

**DIVISION V
FAMILY LAW**

**CHAPTER 1
GENERAL**

Rule 5.1.1

Application of Rules and Sanctions.

A. These rules apply in all departments of the San Diego Superior Court hearing family law matters (“Family Law Courts”). They must be read and applied in conjunction with the applicable law, including federal and state statutes, and the California Rules of Court.

B. Sanctions may be imposed for violation of and/or failure to comply with these local court rules in accordance with the applicable California Rules of Court.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.1.2

Definitions. Unless the context otherwise requires, the following definitions govern the construction of these rules.

1. “party” includes a self-represented litigant or a person represented by an attorney.
2. “person” is as defined in California Rules of Court, rule 5.14.
3. “self-represented litigant” means any party who is representing himself or herself.
4. “must” is mandatory; “may” is permissive.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. & Renum. 1/1/2015)

Rule 5.1.3

Abbreviations. The following abbreviations are used throughout these rules:

- DCSS = Department of Child Support Services, County of San Diego
DF = All actions under Title IV-D of the Social Security Act (See Chapter 9)
FCS = Family Court Services
FL# = Judicial Council state form
FRC = Family Case Resolution Conference (when at least one party is represented by an attorney)
FSD = Family Support Division
MSC = Mandatory Settlement Conference
RFO = Request for Order
SDSC# = Local court form
SFRC = Self-Represented Family Case Resolution Conference (when both parties are self-represented)
SRL = Self-Represented Litigant

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. & Renum. 1/1/2015)

Rule 5.1.4

A. Website Information.

1. The San Diego Superior Court’s website address is <http://www.sdcourt.ca.gov>. References to “online” throughout these rules generally refer to this court’s website.

2. The “California Courts Web Site” address is <http://www.courts.ca.gov>.

3. Both web sites contain extensive family law information and detailed self-help instructions.

B. Other Resources. Informational handouts are also available in the court’s business office, from the Family Law Facilitator and from Family Court Services.

C. Disclaimer. The San Diego Superior Court does not control or maintain the California Courts Web Site and is not responsible for the accuracy of the information or its content. Additionally, the court’s website is updated periodically. When using the San Diego Superior Court’s website, the user is subject to its terms of use and privacy policy.

(Adopted 1/1/2013; Rev. 1/1/2014; Del. & Reserved for Future Use 1/1/2014; Rev. & Renum. 1/1/2015)

Rule 5.1.5

Family Law Courts and Venue.

A. Proper Venue. For purposes of filing, each of the Family Law Courts ("Central" in San Diego, "South County" in Chula Vista, "East County" in El Cajon, and "North County" in Vista) is a separate division and a separate venue with the exception of matters involving DCSS. For matters involving DCSS, refer to chapter nine of these rules. A list of filing districts by zip code is available online.

B. Marvin Actions. *Marvin* actions, or any similar family law related action not specifically authorized by the Family Code, must be filed as a separate proceeding in the Civil Division.

C. The Family Court does not handle matters of adoption or freedom from parental control. (Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010, Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Renum. 1/1/2015)

Rule 5.1.6

Notice to Court and Sanctions.

A. Parties must immediately notify the court when circumstances arise that might cause any scheduled proceeding to be continued or taken off calendar; for example, inability to timely serve, a stipulation, or illness. The court may sanction a person who fails to promptly notify the court.

B. Notice to the court must be made on the on-line webform. If an SRL has no access to the internet, notice must be given to the courtroom clerk by telephone. (Adopted 1/1/2014; Rev. 1/1/2015)

Rule 5.1.7

Requirement for Current Mailing Address. It is the obligation of all SRLs and attorneys to keep the court informed of their current mailing address by promptly filing a *Notice of Change of Address or Other Contact Information* (Judicial Council form MC-040) which is available online or in the business office of the court. (Adopted 1/1/2010; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 5.1.8

Official Court Reporters and Reporters Pro Tempore.

A. The court's policy regarding the availability and unavailability of official court reporters can be read in full on the court's website. This policy is subject to change without notice.

B. Official court reporters will not be provided by the court in family law matters except for FSD matters, domestic violence restraining order hearings, contempt hearings and RFO hearings scheduled and lasting for 40 minutes or less.

C. For an RFO scheduled for 40 minutes or less, the moving party is charged the mandatory court reporter fee.

1. The fee must be paid at the time the RFO is filed.
2. If the matter is continued before the case is called, the fee continues over to the next hearing.
3. If the matter is continued after the case is called, the party requesting the continuance must pay a new and separate fee for the next hearing and submit proof of payment before the next hearing.
4. If a hearing is taken off-calendar before the case is called, the fee will be refunded.
 - a. Claiming a refund is solely the responsibility of the party.
 - b. Refunds may be requested by filing a *Request for Payment of Trust Funds/Refund* (form SDSC CIV-180).

