

CHAPTER 12 MISCELLANEOUS

Rule 5.12.1

Child Support

A. Amount of Support. In any proceeding in which a party seeks to establish or modify child support, whether temporary or permanent, based on State or Federal Law, the amount will be determined pursuant to Family Code sections 4050 et seq.

B. Presumptions Used to Calculate Support Pursuant to Family Code section 4059, subdivision (a), the following rebuttable presumptions will be applied to determine the appropriate income tax filing status and number of withholding exemptions for a party. These presumptions may be rebutted by any relevant factors (such as the fact that the parties are likely to file joint returns for the current tax year) and any material generated by computer programs certified by the Judicial Council:

1. Single Status will be presumed if the party has less than 50 percent time share with the child of the relationship before the court and does not have any additional dependents. In such an event, the court will presume there is one exemption for tax withholding purposes.

2. Head of Household Status will be presumed if the party has not remarried and has greater than 50 percent time share with a child of the relationship before the court or has another dependent that qualifies the party for Head of Household status. The number of exemptions for tax withholding purposes will be one plus the number of other dependents the party is entitled to claim for income tax purposes.

3. Married Status will be presumed if the party is married to someone other than the other party. The total number of exemptions assigned for tax withholding purposes will be that to which the party is entitled for income tax purposes.

4. The court will apply the “standard deductions” unless sufficient evidence is presented to allow the court to determine appropriate itemized deductions.

5. Time sharing percentages will be calculated by assigning each parent the number of hours that the child is scheduled to be with that parent or to be under the care, custody or control of that parent. Unless rebutted by competent evidence, it will be assumed that the hours credited to a parent who is not the primary caretaker begin at the time the child is transferred to his or her care and do not extend beyond the end of his or her custodial or visitation time when the child is returned to the other parent or to the child’s school or day care provider. “Primary caretaker” refers to the parent who has custody of the child the majority of the time.

C. Income and Expense Declarations. In any proceeding in which a party is seeking child support, both parties must comply with Local Rule 5.6.2 regarding the filing of current Income and Expense Declarations.

D. Stipulations

1. Mandatory Language. In order to be accepted by the Court, any written stipulation for the payment of child support must include the following language: “The parties declare all of the following:

- a.** They are fully informed of their rights concerning child support;
- b.** The order is being agreed to without coercion or duress;
- c.** The agreement is in the best interests of the children involved;
- d.** The needs of the children will be adequately met by the stipulated amount; and

e. The right to support has not been assigned to any county pursuant to section 11477 of the Welfare and Institutions Code and/or Family Code section 17404, and no public assistance application is pending.”

2. Issuance of Wage Assignment Order. Absent a written waiver, a written stipulation for the payment of child support must include the following or similar language: “A wage assignment order will be issued for the payment of support ordered pursuant to this agreement.”

3. Stay of Service of Wage Assignment Order. The stipulation may provide for the stay of service of the wage assignment order by including the following or similar language: Pursuant to Family Code section 5260 et seq., the parties agree that they are specifically providing for an alternative arrangement for the payment of the support obligation set forth in this agreement that is acceptable to both parties. The parties further agree to stay the service of the wage assignment order until the stay is terminated pursuant to Family Code section 5261.”

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

Rule 5.12.2

Spousal Support Guideline

San Diego County has declined to adopt any specific spousal support guideline. The Court will consider all relevant factors in setting temporary spousal support including guideline calculations based upon any formulae adopted in other counties of this state.

(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.12.3

Attorneys Seeking to be Relieved as Attorney of Record

Absent a properly executed substitution of attorney form, attorneys will not be relieved as attorney of record unless a properly served notice of motion or OSC (using the applicable Judicial Council form) is before the court. Counsel must comply with California Rules of Court, rule 3.1362. The entry of a status-only judgment may not be a basis for withdrawal pursuant to Code of Civil Procedure section 285.1.

