

CHAPTER 2 CASEFLOW MANAGEMENT

Rule 5.2.1

Direct Calendar Case Assignment

New cases are assigned randomly to a judicial officer for all purposes. All appearances in the case must be made before the assigned judicial officer unless otherwise ordered. The Petitioner/Plaintiff will receive a notice of case assignment when the petition/complaint is filed. The Petitioner/Plaintiff must serve the Respondent/Defendant with a copy of the notice of case assignment with the petition/complaint.

The time limits for filing a peremptory challenge are set forth in California Code of Civil Procedure section 170.6 and California Government Code section 68616, subdivision (i).

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

Rule 5.2.2

Alternative Dispute Resolution

The Family Code and the California Rules of Court encourage Alternative Dispute Resolution of Family Law Matters. The Family Law Court promotes and encourages the use of mediation, arbitration, Collaborative Family Law, a private judge (Temporary Judge) and, when appropriate, judicial case management as methods of Alternative Dispute Resolution in Family Law cases.

A. Mediation or Arbitration. Except in cases of domestic violence, attorneys are encouraged to provide their clients with (Form D-9) Alternative Dispute Resolution Informational Notice available at Family Law Business Offices or online at www.sdcourt.ca.gov, and to advise their clients of the availability of mediation and arbitration. Parties wishing to participate in mediation or arbitration must advise the court as soon as possible by submitting a written stipulation signed by both parties and their attorneys if the parties are represented. Where known, the name of the Mediator or Arbitrator selected by the parties must be included in the written stipulation.

B. Collaborative Family Law

1. A case will be designated a "Collaborative Family Law Case" if the parties have signed and filed with the court a written Collaborative Family Law stipulation which provides that:

- a.** The parties will engage in the full and candid informal exchange of all relevant information and documentation;
- b.** The collaborative attorneys are disqualified from continuing to represent the parties if the Collaborative Family Law process is terminated by either party;
- c.** The parties will jointly retain any experts needed to assist them in reaching a collaborative settlement;
- d.** All documents filed in the case will be submitted by the parties in propria persona;
- e.** No contested matters will be presented for determination by the court either by Motion or Order to Show Cause while the case is proceeding as a Collaborative Family Law Case; and
- f.** The words "**Collaborative Family Law Case**" will be included in the caption of every document filed with the court.

2. The essence of the Collaborative Family Law process is a series of intense settlement negotiations. Therefore, pursuant to the written Collaborative Family Law stipulation of the parties:

- a.** No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the Collaborative Family Law process will be admissible as evidence or subject to discovery, and disclosure of such will not be compelled in any non-criminal proceeding;
- b.** No writing that is prepared for the purpose of, in the course of, or pursuant to a Collaborative Family Law Case will be admissible or subject to discovery, and disclosure of the writing will not be compelled in any non-criminal proceeding; and
- c.** All communications, negotiations, and/or settlement discussions by and between the participants in a Collaborative Family Law Case will remain confidential.

3. In any Collaborative Family Law case, pursuant to the written Collaborative Family Law stipulation of the parties, the Court will:

- a.** Consider collaborative counsel to be advisory counsel and not attorneys "of record;"
- b.** Refuse to schedule any contested hearings, impose discovery deadlines, or enter any scheduling orders; and

c. Provide notice and an opportunity to be heard prior to any dismissal based on a failure to prosecute or delay.

4. The designation of a case as a Collaborative Family Law Case is completely voluntary and requires the agreement of all parties. The Collaborative Family Law Case designation will be removed by the court upon the written stipulation of the parties or upon the filing and service of a Termination Election indicating a party's desire to terminate the Collaborative Family Law process. Upon the filing of a Termination Election, the clerk shall schedule a Status Conference and notify the parties thereof.

C. Use of a Privately Compensated Temporary Judge (Temporary Judge). With the court's authorization, the parties may agree to use a Privately Compensated Temporary Judge ("Temporary Judge") to adjudicate their case. (Cal. Rules of Court, rules 2.830-2.834.)

1. Submission of Stipulation - Parties must submit the stipulation, "Notice of Posting", and proposed order for appointment of a Temporary Judge to the courtroom of the Supervising Family Judge (located in the Central Division). (See Stipulation and Order for Appointment of Privately Compensated Temporary Judge (form SDSC D-008) and Notice of Posting (form SDSC D-010) located at www.sdcourt.ca.gov.)

2. Representations by the Stipulating Parties - By submitting the stipulation and proposed order to the court, the stipulating parties and their attorneys represent that they are the only parties in the case and that no new parties will be added.