D. Parties may arrange with a private provider for the appointment of an official court reporter pro tempore for hearings at which the court does not provide an official court reporter. The policies and mandatory procedures for a court appointed official reporter pro tempore are on the court's website. (Adopted 1/1/2013; Rev. 1/1/2014; Rev1/1/2015)

CHAPTER 2 CASE MANAGEMENT

Rule 5.2.1

Case Assignment for All Purposes.

A. Notice of Assignment. New cases are assigned to a specific judicial officer for all purposes. The petitioner will receive a notice of case assignment when the petition is filed. A copy of the notice of case assignment must be served on the respondent with the petition.

B. Notice of Reassignment. All case reassignments initiated by the court as a result of the change of a judicial officer in a department are posted online and in the courthouse lobbies approximately thirty days in advance of the reassignment.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.2.2

Family Case Resolution Conference (FRC) and Self-Represented Family Case Resolution Conference (SFRC).

A. Scheduling and Service of Notice of FRC or SFRC (collectively referred to as “conference(s)”)

1. The court will set an initial FRC (cases with at least one attorney) or SFRC (cases where both parties are self-represented) hearing date and issue a *Notice of Hearing* of the conference at the time the petition is filed.

2. The petitioner must serve the respondent with a copy of the notice along with the petition. Petitioner must also serve a copy of the notice on all parties or their attorneys of record who have made an appearance in the case before the scheduled conference.

3. Subsequent conferences may be set and noticed by the court.

B. Attendance.

1. **FRC.** All parties or their counsel must appear at the conference either in person or by telephone, unless otherwise ordered by the court. See Rule 5.2.6 for the procedures for all telephonic appearances.

2. **SFRC.** All noticed parties must personally attend the conference, unless otherwise ordered by the court.

C. Alternative Dispute Resolution (ADR) and Reconciliation. Parties who file a stipulation prior to the conference indicating they are participating in ADR or attempting reconciliation will be exempt from the conference for six months. If a judgment or dismissal is not filed within six months of the filing of the stipulation, the parties will be required to attend the noticed conference.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. & Renum. 1/1/2012; Rev. & Renum. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.2.3

Alternative Dispute Resolution (ADR). Except in cases involving domestic violence, ADR is encouraged but voluntary. The *Alternative Dispute Resolution Informational Notice* (form SDSC D-9) is available at the family court business offices or online.

A. Mediation or Arbitration. Before participating in mediation or arbitration, the parties must file with the court a written and signed stipulation.

B. Collaborative Law Process.

1. **Stipulation.** Before participating in the collaborative law process, the parties shall file with the court a signed stipulation pursuant to Family Code section 2013.

2. **Designation.** The words "Collaborative Case" must be included below the case number in the case caption of every document filed with the court.

3. **Termination.** The case may be removed from the collaborative process either by filing a signed stipulation by both parties or by either party by filing and serving a notice of termination. Termination of the process does *not* require good cause. After filing the stipulation or notice of termination, the clerk will schedule a FRC or SFRC and notify the parties of the date.

C. Privately Compensated Temporary Judge. A request for the appointment of a privately compensated temporary judge must be directed to and granted by the supervising judge of the family law division.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2012; Rev. & Renum. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.2.4

Related Cases. Parties must file and serve a notice of “related case,” as defined by California Rules of Court, as soon as possible upon learning of the existence of a related case. The court encourages the use of the *Notice of Related Case* (Judicial Council form CM-015).

(Adopted 1/1/2013; Rev. 1/1/2015)

Rule 5.2.5

Mandatory Settlement Conference (MSC).

A. Setting MSC Date. The MSC will be set only when all parties and/or their attorneys have completed, signed and filed the *Joint Readiness Declaration–Mandatory Settlement Conference* (form SDSC D-274).

B. Settlement Conference Brief.

1. Unless otherwise ordered by the court, a settlement conference brief is mandatory. The contents of the settlement conference brief must include all the information required for a trial brief as set forth in California Rules of Court, rule 5.394. Parties may use the optional form *Mandatory Settlement Conference Brief* (form SDSC D-241) available online or in the family court business office.

2. The settlement conference brief and all attachments must be exchanged between the parties and served on the settlement conference attorney in a manner that ensures they are received no later than 4:00 p.m., three court days before the MSC, unless otherwise ordered by the court.

C. MSC Confirmation. No later than ten calendar days before the scheduled MSC, parties must call the court to confirm that the MSC will go forward and to receive the name and address of the settlement conference attorney.

D. Continuances and Sanctions. An MSC may be continued only by court order, requested at least five court days before the scheduled date for the MSC. The court may sanction a person who fails to timely request a continuance, for any reason, other than the settlement of the entire case.

E. Personal Appearance and Sanctions. All parties must personally appear at the MSC unless excused in advance by the court. The court may sanction a person who fails to personally appear at the MSC.