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

Rule 5.12.4

Bifurcation of Marital Status

A request to bifurcate the trial of the marital status from the remaining issues in the case will ordinarily be granted, and the requesting party will be permitted to present jurisdictional testimony to obtain a judgment of dissolution (status only). The motion to bifurcate must have attached a completed Judicial Council Form FL-315. The court order must comply with Family Code section 2337.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.12.5

Writs of Execution

Writs of execution on judgments or orders in a fixed amount, or based on judgments or orders providing for installment payments, do not require a judicial officer's signature or notice to the opposing party before presentation to the records division of the clerk's office for approval and issuance.

A supporting declaration must be submitted to the clerk. The declaration must allege, under penalty of perjury, the date and amount of the judgment or order, the date and amount of any payments thereon and the current, unpaid balance. For writs based on installment judgments or orders, the declaration must clearly set forth in columns the date and amount of each payment as it came due, the date and amount of any payments received and a running total of the amount owing. The supporting declaration for either type of judgment or order must also state that no other writ on this judgment or order is outstanding in the same county and that the arrearages have accrued within the past 10 years, unless the arrearages relate to child support, spousal support or family support in which case Family Code section 4502 will govern.

The writ may include the fee paid for issuance of the writ. If attorneys' fees are requested, a hearing is required, and a current Income and Expense Declaration must be filed with the application. If the moving party is requesting interest on the arrearages or costs not awarded in the original order, a declaration setting forth the calculation of the amount of interest on the arrearages or a cost bill must be filed.

(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.12.6

Elisors

Where one of the parties fails to execute a document necessary to carry out a court order, the Clerk of the Superior Court or the Clerk's authorized representative or designee may be appointed as an elisor to sign the document. An application for appointment of an elisor may be made ex parte. When applying for the appointment of an elisor, the application and proposed order must designate "The Clerk of the Court or the Clerk's Designee" as the elisor. The application must not set forth a specific court employee. The declaration supporting the application must include specific facts establishing the necessity for the appointment of an elisor.

If the Court grants the application for appointment of an elisor, the applicant must contact the business office to make an appointment for the actual signing of the document(s) to ensure the availability of an authorized elisor. If the elisor is signing documents requiring notarization, the applicant must arrange for a notary to be present when the elisor signs the document(s).

(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 5.12.7

Appointment of Counsel for Children

Pursuant to Family Code section 3150, subdivision (a), counsel may be appointed to represent the best interests of the children who are the subject of a custody or visitation dispute (“minor’s counsel”).

A. Persons Who May Request the Appointment. The persons who may request the appointment of minor’s counsel are specified in California Rules of Court, rule 5.240(b). The court may also appoint minor’s counsel on its own motion.

B. Guidelines for Appointment. When appointing minor’s counsel, the court will be guided by the considerations for appointment set forth in California Rules of Court, rule 5.240(a).

C. Qualifications for Appointment. The qualifications to serve as minor’s counsel are as set forth in California Rules of Court, rule 5.242. Before beginning work on the case and no later than 10 days after being appointed, minor’s counsel shall file Judicial Council Form FL-322 (Declaration of Counsel for a Child Regarding Qualifications), to establish that the qualifications to serve as minor’s counsel have been met.

D. Duties of the Parties Upon Appointment of Minors Counsel. Upon the appointment of minors counsel, the parties must provide minors counsel with copies of all substantive pleadings, declarations and exhibits filed or lodged in the case, the name, address and telephone number of each professional who has provided services to the children, and a list of the contentions of the parties bearing on custody and visitation. The court will order the parties to provide the information and sign releases to permit all professionals who are or have been involved with the parties and/or the child to provide information as requested by minors counsel.

E. Rights and Responsibilities of Appointed Minors Counsel. Upon appointment, minors counsel will be vested with all rights and duties set forth in Family Code sections 3151, 3151.5 and 3152, and California Rules of Court, rule 5.242.

1. Once counsel for a child has been appointed, he or she must be given notice of all future proceedings and the child must be treated as a party to the action. Accordingly, all written communications and documents regarding child custody/visitation and related issues must be copied to the other attorney and the child’s counsel. The child’s counsel must participate in any proceeding in which custody, visitation or related matters are at issue. The child’s counsel may participate in other proceedings if counsel believes the child’s best interests would be served by such participation.

