

**DIVISION V
FAMILY**

**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 Division”). They must be read and applied in conjunction with the applicable law, including federal and state statutes, and the California Rules of Court.

B. Violation of and/or failure to comply with these local court rules in accordance with the applicable California Rules of Court is good cause for imposing sanctions whether or not so specifically stated.
(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; Rev. 1/1/2016)

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
FLF	= Family Law Facilitator
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; Rev. 1/1/2016)

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 Website” address is <http://www.courts.ca.gov>.

3. Both websites contain extensive family law information, detailed self-help instructions, and forms, including all forms referenced in these rules.

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 Website 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; Rev. 1/1/2016)

Rule 5.1.5

Family Law Divisions and Venue.

A. Proper Division and Venue for Filing Action. Each family court location ("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 according to zip code.

B. The zip code list for filing divisions is [Zip Code List](#) (form ADM-254).

C. Matters involving DCSS are an exception to the zip code filing rule.

D. 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 Law Division.

(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; Rev. 1/1/2016)

Rule 5.1.6

Notice to Court and Sanctions.

A. Parties must immediately notify the judicial officer assigned to the case 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.

B. Notice to the judicial officer assigned to the case must be made through the judicial officer's name on the court's webform, [Notification of Continuance Request/Settlement](#).

C. If an SRL has no access to the internet, notice must be given to the assigned judicial officer's courtroom clerk by telephone.

D. Failure to notify the court in accordance with this rule is good cause for imposing sanctions.
(Adopted 1/1/2014; Rev. 1/1/2015; Rev. 1/1/2016)

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).

(Adopted 1/1/2010; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2015; Rev. 1/1/2016)

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 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, for any reason, before the case is called, the fee continues over to the next hearing.

3. If the matter is continued, for any reason, 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, in accordance with the court's mandatory procedures, for hearings at which the court does not provide an official court reporter.
(Adopted 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015; Rev. 1/1/2016)

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). (See *Family Center Case Resolution Process-General Information* (form SDSC D-080) for additional information)

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

1. The court will set an initial FRC or SFRC 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; Rev. 1/1/2016)

Rule 5.2.3

Alternative Dispute Resolution (ADR). Except in cases involving domestic violence, ADR is encouraged but voluntary.

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 must 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 an 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; Rev. 1/1/2016)

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 the California Rules of Court. Parties may use the optional form *Mandatory Settlement Conference Brief* (form SDSC D-241).

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. Failure to timely request a continuance, for any reason, other than the settlement of the entire case, is good cause for imposing sanctions.

E. Personal Appearance and Sanctions. All parties must personally appear at the MSC unless excused in advance by the court. Failure to personally appear at the MSC is good cause for imposing sanctions. (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; Rev. 1/1/2016)

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 <http://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. Moving papers must be filed with the court no later than 12:00 p.m. and served on all parties by 4:00 p.m. the court day before the hearing. The moving papers must include a completed form *Emergency Order (Ex Parte) Application and Order – Family Law* (form SDSC D-046).

C. Consideration of late filed and/or late served papers is at the court’s discretion.
(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; Rev. 1/1/2016)

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

Reissuance of Domestic Violence Temporary Restraining Order (DVTRO).

A. A request for a reissuance of a DVTRO and to set a new hearing date must be made either by:

1. Ex parte request prior to the scheduled hearing date for the permanent DVRO; or
2. In person on the day of the hearing when the case calendar is called.

B. All requests must be submitted on the mandatory form *Request to Continue Court Hearing and Reissue Temporary Restraining Order* (form DV-115) and the completed top portion of the form *Notice of New Hearing and Order on Reissuance* (form DV-116).

(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; Adopted 1/1/2016)

Rule 5.4.2

Residence Removal Orders. A protected party requesting to have the restrained party removed from the residence must prepare and submit for the court’s signature the *Order for Removal from Residence* (form SDSC D-072). If 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; Rev. 1/1/2016)

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 permanent DVRO 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 the California Law Enforcement Telecommunications System (CLETS).

(Adopted 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015; Rev. 1/1/2016)

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 by using the following procedure:

1. The RFO form must state “No Hearing Date” and “Preserve Retroactivity” where the date would otherwise be written.
2. The RFO and all supporting papers must be filed and promptly served.
3. The moving party must file the following documents within one hundred and eighty days of the filing of the original RFO:

- a. A new RFO form identical to the original but with the hearing date box left blank.
- b. A conformed copy of the first page of the originally filed RFO.
- c. Any additional declarations or exhibits supporting the RFO.

(1) For purposes of the California Rules of Court, the page limit for a party's moving declaration is the total of the declaration filed and served with the original "no hearing date" RFO and the declaration filed and served with the "hearing date" RFO.

(2) The moving party's "no hearing date" declaration may be a brief statement that the supporting declaration will be timely filed and served when the hearing date is set to preserve the party's declaration page limits.