3. Application of Settlement Conference Rules to Proceedings before Temporary Judges - Notwithstanding rule 5.2.6(c), the case will be exempt from the Settlement Conference requirements upon the signing of the proposed order by the Supervising Family Judge. Until the order is signed, the case remains subject to the Settlement Conference rules, to all other applicable rules of this court, and all previously ordered deadlines, hearings, and other orders will remain in full force and effect.

4. Case Management Conference (CMC) and Status Reports - The Supervising Family Judge will set a CMC every six months at the time the stipulation and order is signed to be heard in the department of the Supervising Family Judge. Each month, the Temporary Judge must submit a report to the Supervising Family Judge giving the status of all matters under submission including a description of the matters taken under submission and the length of time under submission. (Judicial Administration Rule 10.603(c)(3).)

5. Use of Court Facilities, Court Personnel and Summoned Jurors

a. The use of court facilities, court personnel and summoned jurors for matters pending before a Temporary Judge are governed by rule 2.833 of the California Rules of Court.

b. Pursuant to California Rules of Court, rule 2.833(b), the testimony of a Family Court Services Counselor is subject to the approval of the Presiding Judge. The subpoenaing party must comply with Local Rule 5.2.8 and, in order to minimize disruption to court operations, set a date and time certain for the testimony.

6. Exhibits - All exhibits must be available for public inspection as they would be if the case were being tried by the court. Upon final determination of the case by the Temporary Judge, parties may stipulate to the return of the exhibits.

7. Filing of Original Papers and Orders of Temporary Judge

a. All original papers must be filed with the clerk prior to submission of a filed stamped conformed copy to the Temporary Judge.

b. Minute orders will not be accepted unless they are signed by the Temporary Judge. If the minute order format is used, the order must set forth the name, address, telephone number, and CSR number of any privately retained court reporter. If electronic reporting is used, the minute order must reflect this.

8. Notice of Pending Matter - Parties must file one original and one copy of the notice required by California Rules of Court, rule 2.833(a). (Notice of Posting (form SDSC D-010) available at www.sdcourt.ca.gov.) The Clerk of the Court will post the notice in the lobby of the Family Court location where the case was initiated.

9. Interested Persons Wishing to Attend a Hearing before a Temporary Judge - Interested persons wishing to attend a hearing or hearings on a matter heard by a Temporary Judge must serve a "request for special notice" with the parties to the action. A copy of the "request for special notice" along with a proof of service must be filed with the court. The interested persons must thereafter be given notice of all hearings in the matter pending before the Temporary Judge.

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

Rule 5.2.3

Filing Locations

Family Law cases must be filed in the division in which the Petitioner and/or the Respondent reside, or, in paternity cases, where the child resides. A listing of filing districts by zip code is available at: www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/FAMILYANDCHILDREN/WHERETOFILEFLH.TM. Original petitions must bear the proper filing location and be filed in the appropriate division. (Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.4

***Marvin* Actions**

Any family law related action not specifically authorized by the Family Code (e.g., *Marvin* complaints) initially must be filed as a separate proceeding in the Family Law Division. Upon the Court's own motion or if a timely request for a jury trial is made and granted, the assigned judicial officer will consult with the supervising judge to determine whether the matter will remain in the Family Law Division for trial. On the court's own motion or upon noticed motion, the action may be coordinated with a pending Family Law case pursuant to California Rules of Court, rule 3.350. (See also Local Rule 5.2.5.) (Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.2.5

Consolidated Cases

If the court consolidates a case, the case of broader jurisdiction or the lower case number if the cases are of equal jurisdiction will be designated as the lead case. The originals of all papers thereafter filed will be placed in the lead case file. (Cal. Rules of Court, rule 3.350.) Any hearing date in any case other than the lead case will be vacated or reset, and all future hearing dates will be noticed under the lead case number. (Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.2.6

Status Conference (STC)

In those cases where both Petitioner and Respondent are self-represented, the court will calendar a STC for the earlier of 150 days after the filing of the petition or 90 days after the filing of the response, unless the parties have requested an earlier date or the parties have filed an ADR or Reconciliation stipulation pursuant to sections C and D below or a judgment has been entered or a dismissal has been filed.

A. Unrepresented parties are required to meet with a staff attorney from the Family Law Facilitator's Office to discuss the status of their case and receive necessary assistance.

B. Scheduling and Notice. The court will provide notice of the STC to parties who have filed an appearance in the case. Each party may request one continuance by telephone up to one day before the scheduled conference date for a reasonable period of time. The continuance must be by stipulation if Respondent has appeared. Additional continuances may be requested ex parte with a declaration showing good cause. It is the obligation of all self-represented parties to keep the court apprised of their current mailing address. If a party changes his or her residence without promptly filing a Notice of Change of Address (available free of charge in the Business Office of the court), the notice of the STC provided to the party may be returned by the Postal Service as undeliverable. If this results in a failure to appear at the STC, the court will likely determine that the case has been abandoned and will dismiss it without prejudice as a sanction for non-compliance under Code of Civil Procedure section 575.2 without further notice.