2. Requests by minors counsel for the appointment of experts and/or investigators must be made in writing to the Supervising Family Judge prospectively. Requests will be determined on a case-by-case basis, including a determination of reasonable fees to be incurred. Requests for fees for experts and/or investigators retained without prior court approval will be denied.

F. SDSC Form D-137 (Declaration and Order for Payment of Fees and Costs). Minors counsel must file D-137 with the court quarterly, regardless of whether there has been any billing and/or case activity during the quarterly cycle. The form must be filed within two weeks after the end of each quarter. Fees incurred must be billed at 0.1 hour increments; bills with a minimum increment of .25 hour will not be processed.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.12.8

Appraisal of Closely Held Business Interests

A. Standard of Value for Business Appraisal. Businesses are appraised in Family Law proceedings to establish the value of the interest to the spouse who is awarded the business.

B. Procedure to be Followed in Appraisal Process. Unless the parties agree via written stipulation to appoint and compensate a joint appraiser, the identification of appraisers for each side will be subject to Code of Civil Procedure section 2034 et seq. The parties will notify the court at the initial CMC of the need to set dates for the identification of expert trial witnesses, including appraisers.

C. Appraisal Reporting Requirements. The appraisal must state the specific reasons that would justify the use of the appraisal method(s) chosen. The appraisal must state the risk and other factors specific to this business that were considered in selecting the capitalization rate and the nature of the impact each factor had on this rate. The appraiser must state the factors considered in arriving at any reasonable compensation estimate used in the appraisal, including compensation studies or other reference materials. The appraisal must state the factors considered in making any other adjustments, assumptions or estimates made in the appraisal process.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.12.9**Discretionary Dismissal**

Pursuant to Code of Civil Procedure section 583.410 and California Rules of Court, rule 3.1340, cases which a judgment has not been filed or which have not been brought to trial within three years after the action was commenced may be set for a hearing to dismiss the case. The filing of a judgment or a dismissal will vacate the hearing. If the Petitioner/Plaintiff does not appear at the hearing the case will be dismissed without prejudice, subject to the court's reservation of jurisdiction to set aside the dismissal nunc pro tunc. Cases involving DCSS will be reinstated administratively once service has been obtained. (Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.12.10**Family Law Facilitator's Duties**

The services provided by the Family Law Facilitator are pursuant to Family Code sections 10004 and 10005.

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

Rule 5.12.11**Communication Between Court Divisions**

The court will develop procedures to facilitate communication between divisions regarding information involving child custody and visitation orders and criminal court protective orders pursuant to California Rules of Court, rule 5.450.

(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008)

Rule 5.12.12**Appointment of Counsel Under Service Members Civil Relief Act**

If the Respondent or responding party is in the military service, the Service Members Civil Relief Act (the "Act") may apply. (50 U.S.C. Appen. § 501 et seq.)

A. If the service member has not made an appearance.

1. The court may not enter a default judgment until the court appoints an attorney to represent the Respondent. If the appointed attorney cannot locate the service member, the actions taken by the attorney will not bind the service member or waive any defenses.

2. The court must grant a minimum 90-day stay of the proceedings if there may be a defense to the proceeding which cannot be presented without the presence of the service member, or if after due diligence, appointed counsel has been unable to contact the service member to determine if there is a meritorious defense.

B. If the service member has received notice of the proceeding.

1. The Court must grant a minimum 90-day stay of the proceedings if the service member communicates that military duty requirements materially affect the service member's ability to appear, stating a date when the service member will be available, and if the service member's commanding officer communicates that the service member's current military duties prevent an appearance and leave is not authorized at the time of the hearing.

2. The service member may apply for an additional stay in the same manner as the original request. If the court refuses to grant the additional stay, the court must appoint counsel to represent the service member in the proceeding.

C. Procedure.

1. Appointments of counsel under the Act are pro bono.

2. Any individual holding a power of attorney from the service member may appear in court on his or her behalf to request a stay or additional stay.

3. A request for a stay does not constitute a general appearance for jurisdictional purposes or a waiver of substantive or procedural defenses.

(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008, Rev. 1/1/2009)