 5326.2) and otherwise participate in the treatment decision by means of rational thought processes.

Rule 8.5.11
Patient Presence
The patient has the right to be present at the hearing and at any appeal hearing and to present evidence and to cross-examine witnesses at the hearing and appeal hearing. However, the patient may choose not to attend the hearing or the appeal hearing.

Rule 8.5.12
Access to Records
The hearing officer and the Mental Health Court judge have access to and may consider the relevant medical records of the patient as well as the petition and declaration of the physician in reaching the legal determination of the patient's capacity to give or withhold informed consent.

Rule 8.5.13
Continuance of Hearings
Upon a showing of good cause and at the discretion of the judge or hearing officer, a hearing may be continued for a reasonable amount of time.

Rule 8.5.14
Determination
At the conclusion of the hearing, the hearing officer or judge will make a legal determination whether the patient is capable of giving or withholding informed consent to the administration of antipsychotic medication.

Rule 8.5.15
Confidentiality
The proceedings under these rules and all records of these proceedings are confidential as provided in Welfare and Institutions Code section 5328.

CHAPTER 6
180 DAYS POST CERTIFICATION PROCEDURES FOR IMMINENT DANGEROUS PERSONS

Rule 8.6.1
Preparation of Petition
A petition must be prepared by County Counsel (pursuant to section 5114 of the Welfare and Institutions Code) and supported by affidavits describing in detail the behavior of the patient which presents information as provided in section 5300 of the Welfare and Institutions Code.

Rule 8.6.2
Filing and Service of Petition
Copies of the petition for post certification treatment and the affidavits in support thereof must be served upon the person named in the petition on the same day as they are filed with the Mental Health Desk.

Rule 8.6.3
Affidavits
The court may receive the affidavits in evidence and may allow the affidavits to be read to the jury unless counsel for the person named in the petition subpoenas the treating professional person.

Rule 8.6.4
Right to Attorney and Jury Trial
The person named in the petition has the right to be represented by an attorney and a right to demand a jury trial. If the person named in the petition cannot afford an attorney, an attorney will be appointed.

CHAPTER 7
CERTIFICATION REVIEW HEARINGS

Rule 8.7.1
Compliance with Welfare and Institutions Code
Certification Review hearings will be held in compliance with Welfare and Institutions Code Section 5256 et seq.

Rule 8.7.2

Procedures

The Office of Counselor in Mental Health is appointed to administer/or conduct certification review hearings in compliance with section 5256 et seq. of the Welfare and Institutions Code. All persons involuntarily detained in psychiatric hospitals in San Diego County will have a certification review hearing when a 14-day certification has been filed. Hearings will be held for all persons regardless of the basis for certification. Hearings will be held within four days of the date on which the person was certified for intensive treatment, unless postponed by request of the person or his or her attorney or advocate. Hearings may be postponed 48 hours, or until the next regularly scheduled court date.

The following will apply to certification review hearings held in San Diego County:

A. Certification review hearings will be conducted at the facility where the person is receiving treatment;

B. Certification review hearings must be held in surroundings which allow for safety, quietness, and reasonable degree of confidentiality. A copy of the certification will be at the certification review hearing;

C. "Representative of the treating facility" means a registered nurse, psychiatrist, social worker or psychologist. A representative of the treating facility must be present at the hearing to give testimony and answer questions regarding the basis for continued detention and treatment;

D. Certification review hearings will be scheduled by the Office of Counselor in Mental Health unless the hearing is to be conducted by a certification review hearings stipulated in paragraph "J". below. Such hearing will be scheduled per agreement with the certification review hearing officer;

E. Friends, relatives and the patient's rights advocate or an attorney for the patient may be present and testify at the certification review hearing. Other persons will be admitted to the hearing at the discretion of the court commissioner or hearing officer;

F. Certification review hearings are not bound by rules of procedures of evidence applicable to judicial proceedings. All evidence which is relevant to establishing that the person is, or is not, as a result of a mental disorder, a danger to themselves or others, or gravely disabled may be admitted at the hearing and considered by the court commissioner or hearing officer;

G. The person will be assisted in preparation for the hearing by the patient's rights advocate or a retained attorney who will meet the patient prior to the certification review hearing, to discuss the commitment process and to assist the person in preparing for the certification review hearing or to answer questions or otherwise assist the person as is a appropriate;

H. The person certified has the right to make reasonable request for the attendance of facility employees who have knowledge of, or participated in, the certification decision;

I. Certification review hearings will be held for the person who has already requested a writ of habeas corpus hearing if the certification review hearing can be held on a date preceding the writ hearing. A certification review hearing will not be held where of habeas corpus hearing has been held;

J. Where the admission to the psychiatric facility has been ordered by the court pursuant to section 5200 of the Welfare and Institution Code, the certification review hearing will be conducted by an attorney who has been assigned by the San Diego Superior Court as a Mental Health hearing officer.

CHAPTER 8
WRIT OF HABEAS CORPUS

Rule 8.8.1

Filing Petitions, Orders, Writs

Petitions for a writ of habeas corpus must be filed with the court clerk at the Mental Health Desk. The petition must be filed with an order granting writ of habeas corpus and a writ of habeas corpus. Sufficient petitions will be accepted for filing and file stamped immediately upon their presentation to the clerk.

Rule 8.8.2

Applications for Writ Seeking Release or Modification of Custody

A petition for a writ of habeas corpus, or for any other writ, seeking the release from or modification of the conditions of custody of one who is confined under the process of any court of this state or local penal institution, hospital, narcotics treatment facility, or other institution must be on a form approved by the Judicial Council, or on a printed form furnished or approved by the clerk of the court.

Rule 8.8.3

Hearing

Hearings on a writ will be heard in the Mental Health court, unless otherwise approved by the supervising judge.

Rule 8.8.4

Time of Hearing

A hearing on a writ will be scheduled at the time the writ is filed. Counsel for petitioner must notify the facility of the scheduled time for the hearing. Such notification will not replace the actual

service of the writ requiring the patient to be present at the time set for the hearing. The hearing will be held within two court days of filing.

CHAPTER 9
WRIT OF HABEAS CORPUS PROCEDURES FOR MINORS ADMITTED TO PRIVATE PSYCHIATRIC FACILITY BY A PARENT

Rule 8.9.1

Applicability

Minors admitted to private Psychiatric facilities by a parent are entitled to habeas corpus relief in a manner consistent with the provisions of the LPS Act.

This procedure applies to any minor who is voluntarily admitted to a private psychiatric facility by a parent who has legal and physical custody of the minor. As used in this section "minor" means any person 10 through 17 years of age whose liberty is being restrained in a private (non-public) psychiatric treatment facility and the minor protests the restraint. For purpose of this section, writs of habeas corpus will be subject to the general provisions of Penal Code section 1473 et seq.