C. Alternative Dispute Resolution (ADR). Parties who file a stipulation indicating they are participating in ADR will be exempt from the STC for a period of 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a STC.

D. Reconciliation. Parties who file a stipulation indicating they are attempting reconciliation will be exempt from the STC for a period of 12 months, however, if a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a STC.

E. Attendance. All parties to whom notice of the STC has been sent by the court must attend the STC. If a party fails to attend an initial STC, and the notice sent by the court has not been returned by the Postal Service as undeliverable, the court will re-notice a second and final STC within 90 days. If the noticed litigant(s) fail to attend the second STC, the court will likely determine that the case has been abandoned and will dismiss it without prejudice as a sanction for non-compliance under Code of Civil Procedure section 575.2 without further notice.

F. Reinstatement of Dismissed Cases. A party to a case dismissed pursuant to this Local Rule for failure to attend a STC may apply within 6 months of the dismissal to have the case reinstated under Code of Civil Procedure section 473, subdivision (b). Upon a showing of good cause, the court may reinstate the case upon such terms and conditions as the court deems just.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.7

Case Management Conference (CMC)

In those cases where one or both of the parties is represented by counsel, the court will calendar a CMC for the earlier of 150 days after the filing of the petition or 90 days after the filing of the response, unless the parties have requested an earlier date or the parties have filed an ADR or Reconciliation stipulation pursuant to sections C and D below.

A. Purpose. The purpose of the CMC is to discuss the timetable for the resolution of the case and for the court to make all appropriate orders.

B. Scheduling and Notice. The court will provide notice of the CMC to all parties who have entered an appearance in the case. Each party may request one continuance for a reasonable period of time by telephone up to one day before the scheduled conference date. The continuance must be by stipulation if Respondent has appeared.

C. Alternative Dispute Resolution (ADR). Parties who file a stipulation that they are participating in ADR will be exempt from the CMC for a period of up to 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a CMC.

D. Reconciliation. Parties who file a stipulation that they are attempting reconciliation will be exempt from the CMC for a period of up to 12 months. If a judgment or dismissal is not filed within 12 months of the filing of the petition, the court will proceed with a CMC.

E. Attendance. All Parties who have been noticed must be present at the CMC unless represented by counsel, in which case, counsel must appear in person or by telephone. The parties or counsel must be prepared to discuss the timetable for resolution of the case and be sufficiently familiar with the facts so that the court may make all appropriate orders. Counsel making a special appearance for counsel of record must have actual knowledge of the facts and procedural history of the case.

F. Orders. The court may make any of the following orders:

1. Set a date for the exchange of Final Declarations of Disclosure and the filing of proofs of service, consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.

2. Establish a plan for the completion of discovery, consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.

3. Set a date for the preliminary exchange of expert witness information, consistent with the applicable provisions of the Family Code and the Code of Civil Procedure.

4. Set an FCS date in cases where custody/visitation is at issue, and no evaluation or private mediation is pending or completed.

5. Address the selection of joint experts.

6. Address the appointment of a Special Master pursuant to the Code of Civil Procedure and the California Rules of Court.

7. Address any issues to be bifurcated.

8. Set a date for the exchange and filing with the court of the Family Law CMC Form which includes a list of settled issues and a list of issues to be litigated. (See www.sdcourt.ca.gov for the most recent version of this form under "Family Law" forms.)

9. Set an MSC.

10. Any other orders the court deems appropriate for the expeditious resolution of the case, including the setting of another CMC.

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

Rule 5.2.8

Mandatory Settlement Conference (MSC)

A. Calendaring. The court will set a Mandatory Settlement Conference in all Family Law cases unless specifically exempted. The MSC will be set at the CMC. Absent a court order allowing a party to appear by telephone, both parties and their counsel of record must personally attend the MSC. Counsel and all parties must be present for the calendar call. Due to the time settlement judges spend reading the briefs and preparing for the MSC, there will be NO continuances granted on the day of the MSC.

B. Settlement Conference Panel. The court will appoint a family law attorney pursuant to the qualifications set forth in California Rules of Court, rule 2.812, as a temporary judge to each case to assist the parties and trial counsel in reaching a settlement at the MSC. If available, two temporary judges will be assigned to more complex cases. The Supervising Judge and any judges not otherwise engaged may be available for additional assistance.