- d. A proof of service showing service of the original RFO.

4. The original RFO will not be heard and the moving party will forfeit all rights to a retroactive order if the documents required in #3 above are not timely filed.

C. Hearing Time Limits.

- 1. All RFOs must indicate a time limit beneath the case number on the first page of the RFO form. "Time limit" means the time needed for the hearing.
- 2. Failure to indicate a time limit will result in a default hearing time limit of 20 minutes.
- 3. If the time limit is reached before the hearing is completed, the court may continue the matter to a future date.
- 4. Failure to adhere to the time limit constitutes good cause for imposing sanctions.
- 5. Refer to rule 5.1.8 for availability of and payment for court reporters at RFOs.

D. Hearing Assignments.

- 1. RFOs limited to 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. RFOs with limits of more than 40 minutes but less than two and a half hours may be heard by the judicial officer assigned to the case, another judicial officer in the family law department, or any trial department.
- 3. RFOs longer than two and a half hours may be heard by the judicial officer assigned to the case, another judicial officer in the family law department, or any trial department, and are subject to the California Rules of Court regarding long-cause hearings.

E. Reissuance of RFO.

- 1. If the RFO is not timely served, the moving party must apply for a reissuance of the RFO and any orders therein in accordance with the California Rules of Court.
- 2. The reissuance request must be made on the mandatory form *Application and Order for Reissuance of Request for Order and Temporary Emergency Orders* (form FL-306).
- 3. The reissuance order will include a new hearing date.

F. Continuance of RFO Hearing.

- 1. If an RFO has been timely served, either party may request a continuance of the hearing without a reissuance of the RFO.
- 2. An *unopposed* request for a continuance may be made by either party. The request must be made at least two court days before the hearing either by:
 - a. Filing a stipulation stating good cause and signed by all parties; or
 - b. Completing the online webform, *Notice of Continuance Request/Settlement*. Self-represented litigants without internet access must timely make their request to the courtroom clerk by telephone.
- 3. An *opposed* request for a continuance must be made by ex parte application at least two court days before the hearing. The requestor must show good cause for the continuance.
- 4. Continuances are disfavored and will be granted only for good cause shown.
- 5. All continuances may be subject to statutory fees under the Government Code.

G. 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.

H. 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.

I. Page Limits and Late Filed Papers. The court, in its discretion, may refuse to consider declarations which exceed the mandatory page limits and/or late filed papers.
(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; Rev. 1/1/2016)

Rule 5.5.2

Related RFO. A 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; Rev. 1/1/2016)

Rule 5.5.3

RFO Procedures.

A. 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

B. FCS Screening Form. When filing an RFO regarding custody or visitation, the moving party must also file the *Family Court Services Screening Form* (form SDSC FCS-046).

C. FCS Data Sheet. When filing an RFO regarding custody or visitation, each party must submit a *Family Court Services Data Sheet* (form SDSC FCS-002), directly to Family Court Services prior to their scheduled FCS appointment.

(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; Rev. 1/1/2016)

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 conformed 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; Rev. 1/1/2016)

CHAPTER 6 PARTIES' INCOME

Rule 5.6.1

Parties' Income.

A. Income and Expense Declaration (I&E). An *Income and Expense Declaration* (form FL-150) should be printed on green paper for ease of identification.

B. If an updated I&E is required pursuant to statute, rules, or court order, it must be filed with the court and served on all parties no later than five court days prior to the hearing.

C. Privileges and Protective Order. It is the obligation of the party asserting a privilege to obtain a protective order.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. & Renum. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2016)

CHAPTER 7 MASTER CALENDAR ASSIGNMENTS

Rule 5.7.1

Master Calendar Assignments and Procedure.

A. Assignments. Trials and RFO hearings with time limits over 40 minutes 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 a trial or RFO (ex: motions in limine), must be directed to the judicial officer assigned to hear the trial or RFO.

2. A request for a continuance of a trial or RFO and a request for reissuance of an RFO 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; Rev. 1/1/2016)

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 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; Rev. 1/1/2016)

CHAPTER 9 FAMILY SUPPORT DIVISION

Rule 5.9.1

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

A. Referred to as "FSD" matters, and

B. Case files are delineated and referred to as "DF" files.

Adopted 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015; Rev. 1/1/2016)

Rule 5.9.2

Pre-Hearing Mandatory Meet and Confer.

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

B. Parties granted a meet and confer by telephone must be available at the number listed on their telephone appearance request form for at least two hours prior to their hearing.

(Adopted 1/1/2005; 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; Rev. 1/1/2016)

Rule 5.9.3

Reserved for Future Use.

(Adopted 1/1/2008; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015; Del. 1/1/2016)

Rule 5.9.4

Reserved for Future Use.