(A) Right to Writ

(1) Every minor 10 through 17 years of age, whose liberty is being restrained in a private psychiatric treatment facility may request a writ of habeas corpus to inquire into the cause of such restraint.

(2) A writ of habeas corpus may be adjudicated to inquire into the basis for the restraint. The criteria are as follows:

(a) the minor is not being detained for evaluation and treatment of any disorder.

(b) other causes which may be unlawful, as specifically stated in the petition.

Nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies.

Rule 8.9.2

Procedures

(A) Filing. When a minor requests release from any private psychiatric facility to any member of the facility treatment staff or the Patient Rights Advocate, that minor must promptly be provided with a "Petition for a Writ of Habeas Corpus by a Minor". Such form must be filed with the court clerk at the Mental Health Desk at 220 West Broadway within the next work day following completion of the petition.

(B) Granting Writ. Upon a finding of probable cause, the following will occur:

(1) The judge will endorse upon the petition the hour and date of the granting or denial of the writ, and a hearing will be held within two court days. When a writ is granted, it will be directed to the director of the facility restraining the minor, commanding the director to have the minor before the court at a time and place therein specified.

(2) The court will appoint an attorney to represent the minor at the hearing.

(C) Sick and Infirm Petitioner. The writ will be adjudicated in accordance with Penal Code section 1482.

(D) Delivery of Writ. The writ will be delivered to the sheriff and will be served upon the facility director without delay.

(E) Discharge or Remand. If the writ is discharged the minor must be released to the custody of their parents or other authority within a reasonable time, which shall be allowed to make adequate arrangements for the care of the minor. If the writ is remanded, the minor may continue to be restrained in accordance with any other pertinent laws and regulation.

CHAPTER 10
ADMINISTRATIVE PROCEDURE FOR ADMISSION OF MINORS FOR ACUTE CARE PSYCHIATRIC HOSPITAL TREATMENT WHO ARE WARDS OR DEPENDENTS OF THE JUVENILE COURT

Rule 8.10.1

Applicability and Definitions

(A) This policy is applicable upon the presentation of a dependent minor or ward to a psychiatric facility for the purpose of inpatient evaluation and treatment.

(B) This policy is not applicable to non-dependent minors or non-declared wards.

(C) Admissions of minors who are not subject to the jurisdiction of the Juvenile Court are governed by the provisions of the LPS Act, or other applicable law.

(D) The reference to the term minor or minors as used in this policy refers to a minor child who has been adjudged a dependent or ward pursuant to the applicable provisions of the Welfare and Institutions Code.

(E) Any reference in this policy requiring that notice be given requires notice to the following individuals: the minor's attorney, each parent’s attorney, the parent, County Counsel, any court-

appointed special advocate, and the office of the Patient Advocate.

(F) The term "Department" means the Health and Human Services Agency if the minor is a dependent child, or the Probation Department if the minor is a ward.

Rule 8.10.2

Involuntary Hospitalization for the Initial 72-hour Period

(A) Involuntary hospitalization of minors occurs only under the provisions of section 5585 et seq. or 5350 of the Welfare and Institutions Code.

(B) Pursuant to section 5585, and other applicable laws, the facility and its professional staff will determine whether the minor meets the criteria for admission for the initial 72-hour period.

(C) Notice will be given by the Department indicating that the minor was presented to the facility for LPS evaluation and was either admitted to the facility, or was deemed not subject to admittance under provisions of section 5585 et seq. If the minor is admitted without the knowledge of the Department, the Department must, upon being informed to the minor's admission, undertake reasonable steps to provide notice required by this policy.

(D) If the minor is admitted into the facility, the Department must, in addition to the notice referred to in paragraph C. above, contact the minor's attorney, in person or by phone, within six hours of admission. If the minor's attorney cannot be so contacted, or is otherwise unavailable, such notice shall be given to the office of the Patient Advocate.

(E) Upon receiving the notice specified in paragraph D. above, the minor's attorney, or patient advocate when attorney is unavailable, must, within 24 hours, do the following:

(1) Interview the minor at the facility;

(2) Explain to the minor his/her rights, under the LPS Act, all in a manner to assist the minor to understand;

(3) Counsel the minor regarding voluntary treatment, as set forth in section 6552 of the Welfare and Institutions Code; and

(4) Assure that all procedural requirements are fully met.

(F) The Treatment and Aftercare recommendations required by statute must be provided to the Department who will then incorporate the same in the planning process for proper placement of the minor upon discharge from the facility. The Department must inform the Court of any delays or difficulties in receiving the Treatment and Aftercare recommendations from the facility.

(G) If, after the expiration of the 72-hour period, the minor is not certified for the 14-day period described in section 5250, et seq. of the Welfare and Institutions Code, and if the minor has not completed the voluntary application referred to in these rules, the minor will be discharged from the facility to the custody of the Department for further placement consistent with the procedures of the Welfare and Institutions Code and court policy.

Rule 8.10.3

Involuntary Hospitalization After the Initial 72-Hour Period

(A) Any further involuntary hospitalization of minors after expiration of the initial 72-hour period will occur only under the provisions of the LPS Act.

(B) It is the sole responsibility of the facility and its professional staff to determine whether the minor meets the criteria for further hospitalization under the provisions of the LPS Act.

(C) The office of the Patient Advocate or the minor's attorney represents the interests of the minor during any Certification Review Hearing conducted under the LPS Act, in accordance with Welfare and Institutions Code Sections 5255-5256.7.

(D) At the expiration of the involuntary status under LPS or sooner if the minor is discharged from the facility, the minor must be returned to the custody of the Department for further placement consistent with the procedures of the Welfare and Institutions Code and court policy, unless the minor completes the voluntary application referred to in this policy.

Rule 8.10.4

Voluntary Hospitalization (Welf. & Inst. Code, § 6552)

(A) The term "voluntary hospitalization" means the request, by application, of the minor to seek inpatient mental health services.

(B) The term "by application" means the request of the minor to seek or receive inpatient mental health services.

(C) The application must be a form in writing, and must include, at a minimum, the following:

(1) An acknowledgment by the minor and his/her attorney that the minor understands the need to receive treatment, its probable duration and treatment regimen, and his/her desire to receive such treatment;

(2) An acknowledgment that the minor has been made aware of his/her rights, the consequences of waiver, all in a manner the minor is able to understand.

(D) An acknowledgment of the right to revoke the application and be discharged pursuant to rule 8.10.4, paragraph J, unless the minor may be involuntarily detained under sections 5585 or 5350.