(Adopted 2005; Rev. 2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. & Renum. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.2.6

Telephone Appearances in Family Court.

A. An appearance by telephone requires a court order for all hearings except an FRC. (See Rule 5.2.2)

B. All non-ADA requests for a telephone appearance, at hearings other than an FRC, must be made on the *Request to Appear by Telephone and Order* (form SDSC D-259). The request must be filed with the court and served on all parties at least ten court days before the scheduled hearing.

C. All telephonic appearances must be made through CourtCall. All arrangements for a telephonic appearance are the obligation of the attorney or party who intends to appear by telephone. CourtCall can be contacted at (888) 882-6878 or at www.courtcall.com

(Adopted 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev.& Renum. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

**CHAPTER 3
EMERGENCY ORDERS
(EX PARTE ORDERS)**

Rule 5.3.1

Emergency Orders (Ex Parte Orders).

A. Parties must obtain an emergency order hearing date either by calling the court or by appearing in person at the court's business office no later than 10:00 a.m. the day before the requested hearing date.

B. All papers must be filed with the court by 12:00 p.m. the court day before the hearing along with a completed form *Emergency Order (Ex Parte) Application and Order – Family Law* (form SDSC D-046)

C. Consideration of late filed papers is at the court's discretion.

D. The telephone numbers for the business office of each branch court can be found on the court's website.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.3.2

Non-Emergency Orders Not Requiring Notice. The business office at each division has a drop box where a request for a non-emergency order may be deposited for processing. An attorney service slip or stamped self-addressed envelope must be included if conformed copies are requested.

(Adopted 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

**CHAPTER 4
DOMESTIC VIOLENCE RESTRAINING ORDERS (DVRO)**

Rule 5.4.1

Reserved for Future Use.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Del. 1/1/2015)

Rule 5.4.2

Residence Removal Orders. If a party seeks to have the restrained party removed from the residence, the protected party must prepare and submit for the court’s signature a separate order on the *Order for Removal from Residence* (form SDSC D-072). If the order is granted, the protected party must give the Sheriff two certified copies of the removal order for service.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2012; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.4.3

Requests by Protected Party to Modify or Terminate Permanent Restraining Order(s). A request by a protected party to modify or terminate a restraining order before its expiration date may be made by filing an *Ex Parte Request and Order to Terminate Restraining Order* (form SDSC D-001). If granted, the court will deliver a copy of the order to the sheriff for removal from CLETS.

(Adopted 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

**CHAPTER 5
REQUEST FOR ORDER (RFO)**

Rule 5.5.1

Hearings on Request for Order.

A. Calendaring. The court will set a hearing date unless the RFO clearly specifies that no hearing date be set.

B. Retroactive Order. RFOs in which the date of filing may determine retroactivity may be filed without setting a hearing date to preserve retroactivity. The RFO form must state “No Hearing Date” and “Preserve Retroactivity” where the date would otherwise be written. The RFO and all supporting papers must be filed and promptly served. The moving party must file the following documents within one hundred and eighty days of the filing of the original RFO:

1. A new RFO form identical to the original but with the hearing date box left blank.

2. A conformed copy of the first page of the originally filed RFO.

3. Any additional declarations or exhibits supporting the RFO. For purposes of the California Rules of Court, rule 5.111(a), the ten page limit for a party’s moving declaration is the total of the original plus any additional declaration.

4. A proof of service showing service of the original RFO.

5. Failure to file all of the documents listed above within one hundred and eighty days will result in a dismissal of the original RFO and a retroactive order will not be entered.

C. Hearing Time Commitments. All RFOs must indicate a time commitment beneath the case number on the first page of the RFO form. “Time commitment” means the time needed for the hearing itself in the courtroom.

1. **Short Cause RFO.** Hearings committed for 40 minutes or less are set on the short cause calendar of the judicial officer assigned to the case. The official court reporter will stop reporting after 40 minutes.

2. **Special Set RFO.** Hearings committed to more than 40 minutes but less than two and a half hours are specially set and may be heard by another judicial officer in the family law department or any trial department.

3. **Long-Cause RFO.** For hearings longer than two and a half hours, refer to Chapter 7 of these rules on “trials and long-cause hearings.”

4. Failure to indicate a time commitment results in a default hearing time commitment of 20 minutes.

5. If the time commitment is reached before the hearing is completed, the court may continue the matter to a future date. The court may sanction any person who fails to adhere to the time commitment.

D. Reissuance. If the RFO is not timely served on the opposing party and the moving party wishes to proceed with the request, the moving party must apply for a reissuance of the RFO and any orders therein.

E. Continuance of Hearing When Reissuance Not Required.

1. Continuances are disfavored and will be granted only for good cause shown.

2. A request for a continuance of a hearing does *not* require a reissuance only if the RFO has been timely and properly served and it does *not* include any temporary emergency orders.