(Adopted 1/1/2014; Rev. 1/1/2015; Del. 1/1/2016)

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. Only the moving party may request that an FCS session be cancelled. This request must be made by notifying FCS directly, no later than two court days before the session. 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. The parties may ask to reschedule an FCS session one time by notifying FCS directly of their joint agreement to reschedule, no later than two court days before the session. 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 is good cause to order monetary sanctions of up to \$1,500 pursuant to Code of Civil Procedure section 177.5.

D. Materials for FCS Review.

1. No documents may be submitted to FCS for the counselor's review absent either a court order or a specific request for the materials by the counselor.

2. A party seeking a court order that documents be submitted to FCS for review must prepare a Notice of Lodgment attaching copies of the proposed documents and must serve the Notice of Lodgment with attached documents on the other side prior to requesting the court order.

3. If the court issues an order granting a request that materials be submitted to FCS for review, the requesting party must provide FCS with a conformed copy of the court order and a copy of those documents as to which the court has granted the request.

4. When FCS requests documents from one of the parties, the responding party must provide copies of the submitted documents to the other side as soon as possible and no later than when the requested documents are submitted to the FCS counselor.

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; Rev. 1/1/2016)

Rule 5.10.2

Non-Confidentiality and Recommendation.

A. Non-Confidential. Unless 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, a 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 must 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; Rev. 1/1/2016)

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 a 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.

1. 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 is available on the California Court's website. 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.

2. 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.

3. The court does not maintain a list of qualified evaluators nor does it endorse any mental health professional.

4. 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 and California Rules of Court, rule 5.235

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. 1/1/2016)

Rule 5.10.6

Supervised Visitation Providers.

A. List. A list of visitation monitors is available through the San Diego Superior Court Program 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; Rev. 1/1/2016)

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 and Judgments.

A. Procedure. Failure to comply with the mandatory requirements for an order after hearing as set forth in the California Rules of Court is good cause to impose sanctions. It may also delay an attorney's ability to substitute out as attorney of record.

B. Format.

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

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

3. The order or judgment must 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.

C. Attachments or Exhibits.

1. 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.

2. All orders and judgments, whether contested or by stipulation, must include all applicable Judicial Council mandatory forms.

(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; Rev. 1/1/2016)

CHAPTER 12 Reserved for Future Use

Rule 5.12.1

Reserved for Future Use

(Del. 1/1/2013)

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 of Record.

A. Attorneys Seeking to be Relieved or Substitute Out. Absent a court order, no attorney may be relieved as attorney of record or substitute out until all outstanding proposed orders after hearing and judgments have been submitted to the court for filing.

B. Attorneys Seeking to Withdraw. No attorney may withdraw as attorney of record absent compliance with Code of Civil Procedure section 285.1.

C. Conflicts and Errors in Orders After Hearing and Judgments.

1. Any and all conflicts or disagreements on the form, content, or language of an order after hearing or judgment must be resolved in accordance with the California Rules of Court before submitting the proposed order after hearing or judgment.

2. If an order after hearing or judgment is returned for any errors and/or corrections, the attorney submitting the order after hearing or judgment must promptly correct all errors and resubmit the order or judgment to 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; Rev. 1/1/2016)

Rule 5.14.2

Appointment of Elisor.

A. Request for Order. A court order for the appointment of an elisor must be made by a request for order. The request for order must include at least one supporting declaration with a list of the exact documents the elisor is being asked to sign. The request must be accompanied by a proposed order.

B. Mandatory Information in Supporting Declaration(s). The supporting declaration(s) must include all of the following:

1. The title, date, page(s) and line(s) of the court order upon which the request to appoint an elisor is based.
2. A description of the good faith efforts to meet and confer to resolve the issue informally.
3. Specific facts establishing the necessity of the appointment of an elisor, including the reason, by a person with personal knowledge, why each document requires the elisor's signature.

C. Mandatory Language in Proposed Order. The proposed order must include all of the following:

1. Designate "The Clerk of the Court or Clerk's Designee" as the elisor. The order cannot state a name or title of a specific court employee.
2. State the party's name for whom the elisor is being appointed; the exact title or a sufficient description that accurately identifies each document to be signed; and the capacity the elisor will be signing each document.

D. Mandatory Additional Requirements.

1. Copies of all documents to be signed must be attached to the proposed order.
2. The original documents presented to the elisor for signing must be identical to the copies of the documents attached to the proposed order.

E. Order Granted.

1. If the court grants the order, the party must contact the business office to schedule an appointment for the actual signing of the documents.
 2. If the elisor is signing documents requiring notarization, the party must arrange for a notary public to be present when the elisor signs the documents.
- (Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2010; Rev. 1/1/2012; Rev. & Renum 1/1/2013; Rev. 1/1/2016)

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 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; Rev. 1/1/2016)

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)