(E) The application, signed by the minor after advisement by the attorney or patient advocate,

constitutes the only basis for the facility to accept the minor as a voluntary patient, pending the court order referred to in rule 8.10.4, paragraph F.

(F) The duly executed application will be presented to the Juvenile Court ex parte, whereupon the court will make the findings pursuant to section 6552 that the minor be authorized to make a voluntary application. The finding will be based on the evidence presented, but must include at a minimum the following:

(1) The voluntary application signed by the minor, together with the attorney certification signed by minor's counsel.

(2) A declaration or affidavit by the attending therapist that the minor suffers from a mental disorder; the facility is qualified to treat the disorder; and there is no less restrictive facility available or appropriate which may better meet the needs of the minor.

(3) A medication plan that sets forth the category of medications, if any, to be administered to the minor.

(G) Upon making the findings referred to in paragraph F, the Juvenile Court will issue an order authorizing the voluntary admission of the minor for treatment. Such an order must be served on all counsel and parties. Such an order shall be construed solely as an authorization for treatment pursuant to section 6552 and does not constitute a court-ordered commitment. Upon being served, any counsel or party may schedule a special hearing for purposes of objecting to the court order. The special hearing must be heard within three (3) judicial days.

(H) A court order authorizing the voluntary admission of a minor for treatment does not deprive the minor of the right to revoke the voluntary application.

(I) A revocation of the voluntary application must be communicated immediately to the Department who will calendar a special hearing for the next court day and notify all counsel and parties.

(J) The minor must be released to the Department after the court hearing referred to in paragraph I, unless the provisions of the LPS Act are satisfied.

CHAPTER 11
ADMINISTRATIVE PROCEDURE FOR ADMISSION OF MINORS WHO ARE NOT DEPENDENTS OR WARDS OF THE JUVENILE COURT FOR ACUTE CARE PUBLIC PSYCHIATRIC HOSPITALS AND PRIVATE FACILITIES UNDER CONTRACT WITH THE COUNTY (“ROGER’S” HEARINGS)

Rule 8.11.1

Applicability

This procedure applies to only those admissions in which the responsible person (other than a public official) seeks to admit a minor 14 through 17 years of age for evaluation or treatment of a mental disorder to a public facility and private inpatient facilities under contract with the County (i.e.: County Psychiatric Hospital or UCSD Medical Center). Admissions or detentions not referenced in these procedures will not be affected by these procedures, including, but not limited to the following: Welfare and Institutions Code section 5150 et seq., (Detention of Mentally Disordered Persons for Evaluations and Treatment), 5326.75 et seq., (Court Ordered Evaluation for Mentally Disordered Persons), 5225 et seq., (Court Ordered Evaluation for Persons Impaired by Chronic Alcoholism), 5250 et seq., (Certification for Intensive Treatment), 5260 et seq., (Additional Intensive Treatment of Suicidal Persons), 5300 et seq., (Post Certification Procedures for Dangerous Persons), or 5350 et seq., (Placement by Conservator for Gravely Disabled Persons). This procedure does not affect laws pertaining to what agency or individual has the right to consent to mental health or psychiatric treatment on behalf of a minor.

Rule 8.11.2

Definitions

A. "Hearing Officer" means a designee of the Mental Health or Juvenile Division of the court, and includes attorneys appointed to conduct Capacity hearings (see rule 4.307) or professional staff from the Office of the Counselor In Mental Health who are appointed as hearing officers as referenced in section 5334, subdivision (c) of the Welfare and Institutions Code.

B. "Facility" means any public or private facility under contract to provide services paid by County Mental Health, or any hospital licensed to provide acute care inpatient psychiatric treatment.

C. "Minor" means: any person who is age 14 through 17 years of age who is not emancipated.

D. "Responsible person" means a parent, guardian, or other person having custody of the minor.

E. "Patient Advocate" means the designated Title IX patient rights advocate who will assure that minors are informed of their right to pre-admission hearings and assure that minors who waive the right to a hearing have done so freely, voluntary and intelligently.

F. "Work day(s)" means judicial days (or a day when the court is open).

G. "Public facility" means any facility owned or operated by the State of California or the County of San Diego.

H. "Professional person" means a psychiatrist, psychologist, social worker with a master degree, licensed marriage, family and child counselor, or registered nurse.

Rule 8.11.3

Initiating Hospitalization

A. When it is determined by an appropriate mental health professional that a minor is in need of psychiatric inpatient services, the responsible person, or staff representing the proposed treatment facility, must, prior to any admission to a facility initiate these procedures: (1) obtain a physician's affidavit; and (2) contact the patient advocate who will either in person or by telephone, inform the minor of the right to a hearing and determine whether the minor will freely, voluntarily and intelligently waive the right to a hearing, and may inform the minor of other patient rights;

B. The "Physician's Affidavit" must include the following information:

(1) whether the minor suffers from a mental disorder, and if so, its nature;

(2) whether the proposed treatment program, which requires 24-hour hospital care, is reasonably expected to ameliorate the mental disorder;

(3) whether the proposed facility in which the minor is to be placed is the least restrictive and most appropriate and available facility which can fulfill objectives of treatment; and

(4) whether the treatment facility is in the minor's home community or that the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community.

C. When a minor has been involuntary detained at a facility under other provisions of law, and the responsible person desires to voluntarily admit the minor, the facility staff may assist in initiating voluntary admission. For the purposes of this procedure the voluntary admission will be treated as new admission to the facility regardless of prior involvement of the minor with the facility.

D. The physician's affidavit must be available at the facility when the patient advocate determines whether the minor is protesting the admission, and must be available to the hearing officer at the hearing.

E. The professional person testifying at the hearing may be a person other than the person signing the "Physician's Affidavit" who is familiar with the treatment needs of the minor and available and/or potential resources.

F. When the minor protests the admission at the time of the evaluation for admission, or prior to the time of the patient advocate seeing the minor to ascertain whether the minor is protesting the admission, the procedures described in rule 8.11.5 apply.

Rule 8.11.4

Procedure for a Non-Protesting Minor who Wishes to Waive the Right to a Hearing

A. Before the minor waives the right to a hearing, the Patient Advocate must contact the minor by telephone or in person to ascertain whether the minor is protesting the admission and to provide notification of the right to a hearing. The Patient Advocate must certify that the minor freely, voluntarily, and intelligently waived the right to a hearing. The Patient Advocate and the minor must sign the approved "Waiver of Hearing" form (hereinafter referred to as "waiver"), except where the waiver is obtained telephonically, in which case the waiver on page 2 of the waiver will suffice. The signed waiver allows admission to the facility, providing other necessary authorization(s) (e.g., permission of the responsible person or legally authorized designee) is/are also available. The waiver must remain in the minor's record at the treating facility. A copy of the signed waiver and the physician's affidavit must be given to the facility to which the minor is to be admitted.