3. An unopposed request for a continuance may be made by any of the following procedures at least two court days before the hearing:

- a. Filing a stipulation stating good cause and signed by all parties; or
- b. Completing the online continuance web form. If an SRL has no access to the internet, the request must be made to the courtroom clerk by telephone.

4. All continuances may be subject to statutory fees under the Government Code.

F. Calendar Calls. Requests for calendar priority should be made prior to the calendar call. Parties or counsel unable to appear at the calendar call must notify the opposing party at the earliest reasonable time.

G. Extra Copies of Pleadings. Parties should always bring an extra copy of all court conformed relevant pleadings and exhibits to the hearing in case the court file is incomplete.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. & Renum. 1/1/2013; Rev. 1/1/2014; Rev. & Renum. 1/1/2015)

Rule 5.5.2

Related RFO. An opposing party may request that an RFO reasonably related to the issues raised by a scheduled RFO be set on the same date and time. However, the related RFO must meet the standard statutory requirements for filing and service, absent an order shortening time.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. & Renum. 1/1/2008; Rev. 1/1/2011; Rev. 1/1/2012; Rev. & Renum. 1/1/2013; Rev. 1/1/2014; Renum. 1/1/2015)

Rule 5.5.3

Page Limits, Late Filed Papers, Tabbing and FCS Screening Form.

A. Page Limits. The court, in its discretion, may refuse to consider declarations which exceed the mandatory page limits.

B. Late Filed Papers. The court, in its discretion, may refuse to consider late filed papers.

C. Tabbing. Prior to filing, the court encourages the tabbing of documents with specific colored post-its placed at the bottom of the face or first page of the document. The following colors should be used:

1. RFO – Red
2. Response to RFO - Blue
3. Reply to Response to RFO – Yellow
4. Income and Expense Declaration - Green

D. Custody and Visitation. When filing an RFO regarding custody or visitation, the moving party must also file the *Family Court Services Screening Form* (form SDSC FCS-046).
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008; Rev 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. & Renum. 1/1/2015)

Rule 5.5.4

Exhibits and Lodged Documents.

A. The court encourages petitioner to file or lodge exhibits using numbers and respondent to file or lodge exhibits using letters.

B. Exhibits that exceed ten pages must be lodged rather than filed with the court. A *Notice of Intent to Lodge Documents* (form SDSC D-235 or in pleading form) listing the name or description of the exhibit must be filed and served on all parties in conjunction with service of the moving, opposition and reply papers. A copy of the notice must be submitted with the lodged material. Documents lodged with the court must be tabbed to correlate to the notice.

C. Lodged documents will be stamped "received" by the court. Documents may not be lodged more than ten court days and no later than three court days prior to the hearing except by court order. Absent an addressed envelope with sufficient postage or attorney messenger slip for returning the lodged documents, all lodged documents must be picked up within five court days following the hearing or they may be discarded without further notice. All returned lodged documents must be retained by the party until the applicable appeal period has expired and must be re-lodged for subsequent hearings.

D. This rule does *not* apply to lodged Assisted Reproduction Agreements for Gestational Carriers.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. & Renum. 1/1/2015)

CHAPTER 6 PARTIES' INCOME

Rule 5.6.1

Parties' Income

A. Income and Expense Declaration. Income and Expense Declarations on Form FL-150 should be printed on green paper for ease of identification.

B. Attachments to Income and Expense Declaration; Privileges and Protective Order. Documents required by this rule to be served with the Income and Expense Declaration may be lodged with the court rather than filed. Parties must serve copies of all the applicable listed documents with their Income and Expense Declaration. The court may sanction any person who fails to timely file an Income and Expense Declaration or fails to provide the required attachments.

1. Salaried Employees:
 - a. The prior calendar year's W-2
 - b. All pay stubs for the last two months showing all forms of year-to-date earned income
2. Self-employed Individuals, including Independent Contractors:
 - a. A schedule reflecting all compensation received year-to-date
 - b. The last two filed IRS 1040 Schedule C or C-EZ
 - c. Profit-and-loss statements and balance sheets for the two prior calendar years and the current year-to-date
3. Employees who are shareholders in a closely-held corporation:
 - a. The prior calendar year's W-2
 - b. All pay stubs for the last two months showing all forms of year-to-date earned income
 - c. All IRS K-1's for the two prior years
 - d. The last filed IRS Schedule E (Part II)
 - e. Profit and loss statements and balance sheets for the two prior calendar years and the current year-to-date
4. Partnership Income:
 - a. A schedule reflecting all compensation received year-to-date
 - b. All IRS K-1's for the two prior years
 - c. The last filed IRS Schedule E (Part II)
 - d. Profit and loss statements and balance sheets for the two prior calendar years and the current year- to-date
5. Rental Income:
 - a. The last filed IRS Schedule E (Part I)
 - b. Summaries of all rental receipts, deposits, disbursements and expenses for the prior calendar year, and for all periods year-to-date
6. Dividend Income, Interest Income or other Unearned Income:
 - a. The prior calendar year's IRS 1099's
 - b. The last filed IRS Schedule
 - c. An itemized summary of all funds on deposit, shares of stock, bonds, or other income producing assets owned, and the rate of return currently being paid thereon
 - d. Any income derived therefrom during the prior calendar year, and year-to-date