C. Meet and Confer Requirement. Counsel must meet and confer either in person or by telephone at least five court days before the MSC to resolve as many issues as possible and to identify those issues which remain unresolved. The results of this conference must be included in the settlement brief.

D. Settlement Briefs. Each party must prepare a settlement brief. Documents to be submitted to the settlement judge(s) with the settlement briefs include a current Final Declaration of Disclosure and, if support or fees are at issue, a current Income and Expense Declaration. Each party must provide a copy of each of these documents to opposing counsel and the settlement judges no later than 4:00 p.m. three court days preceding the MSC. The settlement briefs must be in the same format as the Mandatory Trial Statement (See form at www.sdcourt.ca.gov for the most recent version of this form under "Family Law" forms.) Failure to prepare and serve a Settlement Brief in accordance with these rules may subject a party or counsel to a sanction. Each party must state with specificity that party's proposal for the resolution of each contested issue and the reasons therefor.

E. Division of Furniture, Furnishings, and Personal Effects. If the parties have been unable to divide their furniture, furnishings, and personal effects by agreement, the parties must jointly prepare and submit a combined list of these items. The list must include a description of each item, and opposite that item each party's position concerning the value, character (separate or community), and the proposed disposition of the asset.

F. Epstein Credit Claims. If a party is claiming reimbursement for payment of community debts from separate funds following separation, that party must attach to the settlement brief all exhibits to be introduced into evidence on this issue at trial. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

G. Family Code Section 2640 Reimbursement Claims. A party claiming reimbursement pursuant to Family Code section 2640 must attach to the settlement brief any exhibits which that party intends to introduce at the time of trial to substantiate the claim(s). This includes canceled checks, bank statements, title documents, escrow documents, etc. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

H. Reference to Special Master. Failure to meet the requirements set forth in sections E, F, and above may result in those issues being referred to a Special Master pursuant to Code of Civil Procedure section 639. Any costs relating to proceedings before the Special Master will be borne by one or both of the parties as ordered by the court.

I. Valuation of Vehicles. Current *Kelley Blue Book* values, whether obtained from the current printed book or from the *Kelley Blue Book* on-line service (www.kbb.com), for all vehicles will be accepted into evidence without further foundation. There will be a rebuttable presumption that the value of the vehicle in question is midway between the "wholesale" and "retail" values, or the on-line "trade-in" and "retail" values, with appropriate adjustments for extras and mileage. Copies of the relevant *Kelley Blue Book* information for all vehicles whose value is in issue must be attached to both parties' settlement briefs. (Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.2.9

Telephonic Appearances in Family Court

A. Appearance by Telephone.

1. An attorney of record may appear by telephone in CMCs and Joint Requests for Continuances.

2. A self-represented party may appear by telephone in a Joint Request for Continuance.

3. Appearances by telephone at any other hearing may only be made with the prior permission of the court, for good cause shown. The court may permit an appearance by telephone at any time under such conditions and circumstances as the court deems appropriate. A request to make an appearance by telephone must be communicated to the department's calendar clerk and to all other self-represented parties or attorneys of record not less than two court days before the hearing.

B. Personal Appearance Otherwise Required. A personal appearance is required for all other hearings and proceedings.

C. Reporting. All hearings and proceedings involving an appearance by telephone shall be reported to the same extent and in the same manner as if the participants had appeared in person. If more

than one self-represented party or attorney of record is appearing telephonically in a given hearing or proceeding, each speaker shall identify himself or herself as often as necessary to maintain a good record of the hearing or proceeding.

D. Costs. Costs, if any, incurred in connection with a telephonic appearance shall be borne by the party or attorney making the appearance or equally by both/all sides where all parties in the action are appearing telephonically. However, a party who has obtained a fee waiver prior to a telephonic appearance shall not be required to pay costs, if any, incurred in connection with the telephonic appearance.

E. Advisement Regarding Appearance by Telephone. Any self-represented party or attorney of record who elects to make an appearance by telephone under this rule is hereby advised that:

1. A self-represented party or attorney of record has a right to appear personally at the hearing or proceeding, and by giving notice of an intention to appear by telephone waives that right.

2. A self-represented party or attorney of record appearing by telephone shall be prepared to provide information (e.g., driver's license number, Social Security number, State Bar number, etc.) sufficient to establish the identity of the self-represented party or attorney to the satisfaction of the court.

3. A self-represented party or attorney of record appearing by telephone will be unable to assess visually the demeanor of witnesses or other participants at the hearing and may be unable to examine visually documents and evidence presented at hearing. By electing to appear telephonically, the self-represented party or attorney of record acknowledges and agrees to these limitations.

(Adopted 1/1/2007; Rev. 1/1/2008)