B. When the waiver has been signed by a person other than the Patient Advocate due to telephone authorization, on the next work day following admission of the minor, the Patient Advocate must personally interview the minor and review the waiver. If in the opinion of the Patient Advocate, the minor is not freely, voluntarily and intelligently waiving the right to the hearing, or if the minor is now protesting the admission and requesting a hearing, the Patient Advocate must again advise the minor of the right to a hearing. A hearing must be held within five work days from the date the minor requests a hearing unless an

agreement has been reached pursuant to rule 8.11.5H.

C. If, in the opinion of the Patient Advocate, the minor is not freely, voluntarily, and intelligently waiving the right to the hearing, or if the minor is protesting the admission and is requesting a hearing, the Patient Advocate must notify facility staff of the need for a hearing, and the facility staff or responsible person must arrange for a hearing through the Office of Counselor in Mental Health. A hearing will be held within five work days from the date the Patient Advocate informs the facility of the need for a hearing (unless an agreement has been reached pursuant to rule 8.11.5H.

D. In situations where a minor was admitted as an inpatient to a facility in accordance with the provisions of this procedure and waived the right to a hearing and subsequently indicates to the Patient Advocate, patient's counsel, any member of the treatment staff, or the responsible person a desire to have a hearing and/or be released from the facility, then a hearing will be conducted by a hearing officer within five work days from the time of the request for hearing being filed with the Office of Counselor in Mental Health, unless agreement has been reached pursuant to rule 8.11.5H.

Rule 8.11.5

Protesting Minor

A. When the minor protests the admission and requests a hearing, the facility staff or Patient Advocate must promptly telephone the Office of Counselor in Mental Health and request a hearing;

B. No admission will be made for a protesting minor under these procedures until a hearing is held or the minor waives the right to a hearing. It is the intent of these procedures that hearings be held on a pre-admission basis, unless the minor has been previously admitted under other provisions of law;

C. An attorney or the Patient Advocate will be appointed to represent the minor at all hearings for admission to a hospital for acute psychiatric treatment;

D. Upon receipt of the request for a hearing, the Office of Counselor in Mental Health will:

(1) Set a date for a hearing which shall be scheduled no later than five work days after the request for hearing has been received unless agreement has been reached pursuant to rule 8.11.5H; and

(2) Give notice of the hearing to the following by telephone:

(a) the attorney or the Patient Advocate;

(b) the proposed facility;

E. The proposed facility or responsible person must notify the minor of the hearing;

F. The proposed facility must make reasonable effort to notify the responsible person and/or parent(s) of the hearing;

G. The minor's counsel and the hearing officer may review all clinical and medical records in accord with the Welfare and Institutions Code sections 5328, subdivision (j), 5328, subdivision (m), and 5540-5546;

H. Nothing herein precludes the hearing from being held more than five work days from the date of the request, for good cause, and upon agreement of the hearing officer and attorney or the Patient Advocate;

I. At the hearing, the attorney or Patient Advocate represents the minor. The minor and the attorney or Patient Advocate have the right to:

(1) Review the Physician's affidavit;

(2) Be present at the hearing;

(3) Present evidence and call witnesses;

(4) Confront and cross-examine witnesses; and

(5) Waive the minor's right to be present at the hearing;

J. The hearing will be held in a place convenient to the parties and in an informal setting. The public will be excluded from the hearing, subject to exceptions made at the discretion of the hearing officer, inclusive of family members. Hearings will be electronically recorded, and all records will be held as confidential as provided in section 5328 of the Welfare and Institutions Code;

K. Hearings will be conducted in an informal manner and the hearing officer may consider all evidence of probative value irrespective of whether it complies with formal rules evidence. The decision of the hearing officer will be based on the preponderance of evidence. All of the following will be established at the hearing:

(1) the minor suffers from a mental disorder;

(2) the proposed treatment program requires 24-hour hospital care and is reasonably expected to ameliorate the mental disorder;

(3) the proposed facility in which the minor is to be placed is the least restrictive and most appropriate facility which can fulfill the objectives of treatment; and

(4) if the treatment program is not in the minor's home community, the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community;

L. The hearing officer will make findings in writing to support the decision. Following the hearing, the hearing officer will issue an order authorizing admission to the recommended or alternate facility or an order denying admission.

Copies of the findings and order will be provided to all the following:

(1) the minor;

(2) the attorney or Patient Advocate;

(3) the responsible person upon request; and

(4) the proposed facility.

Whenever possible a mental health professional who will participate in treatment in the proposed facility or a professional person who has participated in the minor's treatment should be available to present testimony at the hearing;

M. Nothing in these procedures requires a facility to accept a minor;

N. The minor may be admitted to the authorized facility within 15 calendar days following the hearing.

Rule 8.11.6

Facility Review

Facilities accepting minors under this procedure must provide periodic review of the minor's treatment program to assure that continued treatment is required. Documentation of such reviews must appear in the minor's records at least monthly.

Rule 8.11.7

Confidentiality

Confidentiality must be in accord with section 5328 et seq. of the Welfare and Institutions Code. The hearing officer will be considered a "court" as referenced in section 5328, subdivision (f) of the Welfare and Institutions Code.

Rule 8.11.8

Records

Records must be maintained as provided for by law.

Rule 8.11.9

Writ of Habeas Corpus

If admission is authorized, the attorney or Patient Advocate must advise the minor of the right to a writ of habeas corpus hearing. If a request for release is filed, the writ of habeas corpus hearing will be in the Mental Health Division.

Rule 8.11.10

Filing a Writ of Habeas Corpus

Nothing herein deprives the minor of the right to seek a writ of habeas corpus.

CHAPTER 12
APPOINTED COUNSEL, FEES, COSTS

Rule 8.12.1

Representation of Patients in Mental Health Court.

If the patient has not retained private counsel, the Public Defender is appointed to represent patients in the Mental Health Court in accordance with the authorization of the Board of Supervisors. When the Public Defender has a conflict in representing a patient, then the Alternate Public Defender will be appointed. If the Alternate Public Defender cannot represent the patient, then the Private Conflict Counsel will designate counsel to represent the patient. If Private Conflict Counsel is unable to appoint counsel, then the Mental Health judge will appoint counsel.

Rule 8.12.2

Private Conflict Counsel

(A) Services Subject to Compensation. In any case where counsel has been appointed to represent a person in Mental Health Court proceedings, and where payment of attorney fees will be made by the County of San Diego through Private Conflict Counsel, the determination of which attorney services are to be compensated, and the amount of reimbursement, will be made by the Private Conflict Counsel, consistent with the policies and procedures of the Private Conflict Counsel Manual effective at the time such services are rendered.