C. Privileges and Protective Order. Attachments to an Income and Expense Declaration remain subject to all privileges under the law. It is the obligation of the party to obtain a protective order when necessary.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. & Renum. 1/1/2013; Rev. 1/1/2014)

CHAPTER 7 TRIALS AND LONG-CAUSE HEARINGS

Rule 5.7.1

Trials and Long-Cause Hearings.

A. Assignments. Trials and long-cause hearings may be assigned to any judicial officer in the family law department or a trial department. This assignment will be made by the supervising judge of the family court, or his or her designee, as a master calendar assignment.

B. Procedures.

1. Issues related directly to the trial/long-cause hearing (ex: motions in limine), shall be directed to the judicial officer assigned to the trial/long-cause hearing.
2. A request for a continuance must be directed to the judicial officer assigned to the case for all purposes.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

CHAPTER 8 PARENTAGE ACTIONS

Rule 5.8.1

A. Parentage Actions. Parentage actions include contested or stipulated paternity or maternity actions filed by an individual or DCSS and stipulated traditional or gestational carrier surrogacy actions.

B. Inspection and Copying of Court Files. The inspection of a court file and the copying of documents in these court file are governed by both state and federal law, orders within the file and general orders by the Presiding Judge of the San Diego Superior Court. Any dispute as to who can inspect a parentage file and/or what documents may be copied without a prior court order must be determined by a judicial officer.

(Adopted 1/1/2010; Renum. 1/1/2012; Rev. & Renum. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

CHAPTER 9 FAMILY SUPPORT DIVISION

Rule 5.9.1

Family Support Division.

A. All actions under Title IV-D of the Social Security Act initiated or maintained by the Department of Child Support Services (DCSS) are:

1. Referred to as "FSD" matters, and
2. Case files are delineated and referred to as "DF" files.

B. Unless otherwise stated in this Chapter, FSD matters are governed by the California Rules of Court on Title IV-D Support Cases and these local rules.

(Adopted 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.9.2

Pre-Hearing Procedures.

Mandatory Meet and Confer. All parties and/or counsel must meet and confer with DCSS on the day of a hearing and prior to appearing in court.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 5.9.3

Meet and Confer. All parties granted a telephone appearance must meet and confer with DCSS by telephone prior to their court appearance. For the meet and confer, parties must be available at the number listed on their telephone appearance request form for at least two hours prior to their hearing. (Adopted 1/1/2008; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.9.4

Reserved for Future Use

(Adopted 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Del. 1/1/2014)

Rule 5.9.5

Reserved for Future Use

(Adopted 1/1/2006; Renum. 1/1/2006; Rev. & Renum. 1/1/2008; Rev. 1/1/2010; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Del. 1/1/2015)

Rules 5.9.6

Reserved for Future Use

(Adopted 1/1/2014; Del. 1/1/15)

Rule 5.9.7

No Consolidation of DF Cases with Other Family Law Cases. The court will not order the consolidation of a DF case with another family law case. A DF case may only be consolidated with another DF case. (Adopted 1/1/2014; Rev. 1/1/2015)

CHAPTER 10 CHILD CUSTODY AND VISITATION

Rule 5.10.1

Child Custody Recommending Counseling.

A. FCS Counseling Sessions. Detailed and important information about FCS counseling procedures before, during and after the counseling session is available online or from FCS (*Family Court Services Child Custody Recommended Counseling Information Sheet*, form SDSC FCS-022) and should be read by the parties no later than one week before the session.

B. Absent a court order, an FCS session may be set only once every twelve months.

C Cancellation, Rescheduling and Sanctions.

1. Cancellation. A party may cancel an FCS session no later than two court days before the session. The moving party must notify FCS of the cancellation by calling their office directly. The cancellation must be based on one of the following reasons:

- a. The custody/visitation issue is settled.
- b. The parties are using a private counselor.
- c. The other party has not received timely notice of the session date.

2. Rescheduling. Parties may reschedule an FCS session one time by stipulation by notifying FCS no later than two court days before the appointment. All subsequent requests to reschedule require a court order.

3. Sanctions. Failure to timely cancel or reschedule an FCS session or failure to attend the counseling session may subject the offending party to monetary sanctions of up to \$1,500 pursuant to Code of Civil Procedure section 177.5.

D. Materials for FCS Review. No writings or other materials may be submitted to FCS for the counselor's review absent a court order or at the request of FCS.