(B) Costs Subject to Reimbursement. In those cases where costs incurred by appointed counsel, including mileage, will be reimbursed by the County of San Diego through Private Conflict Counsel, the determination of which costs are subject to reimbursement, and the amount of reimbursement, will be made by Private Conflict Counsel.

(C) Notice of Termination of Contract. Where an attorney appointed to represent a patient in the Mental Health Court pursuant to policies and procedures of Private Conflict Counsel discontinues providing such services, notice must immediately be served by such attorney on the Public Conservator and Private Conflict Counsel. Proof of service and a copy of the notice must be filed at the Mental Health Desk and the Office of the Public Defender.

Rule 8.12.3

Patient Reimbursement of Appointed Counsel's Fees and Costs

(A) Determination. In those cases where counsel has been appointed to represent the patient, and it is believed that the patient has sufficient

funds to pay attorneys' fees and costs, the Mental Health Court judge, upon a timely request by counsel and notice to the conservatee, will determine which legal services and costs, and the amounts, are to be reimbursed by the patient.

(B) Stipulation. Reimbursement to the County for fees and costs can be ordered based on the stipulation of the parties.

(C) Procedural Requirements - Notice to Patient

(1) Payment of attorney fees and reimbursement for attorney costs will not be ordered paid by conservatee unless the conservatee, and the conservator for the estate or the conservatee's personal representative, if any, have been notified in writing of the possibility that fees and costs may be ordered to be paid by the conservatee.

(2) It is the duty of the office of the Public Conservator, or such agency or individual as may file the initial petition for permanent conservatorship, to include on the face thereof written notice of the possibility that the conservatee's estate may be held liable for the payment of attorney fees and reimbursement of cost incurred for services rendered relative to any mental health law proceedings that takes place after the filing of said petition and during the pendency of the conservatorship.

(D) Request for Conservatee to Pay Fees and Costs

(1) Counsel appointed for the conservatee may submit a request to the Mental Health Court judge that the conservatee pay legal fees and/or reimburse the counsel for costs. Appointed counsel (1) may make the request in open court at the time of the subject hearing in the presence of the conservatee; or (2) may submit a separate noticed petition for same, and calendar a hearing with proper notification to the conservatee and the conservator in accordance with the established notice procedures as stated in "Notices" of these rules. In the notice, counsel for the conservatee must specify the amount of the attorney fees and costs being requested and sufficient details to show the reasonableness of the requests.

(2) Counsel appointed for the conservatee has the burden of proving: (1) that the conservatee has sufficient funds to pay the requested amount of attorney fees and costs, and (2) the reasonableness and accuracy of the amounts requested.

(3) In ruling on the request, the Mental Health Court judge will: **(1)** determine whether the conservatee has sufficient funds, and **(2)** set the amount of fees to be paid and the amount of costs to be reimbursed. The judge will consider the amount customarily awarded in routine cases.

SCHEDULE OF FEES FOR THE SAN DIEGO COUNTY SUPERIOR COURT

STATEWIDE CIVIL
FEE SCHEDULE

Effective January 1, 2006

		CODE SECTION	TOTAL FEE DUE
	INITIAL FILING FEES IN CIVIL CASES		
UNLIMITED CIVIL CASES			
1.	Complaint or other first paper in unlimited civil case (amount over $25,000) including: GC 70611		$320.00
2.	Complaint or other first paper in unlawful detainer case over $25,000 GC 70611		$320.00
3.	Petition for a writ of review, mandate, or prohibition GC 70611		$320.00
4.	Petition for a decree of change of name or gender GC 70611		$320.00
5.	Answer or other first paper filed by each party other than plaintiff (amount over $25,000) (including unlawful detainer) GC 70612		$320.00
LIMITED CIVIL CASES			
6.	Complaint or other first paper (amount over $10,000 up to $25,000) GC 70613(a)		$300.00
7.	Complaint or other first paper in unlawful detainer (amount over $10,000 up to $25,000) GC 70613(a), CCP 1161.2		$315.00
8.	Answer or other first paper filed by each party other than plaintiff (amount over $10,000 up to $25,000) (including unlawful detainer) GC 70614(a)		$300.00
9.	Complaint or other first paper (amount up to $10,000) GC 70613(b)		$180.00
10.	Complaint or other first paper in unlawful detainer (amount up to $10,000) GC 70613(b), CCP 1161.2		$195.00
11.	Answer or other first paper filed by each party other than plaintiff (amounts up to $10,000) (including unlawful detainer) GC 70614(b)		$180.00
12.	Complaint or other first paper within small claims jurisdiction limit filed bys assignee of record (with declaration) B&P 6322.1(c)(1), GC 70613(b), CCP 116.420		$165.00
13.	Answer or other first paper filed by each party other than plaintiff (case filed by assignee within small claims jurisdiction limit, with declaration) B&P 6322.1(c)(1), GC 70614(b), CCP 116.420		$165.00
OTHER LIMITED FILING FEES			
14.	Additional fee for case designated as complex (plaintiffs) GC 70616(a)		$550.00
15.	Additional fee for case designated as complex (for each defendant) ($10,000 cap) GC 70616(b)		$550.00
16.	Complaint, response, or other first paper filed on behalf of public entity (but fee is recoverable with judgment under GC 6103.5) GC 6103		No fee
17.	Amended complaint or cross-complaint		No fee
18.	Petition for forfeiture – impounded vehicle Veh. 14607.6(e)(4)		$100.00
19.	Abstract of judgment rendered from another court (unless filed with an application for order of sale of a dwelling under CCP 704.750 or with an application for order of examination under CCP 708.160) GC 70626(b)(2)		$ 20.00
20.	Issuing commission to take deposition out of state under CCP 2026.010 GC 70626(b)(5)		$ 20.00
21.	Filing and entering award under Worker's Compensation Act GC 70626(b)(6)		$ 20.00

		CODE SECTION	TOTAL FEE DUE
REQUEST FOR PROTECTIVE ORDERS			
22.	Petition to prevent domestic violence and response. Fam. Code 6222		No fee
23.	Petition to prevent abuse of an elder or dependent adult and response W&I 15657.03(*l*)		No fee
24.	Petition to prevent civil harassment (involving violence, threats of violence, or stalking) and response CCP 527.6(p)		No fee
25.	Petition to prevent civil harassment (other) and response GC 70611, 70612		$320.00
26.	Petition to prevent workplace violence (involving violence, threats of violence, or stalking) and response CCP 527.8(p)		No fee
27.	Petition to prevent workplace violence (other) and response GC 70611, 70612		$320.00
	CIVIL MOTION AND OTHER FILING FEES		
28.	Motion or other paper requiring a hearing, including GC 70617(a)		$ 40.00
29.	Motion listed under CCP 1005(a)(1)-(12) GC 70617(a)		$ 40.00
30.	Motion or application to continue a trial date GC 70617(a)		$ 40.00
31.	Discovery motion under CCP 2016.010 et seq. GC 70617(a)		$ 40.00
32.	Motion for new trial GC 70617(a)		$ 40.00
33.	Ex parte application requiring a party to give notice of the ex parte appearance to other parties GC 70617(a)		$ 40.00
34.	Motion for summary judgment or for summary adjudication GC 70617(d)		$200.00
35.	Reclassification of limited jurisdiction case to unlimited jurisdiction (CCP 403.060)		$140.00
36.	Change of venue (payable to superior court in which motion is filed) (a separate check with the initial filing fee for the court to which the case will be transferred is also required) GC 70618		$ 50.00
37.	Request, application, or motion for, or notice of, continuance of hearing or case management conference GC 70617(c)(1)		$ 20.00
38.	Stipulation and order GC 70617(c)(2)		$ 20.00
39.	Amended notice of motion GC 70617(b)(2)		No fee
40.	Civil case management statement GC 70617(b)(3)		No fee
41.	Request for trial de novo after judicial arbitration GC 70617(b)(4)		No fee
42.	Stipulation that does not require an order GC 70617(b)(5)		No fee
43.	A request for entry of default or default judgment GC 70617(b)(8)		No fee
	CIVIL JURY AND TRIAL RELATED FEES		
44.	Jury deposit for first day of trial (up to $150) CCP 631(b)		$150.00
45.	Subsequent jury deposits CCP 631(c)		$150.00
46.	Court reporter per diem fees for each one-half day GC 68086(a)(1)-(3)		$253.00
47.	Extra court reporter per diem fees for each one-half day GC 69953.5		$253.00
	JUDGMENT RELATED FEES		
48.	Confession of Judgment (CCP 1134) GC 70626(b)(3)		$ 20.00
49.	Renewal of Judgment (CCP 683.150) GC 70626(b)(4)		$ 20.00
50.	Notice of Settlement (CRC 225)		No fee
	POST JUDGMENT RELATED FEES		
51.	Issuing writ of attachment, writ of mandate, writ of execution, writ of sale, writ of possession, writ of prohibition, writ of restitution, or any other writ for enforcement of an order or judgment GC 70626(a)(1)		$ 15.00

		CODE SECTION	TOTAL FEE DUE
52.	Issuing abstract of judgment GC 70626(a)(2)		$ 15.00
53.	Issuing an order of sale GC 70626(b)(1)		$ 20.00
54.	Application for order of sale of a dwelling (CCP 704.750) GC70617(a)(7)		$ 40.00
55.	Application for examination of third person controlling defendant's property (CCP 491.110, CCP 491.150) GC 70617(a)(3)		$ 40.00
56.	Application for order for judgment debtor examination (CCP 708.110, CCP 708.160). No separate fee is charged for filing the abstract of judgment with the application GC 70617(a)(6)		$ 40.00
57.	Certificate of satisfaction of judgment (CCP 724.100) GC 70626(a)(3)		$ 15.00
58.	Filing claim for $1,500 or less CCP 116.230(b)(1)		$ 30.00
59.	Filing claim for more than $1,500 but less than or equal to $5,000 CCP 116.230(b)(2)		$ 50.00
60.	Filing claim for more than $5,000 but less than or equal to $7,500 (claim by natural persons only) CCP 116.230(b)(3)		$ 75.00
61.	Filing claim by person who has filed more than 12 small claims in California within the previous 12 months CCP 116.230(c)		$100.00
62.	Service by clerk for certified mail, to each defendant CCP 116.232		$ 10.00
63.	Transfer of case out of small claims court (defendant's claim exceeding jurisdictional limit) no receiving court filing or transfer fee) CCP 116.390		No fee
64.	Request for postponement of the hearing CCP 116.570		$ 10.00
65.	Notice of appeal of small claims case CCP 116.760		$ 75.00
66.	Motion to vacate CCP 116.745		$ 20.00
67.	Fee for payment of judgment to court CCP 116.860		$ 20.00
68.	Application for order of examination of judgment debtor GC 70617(a)(6), CCP 116.820		$ 40.00
69.	Writ of execution GC 70626(a)(1), CCP 116.820		$ 15.00
70.	Abstract of judgment GC 70626(a)(2), CCP 116.820		$ 15.00

FAMILY LAW FEES

71.	Petition or other first paper (including a joint petition) for dissolution of marriage or domestic partnership, legal separation, or nullity GC 70670(b)		$320.00
72.	Response or other first paper filed in response to petition for dissolution of marriage or domestic partnership, legal separation, or nullity GC 70670(d)		$320.00
73.	First paper in family law matter other than dissolution of marriage or domestic partnership, legal, or nullity GC 70670(a)		$320.00
74.	First paper filed in response in family law matter other than dissolution of marriage or domestic partnership, legal separation, or nullity GC 70670(c)		$320.00
75.	A settlement agreement or stipulation for judgment that is signed by a defaulted respondent and included in a judgment of dissolution of marriage or domestic partnership; or a stipulation to modify such an agreement if the stipulation is presented by the petitioner. (Defaulted respondent is not charged a first paper fee under GC 70670, GC 70671(b), (e).) GC 70677(c)		No fee
76.	Appearance, stipulation, and waiver of right in dissolution of marriage or domestic partnership, legal separation or nullity or to establish parentage, when respondent is a member of the armed forces GC 70673		No fee
77.	Petition for adoption (for each person to be adopted) H&S 103730		$ 20.00
78.	Filings in a proceeding to declare a minor fee from parental custody and control FC 7806, 7841		No fee
79.	Domestic violence restraining orders, including a request to obtain, modify, or enforce an order to prevent domestic violence or response to that request; and any request that is necessary to obtain or give effect to a restraining order GC 70671(f), 70677(b)(5); FC 6222		No fee
80.	Motion or order to show cause in family law matter GC 70677(a)		$ 40.00