E. Ex Parte Communication with FCS. Ex parte communications between FCS counselors, parties, attorneys, including minors' counsel, are governed by Family Code section 216 and California Rules of Court, rule 5.235.

F. Peremptory Challenge. A peremptory challenge of an FCS counselor is not allowed.

G. Counselor Reassignment due to a Conflict of Interest. Before or during a counseling session, if a party or the counselor discovers a conflict of interest, the matter must be brought to the attention of Family Court Services management for consideration of reassignment to a different counselor.

H. Complaint Procedure. Complaints about an FCS counselor must be submitted on the *Family Court Services Complaint Form* (form SDSC FCS-044) which is available online or from FCS. A complaint may not be based on a party or an attorney's dissatisfaction or disagreement with the counselor's recommendation or a related court order.

(Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.10.2

Non-Confidentiality and Recommendation.

A. Non-Confidential. Unless otherwise stipulated to by the parties or ordered by the court, all child custody counseling in San Diego County is *non-confidential* as between the counselor, the court, the parties and their attorneys, but remains confidential as to the public.

B. San Diego is a "Recommending" County.

1. FCS Report.

a. If the parties reach an agreement during the FCS session and both parties are self-represented, the counselor may prepare a written agreement that will be approved and signed by the parties and filed with the court.

b. If the parties do not reach an agreement during the FCS session, the counselor will submit a comprehensive written report to the court that includes, but is not limited to, custody and visitation recommendation and the reasons for the recommendation.

2. Court's Consideration of Report. Absent timely objections, the entire FCS report will be considered by the court and may be used as a basis for the court's order. If objections are sustained as to any portion of the report, the matter may be continued to allow parties to subpoena the counselor to testify.

C. Subpoena Process. As employees of the Superior Court, witness subpoenas for FCS counselors, are governed by Government Code, sections 68097.1 and 68097.2, including the subpoenaing party's obligation for all statutory fees and salary reimbursements.

1. Counselor's Availability and Service of Process. Before serving the subpoena, the party must first contact FCS to confirm the counselor's availability on the scheduled hearing date and time. After confirmation of the counselor's availability, FCS must be served with the subpoena at least ten calendar days before the hearing along with the required fee deposit.

2. Hearing Off-Calendar or Continued.

a. If the counselor's appearance will no longer be required, the subpoenaing party must notify FCS at their earliest opportunity,

b. If the counselor's appearance will still be required, but for a continued hearing date, a new subpoena will not be necessary *if* the subpoenaing party does both of the following: (1) contacts FCS, at their earliest opportunity, to determine the counselor's availability on the continued hearing date; and (2) immediately provides FCS written notice that the counselor's appearance is required on the new date and time.

3. If at the time of the hearing, the FCS counselor is no longer an employee of Superior Court, is on leave, or other circumstances prevent the Superior Court from producing the counselor as a witness in response to a subpoena, FCS will assign the case for another child custody recommending counseling session with a different counselor.

4. Depositions. The court will not order depositions of counselors absent a showing of extraordinary good cause.

5. FCS Files. Certain privileges attach to FCS files. The court will not order the production of any FCS documents without a prior in-camera review. A party desiring an in-camera review shall serve FCS with a subpoena duces tecum for the file/documents at least fifteen calendar days before the trial or hearing. If an objection is received, the subpoenaing party must file a request for order compelling the in-camera review.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Renum. & Rev.1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.10.3

Reserved for Future Use

(Adopted 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. & Renum. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Renum. & Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Del. 1/1/2014)

Rule 5.10.4

Private (non court-connected) Child Custody Counseling.

A. Stipulation. The parties may stipulate to use a private child custody counselor at the parties' own expense. The private counseling may be confidential or non-confidential as agreed to by the parties.

B. Qualifications. It is the parties' obligation to investigate and know that a private counselor meets the statutory qualifications, training and continuing education requirements.

C. Formal Order. It is the parties' obligation to prepare a formal stipulation and order for the court's signature with the statutory required content before participating in private counseling.

D. Agreements. If the parties reach an agreement, the private counselor will prepare a report setting forth the terms of the agreement. If the counseling was stipulated as non-confidential, either party or the counselor may submit the report to the court.

E. Unresolved Issues.

1. Confidential Counseling. If no agreement is reached and the private counseling was stipulated to as confidential, the parties must then participate in non-confidential counseling before the matter is heard by the court. This non-confidential counseling may be either with a private counselor or with FCS.

2. Non-confidential Counseling. If no agreement is reached and the private counseling was stipulated to as non-confidential, the counselor will submit a full written report with a recommendation and reasons for the recommendation to the parties, their attorneys and the court before the hearing.

3. Court's Consideration of Report. The private counselor's entire written report will be considered by the court and may be used as a basis for the court's order regardless of whether the report is admitted into evidence.