		CODE SECTION	TOTAL FEE DUE
81.	Additional charge on motion or order to show cause to modify or enforce custody or visitation GC 70678		$ 25.00
82.	Stipulation and order not requiring a hearing; request or stipulation for continuance of hearing or case management conference not requiring a hearing GC 70677(c)		$ 20.00
83.	Stipulation that does not require and order GC 70677(b)(7)		No fee
84.	A stipulation regarding the date of termination of marital or domestic partnership status if the court has retained jurisdiction over that date GC 70671(c)		No fee
85.	First paper or any subsequent paper filed by the Department of Child Support Services to establish parentage or to establish, modify, or collect child support GC 70672		No fee
86.	Response or subsequent paper filed in an action brought by the Department of Child Support Services to establish parentage or to establish, modify, or collect support if support is the only issue. If a custody issue is raised, see charge for first paper filed in response to other family law matters GC 70672		No fee
87.	Filings on issues relating to parentage or support in a pre-existing non-governmental case in which a Title IV-D child support agency has intervened and is providing services under Fam. Code § 17400 GC 70672		No fee
88.	Statement to register a foreign support order or other first paper in a UIFSA case GC 70677, FC 4927		No fee
89.	A document relating to a stipulated postjudgment modification of child support GC 70671(d)		No fee
91.	Child custody evaluation FC 3112		Amount set by court
92.	Court-appointed counsel for child (Fam. Code § 3150 et seq.) FC 3153		Amount set by court

PROBATE FEES

First filed petition for letters of administration or letters testamentary, first-filed petition for special letters of administration with powers of general representative under Probate Code § 8545, first account of trustee of testamentary trust subject to continuing court jurisdiction under Probate Code § 17300 et seq.

93.	Estate or trust under $250,000 GC 70650(a)(1)		$320.00
94.	Estate or trust of at least $250,000 and under $500,000 GC 70650(a)(2)		$385.00
95.	Estate or trust of at least $500,000 and under $750,000 GC 70650(a) (4)		$485.00
96.	Estate or trust of at least $750,000 and under $1,000,000 GC 70650(a)(4)		$635.00
97.	Estate or trust of at least $1,000,000 and under $1,500,000 GC 70650(a)(5)		$1,135.00
98.	Estate or trust of at least $1,500,000 and under $2,000,000 GC 70650(a)(6)		$2,135.00
99.	Estate or trust of at least $2,000,000 and under $2,500,000 GC 70650(a)(7)		$2,635.00
100.	Estate or trust of at least $2,500,000 and under $3,500,000 GC 70650(a)(8)		$3,635.00
101.	Estate or trust of $3,500,000 and over GC 70650(a)(9)		$3,635.00 plus 0.2 % of estate's value over $3.5M
102.	Petition for special letters of administration without powers of general personal representative, will contests (objections to probate of will and petition for revocation of probate of will under Probate Code §§ 8250, 8270) GC 70650(c), (d)		$320.00
103.	Later-filed petitions for letters of administration, letters testamentary, or special letters of administration with powers of general representative by a person other than the original petitions GC 70650(d)		$320.00
104.	Opposition to petitions for appointment of a personal representative in a decedent's estate other than competing petitions for appointment or will contests, and objections or other opposition to first account of testamentary trustee subject to court supervision GC 70651		$320.00
105.	Petitions and objections or other opposition to petitions concerning the internal affairs of a trust under Probate Code § 17200 et seq. GC 70652		$320.00

		CODE SECTION	TOTAL FEE DUE
	PROBATE FEES (cont'd)		
	(This fee does not apply to petitions or opposition concerning the internal affairs of testamentary trusts subject to the fees under Gov. Code §§ 70650 or 70651) GC 70652		$320.00
106.	Petition for appointment of conservator, guardian of the estate or guardian of the person and estate or opposition to these petitions other than competing petitions for appointment GC 70653(a), (b)		$320.00
107.	Opposition to petition for appointment of conservator, guardian of the estate or guardian of the person and estate filed by or on behalf of the proposed conservatee or the proposed ward or a parent of the proposed ward GC 70653(f)		No fee
108.	Petition for appointment of guardian of the person only or opposition to petition other than competing petition for appointment GC 70654(a), (b)		$180.00
109.	Opposition to petition by the proposed ward or the parent of the proposed ward GC 70654(e)		No fee
110.	Petition commencing other proceeding under the Probate Code, and opposition to such petition, including the following: GC 70655		$320.00
111.	Petition to determine the fact of death to determine title to real property and objections or other opposition (Prob. Code § 200)		$320.00
112.	Petition for an order concerning a particular transaction and objections or other opposition (Prob. Code § 3100)		$320.00
113.	Petition for an order concerning capacity determination and health care decision authority for adult without conservator and objections or other opposition (Prob. Code § 3200)		$320.00
114.	Petition for compromise of the claim of a minor or disabled adult, no civil action pending, and objections or other opposition (Prob. Code § 3600)		$320.00
115.	Petition concerning a power of attorney and objections or other opposition (Prob. Code § 4541)		$320.00
116.	Petition concerning advance health care directive and objections or other opposition (Prob. Code § 4766)		$320.00
117.	Petition to determine succession to real property and objections or other opposition (Prob. Code § 13151)		$320.00
118.	Spousal or domestic partnership property petition and objections or other opposition (Probate Code § 13650)		$320.00
119.	Any other petition that commences a proceeding under the Probate Code and objections or other opposition		$320.00
120.	Petition for order setting aside estate of small value if no estate is pending for the decedent (Prob. Code § 6602) GC 70656		$180.00
121.	Petition for objections or other paper in opposition, for orders that are appealable under Probate Code § 1300 or 1301 filed after issuance of letters testamentary, letters of administration, letters of special administration to a personal representative of a decedent's estate, or letters of guardianship or conservatorship to a guardian or conservator GC 70658 (Appealable orders are shown in Appendix B)		$180.00
	Motion, application or other paper requiring a hearing after the first paper, Including: GC 70657(a)		Varies, see below
122.	Motions or other papers listed in GC 710617(a) (motions listed in CCP 1005(a)(1)-(12), motion to continue a trial date, discovery motions, motion for new trial) GC 70657(a), 70617(a)		$ 40.00
123.	Pretrial or postrial motions in contested litigation GC 70657(a)(1)		$ 40.00
124.	Application for ex parte relief GC 70657(a)(2)		$ 40.00

	CODE SECTION	TOTAL FEE DUE

PROBATE FEES (cont'd)

125.	Petitions and objections or other papers in opposition to petitions concerning the internal affairs of testamentary trusts subject to the graduated fee under GC 70650 and trusts created by court order under Probate Code sections 2580, 3100, or 3600 (petitions or opposition concerning the internal affairs of trusts that are not subject to the fee under GC section 70652) GC 70657(a)(3)	$ 40.00
126.	Petitions, objections, and other papers in opposition to petitions filed after the issuance of temporary letters of guardianship or letters of guardianship in guardianships of the person only GC 70657(a)(4), 70658(c)	$ 40.00
127.	Petitions, objections, and other papers in opposition to petitions after issuance of special letter of administration or letters testamentary or of administration in decedent's estates that are not subject to the fee in GC 70658 GC 70657(a)(5), 70658(d)	$ 40.00
	(Post-appointment petitions for and opposition to orders that are not appealable under Probate code sections 1300 or 1301, and petitions by personal representatives of Estates commenced after August 17, 2003 that concern any action described in Probate Code section 10501(a) or (b). See Appendix C)	
128.	Petition to withdraw funds from block account GC 70657(a)	$ 40.00
129.	Motion for summary judgment GC 70657(c), 70617(d)	$200.00
130.	Deposit of estate planning documents GC 70660	$ 20.00
131.	Search for estate documents, for each search longer than 10 minutes GC 700661	$ 15.00
132.	Petition to establish record of birth, death, or marriage H&S 103470	$180.00
133.	Affidavit procedure for real property of small value under Probate Code § 13201 GC 70626(b)(9)	$ 20.00
134.	Guardianships investigations Prob. 1513.1	$600.00
135.	Information package for conservators Prob. 1835	$ 20.00
136.	Conservatorship investigator's fee Prob. 1851.5	$600.00
137.	Filing statement of professional conservator Prob 2343	Amount set by court
138.	Petition for summary probate (Public Administrator only) Prob. 7660)	$180.00

APPEAL RELATED FEES

APPEAL OF UNLIMITED CIVIL CASE

139.	Certificate for Court of Appeal or Supreme Court on motion prior to filing appeal record (unlimited civil case) GC 70620	$ 20.00
140.	Appeal or cross appeal to court of appeal (payable to court of appeal) GC 68926, 68926.1(b)	$655.00
141.	Deposit for preparation of clerk's transcript (payable to superior court) (charged when notice of appeal to court of appeal is filed under GC 68926) GC 68926.1	$100.00

OTHER APPEALS

142.	Appeal in limited civil case GC 70621	$100.00
143.	Appeal in small claims case CCP 116.760	$ 75.00
144.	Appeal from Labor Commissioner's Award (Lab. 98.2) GC 70611	$320.00
145.	Appeal of final decision on parking citation violation Veh. 40230	$ 25.00
146.	Appeal from determination of dangerous or vicious dog (F&A 31622) GC 70626(b)(8)	$ 20.00
147.	Appeal of administrative fine or penalty GC 53069.4(b)(2)	$ 25.00

		CODE SECTION	TOTAL FEE DUE

RECORDS RELATED FEES

148.	Certifying a copy of paper, record, or proceeding on file	GC 70626(a)(4)	$ 15.00
149.	Certificate for which fee is not otherwise fixed; includes lis pendens	GC 70626(a)(8)	$ 15.00
150.	Preparing a copy of any record, proceeding or paper on file (per page)	GC 70627(a)	$ 0.50
151.	Comparison of a copy with an original on file (per page)	GC 70627(b)	$ 1.00
152.	Searching records or files, for each search longer than 10 minutes	GC 70627(c)	$ 15.00
153.	Exemplification of record or other paper on file	GC 70628	$ 20.00
154.	Document authenticated pursuant to court order (per signature)	GC 70629	$ 15.00
155.	Certified copy of marriage or domestic partnership dissolution record (requested by public agency)	GC 70674	$ 10.00
156.	Certified copy of marriage or domestic partnership dissolution record (requested by any other applicant)	GC 70674	$ 15.00

RETURNED CHECKS AND INSUFFICIENT PAYMENTS

157.	Administrative charge for a check that is returned without payment. A filing paid for with such a check will be void if fee and charge are not paid, within 20 days of notification, in cash, by certified check, or by other means specified by the court, but not by traveler's check or personal check.	CCP 411.20(g), GC 71386	$ 35.00
158.	Administrative charge for processing a partial payment. A first paper filing submitted with a check for an insufficient amount will be void if the amount due is not paid within 20 days of notification	CCP 411.21(g)	$ 35.00

MISCELLANEOUS FEES

159.	Administrative charge for collection of fees where fee waiver was previously granted	GC 68511.3(d)	Amount set by court
160.	Administrative charge for recovering, as part of judgment, fees not paid by public entity under GC 6103 (maximum $25)		Amount set by court
161.	Taking affidavit, except in criminal case or adoption proceedings	GC 70626(a)(5)	$ 15.00
162.	Acknowledgment of deed or other instrument	GC 70626(a)(6)	$ 15.00
163.	Recording or registering license or issuing certificate in connection with a license, required by law, for which charge is not otherwise prescribed	GC 70626(a)(7)	$ 15.00
164.	Filing affidavit of publication of notice of dissolution of partnership	GC 70626(b)(7)	$ 20.00
165.	Filing and indexing papers for which a charge is not provided elsewhere	GC 70626(b)(10)	$ 20.00
166.	Appearance by videoconferencing - Not available in Ventura County	GC 70630	Amount set by court
167.	Reasonable fee for service or product, not to exceed costs, where no fee is otherwise provided for	GC 70631	Amount set by court
168.	Handling funds held in trust	GC 70632	Amount set by court
169.	Certificate of facts regarding unsatisfied judgment	Veh. 16373	Amount set by court
170.	Witness fee in a civil action for each day, plus mileage @ $020 per mile both ways	GC 68093	$ 35.00*
171.	Advance witness fee for court employee	GC 68097.2(a, b)	$150.00*
172.	Facsimile filing fee, per page in addition to any other fee imposed by law	CRC 2006(g)	$ 1.00*
173.	Juvenile Sealings	PC 1203.45(g)	$120.00*
174.	Expungement	PC 1203.4a(c)	$75.00*

* Local Court Fees

	CODE SECTION	TOTAL FEE DUE

NON-STATUTORY FEES

175. Audio Tape of Court proceedings, (customer provides 90 minute tape) for each tape coied ..... $ 10.00*
176. Video Tape of Court proceedings, (customer provides T-120 VHS tape) for each tape copied ..... $ 25.00*
177. CD of Court proceedings ..... $ 11.00*

(Revised effective January 1, 2006)

* Local Court Fees

SAN DIEGO SUPERIOR COURT

INDICES

List of Abbreviations

App.	Appendix
BPC	Business and Professions Code
CC	Civil Code
CCP	Code of Civil Procedure
CRC	California Rules of Court
EC	Evidence Code
Exh.	Exhibit
FC	Family Code
FF	Filing Fees of the Superior Court of California
GC	Government Code
HSC	Health and Safety Code
IC	Insurance Code
JCR	Juvenile Court Rules (California Rules of Court)
JCF	Judicial Council Forms
LC	Labor Code
PC	Penal Code
PRC	Probate Code
SDA	San Diego Adoptions Guide
SDC	Rules of the Superior Court of San Diego County
SDM	Rules of the Municipal Court of San Diego Judicial District
SDMC	San Diego Municipal Court Forms
SJA	Standards of Judicial Administration (California Rules of Court, Appendix, Division I)
WIC	Welfare and Institutions Code

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