F. Ex Parte Communication with the Private Counselor. Communications between private counselor, parties, and attorneys, including minors' counsel, are governed by the provisions of Family Code sections 216 and 1818.

(Adopted 1/1/2008; Rev. 1/1/2010; Renum. & Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 5.10.5

Child Custody Evaluations. The court may order a child custody evaluation in accordance with the law.

A. Order Appointing Evaluator.

1. The *Order Appointing Child Custody Evaluator* (form FL-327) may be supplemented by and/or attached to a separate stipulation prepared by the parties. It is the responsibility of the parties to ensure that the form and content of the order, including but not limited to, the purpose and scope of the order, complies with the law. Failure to ensure the order complies with the law may be considered as a factor in a party's objection related to the evaluator's report.

2. Parties must immediately provide a copy of the order to the appointed evaluator.

B. Finding a Qualified Private Child Custody Evaluator. The specific criteria required under the law, including licensing, education and training, for a private, mental health professional to be qualified as a court-appointed child custody evaluator by the San Diego court is available to the public on the court's website or from FCS. The list of qualifications may then be used to search through any standard public resource, such as the internet, to find a mental health professional who meets all the legal criteria. A private, court appointed evaluator must be able to sign under penalty of perjury and file a *Declaration of Private Child Custody Evaluator Regarding Qualifications* (form FL-326) within ten days of the appointment. The court does not maintain a list of qualified evaluators nor does it endorse any mental health professional. The parties are responsible for ensuring a private child custody evaluator meets all the legal qualifications.

C. Qualifications Declaration. The parties are responsible for ensuring the timely filing of the qualifications declaration signed by the private evaluator. Failure to ensure the timely filing of the qualifications declaration may be considered by the court as a factor in a party's objection related to the evaluator's report.

D. Child Custody Evaluator's Report. The court may consider the evaluator's report in accordance with the law, including proceedings indirectly related to child custody or visitation.

E. Peremptory Challenges and Challenges for Cause.

1. A peremptory challenge of a private evaluator appointed by the court is not allowed

2. A party may challenge an evaluator for cause by noticed motion upon 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.

F. Withdrawing from a Case. A private evaluator may petition the court to withdraw from the case for good cause by delivering a letter addressed to the trial judge assigned to the case stating the reasons for their request. A copy of the letter must also be served on all parties and minor's counsel. Any objections to the request to withdraw must be filed with the court and served on the evaluator, all parties, and minor's counsel, within ten court days of notice of the petition to withdraw. Based on the court's review of the petition and any objections, the court may schedule a hearing or decide the matter by issuing an ex parte order. All withdrawals require a court order.

G. Ex Parte Communications. Ex-parte communications between an attorney, including minor's counsel, and the court-appointed evaluator, are governed by Family Code sections 216 and 1818.

H. Complaints. Complaints about an evaluator must be in writing and addressed to the supervising judge of the family law division. Complaints must be as specific as possible in describing what the evaluator did or did not do. The supervising judge, or his/her designee(s), will investigate, evaluate and respond to the complaint in due course. A complaint *cannot* be based on a party or an attorney's dissatisfaction or disagreement with the evaluator's conclusions or a related court order.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010; Renum. & Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 5.10.6

Supervised Visitation Providers.

A. List. A list of visitation monitors is available through the San Diego Superior Court Programs Resource List (PRL) which is online. The individuals/entities have identified themselves to the San Diego Superior Court as visitation monitors. The visitation monitors are not affiliated with the court, and each visitation monitor is independently responsible for compliance with any and all applicable legal requirements. The court does not endorse, evaluate, supervise, or otherwise monitor the visitation monitors.

B. Declaration of Qualifications.

1. All professional and non-professional supervised visitation providers must sign and file the *Declaration of Supervised Visitation Provider* (form FL-324), or a declaration containing the same qualifications information, before the first supervised visit.

(Adopted 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Renum. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. & Renum. 1/1/2014; Rev. 1/1/2015)

CHAPTER 11 JUDGMENTS AND ORDERS AFTER HEARING

Rule 5.11.1

Reserved for Future Use

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Del. 1/1/2015)

Rule 5.11.2

Preparation of Orders After Hearing, Judgments, and Stipulations.

A. Parties are encouraged to submit *Findings and Order After Hearing* (form FL-340) printed on brown paper for ease of identification.

B. Parties are encouraged to submit *Judgments* (form FL-180) printed on pink paper for ease of identification.

C. The recommendation portion only of an FCS counselor's report or a non-confidential, private counselor's report may be attached as an exhibit to an order or judgment when the court has adopted the recommendation as its order. No other portion of the report may be attached to the order.

D. The order or judgment shall be prepared so that at least two lines of text appear on the page which will have the judge's signature and no text may appear after the judge's signature.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

CHAPTER 12 Reserved for Future Use

CHAPTER 13 MINOR'S COUNSEL

Rule 5.13.1

Minor's Counsel.

A. Qualifications Declaration. The failure by minor's counsel to timely file the required *Declaration of Counsel for a Child Regarding Qualifications* (form FL-322) may result in a forfeiture of fees and costs incurred prior to the filing date.

B. Review Hearings and Compensation.

1. The court will generally hold a review hearing every ninety days to consider both the continued appointment of minor's counsel and the parties' ability to pay.

2. Minor's counsel must submit a declaration and order for payment of fees on the *Declaration and Order for Payment of Attorney Fees and Costs of Minor's Counsel*, (form SDSC D-137) at every "ability to pay" and/or "review" hearing or no less than every ninety days if there is no pending review hearing. Failure to timely submit the fee declaration may result in the forfeiture of all billings older than one hundred and eighty days.

C. Complaint Procedure.

1. Written Complaint. A complaint regarding minor's counsel must be submitted in writing addressed to the supervising judge of the family law division, and contain all the following information:

a. Case name and number

b. Name of the judicial officer assigned to the case

c. Name of the minor's counsel

d. Specific facts, conduct and dates regarding the alleged inadequacies or behaviors which give rise to the complaint.

2. Complaint Basis. A complaint *cannot* be based on a party or an attorney's dissatisfaction or disagreement with a court order in which minor's counsel was involved.

3. Court Response. The supervising judge has the discretion to respond to the complaint directly, to consult with other judges, or to refer the complaint to the chairperson of the Minor's Counsel Subcommittee of the

San Diego County Bar Association. If referred to the chairperson, the chairperson will attempt to resolve the complaint informally.

4. Review Panel. If the complaint cannot be resolved informally, a review panel will be convened to investigate the complaint and provide a written report with recommendations to the supervising judge. The review panel will include the supervising judge or his/her designee and two volunteer attorneys. The attorneys will have no connection to the underlying case and at least one will be a qualified minor's counsel. Based on the report, the supervising judge will take appropriate action.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

CHAPTER 14 MISCELLANEOUS

Rule 5.14.1

Attorneys Seeking to be Relieved or Substituted as Attorney of Record. Absent a court order, no attorney may be relieved as counsel of record or substitute out of the case until all outstanding orders after hearing and judgments are signed by the court.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Renum. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013)

Rule 5.14.2

Elisors. A motion and proposed order for appointment of an elisor must designate "The Clerk of the Court or the Clerk's Designee" as the elisor and not a specific court employee. If the court grants the order, the party 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 party must arrange for a notary to be present when the elisor signs the document(s).

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2010; Rev. 1/1/2012; Rev. & Renum 1/1/2013)

Rule 5.14.3

Interpreters. Court-funded interpreters are not generally provided in family court. It is the party's obligation to determine if they must bring their own qualified interpreter.

(Adopted 1/1/2013; Rev. 1/1/2014)

Rule 5.14.4

Family Law Facilitator.

A. Authority. The services provided by the Family Law Facilitator (FLF) are pursuant to the Family Law Facilitator Act, Family Code section 10000 *et seq.* including the additional duties set forth in Family Code section 10005. The duties set forth in Family Code section 10005 are expanded to include that the FLF may prepare a formal order after hearing in cases where one or both of the parties is represented by counsel when directed by the court to do so. All orders prepared by the FLF at the request of the court will be submitted directly to the court unless otherwise ordered.

B. Facilitator Disqualification or Bias. If, at any time, a facilitator providing services deems himself or herself to be disqualified or biased, the facilitator will immediately stop providing services and arrange for a new facilitator to assist that litigant.

C. Complaint Procedure. Complaints against a facilitator must be submitted to the FLF manager on the *Family Law Facilitator Customer Complaint Form* (form SDSC FLF-008). The FLF manager, or his or her designee will investigate, evaluate and respond to the complaint in due course. A complaint must *not* be based on a party's dissatisfaction or disagreement with a court order.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Renum 1/1/2010; Rev. & Renum. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.14.5

Communication and Coordination Regarding Criminal Protective Orders, Domestic Violence Restraining Orders and Child Custody and Visitation Orders (California Rules of Court, rule 5.445). Refer to San Diego Superior Court Rules, Division I, Chapter 4, Rule 1.4.5.

(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008; Rev. & Renum. 1/1/2010; Renum. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.14.6

Appointment of Counsel Under Servicemembers Civil Relief Act (SCRA).

If the court reasonably believes a person is covered by the SCRA, the court will appoint counsel from the SCRA Pro Bono Panel Program for a limited scope representation.

(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008, Rev. 1/1/2009; Rev. & Renum. 1/1/2010; Rev. 1/1/2011; Rev. & Renum. 1/1/2013)

Rule 5.14.7

Reserved for Future Use

(Adopted 1/1/2012; Rev. & Renum. 1/1/2013; Rev. 1/1/2014; Del. 1/1/2015)