The courts endorse the Attorney Code of Conduct adopted by the San Diego County Bar Association and hereby encourage all attorneys practicing before them to comply with these guidelines. The Code states:

GENERAL

A. Lawyers must observe all rules of law, including the California Rules of Professional Conduct and the State Bar Act, particularly Business and Professions Code section 6068.

B. Lawyers should honor their commitments.

C. Lawyers should honor and maintain the integrity of our system of justice.

D. Lawyers should not compromise their integrity for the sake of a client, case or cause.

E. Lawyers should conduct themselves in a professional manner.

F. Lawyers should be guided by a fundamental sense of fair play in all professional dealings.

DUTIES OWED IN PROCEEDINGS BEFORE THE COURT

A. Lawyers should always be courteous and respectful to the court.

B. Lawyers should always be candid with the court.

C. Lawyers and clients appearing in court should dress neatly and appropriately.

D. Lawyers should be on time.

E. Lawyers should be prepared for all court appearances.

F. Lawyers should attempt to resolve, by agreement, their differences relating to procedural and discovery matters.

G. Lawyers should discourage and decline to participate in litigation that is without merit or is designed primarily to harass or drain the financial resources of the opposing party.

H. Lawyers should avoid any communication, direct or indirect, about a pending case with a judge except as permitted by court rules or otherwise authorized by law.

I. Lawyers should refrain from impugning the integrity of the judicial system, its proceedings, or its members.

DUTIES OWED TO MEMBERS OF THE BAR

A. Lawyers must remember that conflicts with opposing counsel are professional and not personal; vigorous advocacy is not inconsistent with professional courtesy.

B. Lawyers should treat adverse witnesses, litigants and opposing counsel with common courtesy, good manners, fairness, and due consideration.

C. Lawyers should not be influenced by ill feelings or anger between clients in their conduct, attitude or demeanor toward opposing counsel.

D. Lawyers should conduct themselves in discovery proceedings as they would if a judicial officer were present.

E. Lawyers should not use discovery to harass the opposition or for any improper purpose.

F. Lawyers should not intentionally make any misrepresentation to an opponent.

G. Lawyers should not arbitrarily or unreasonably withhold consent to a just and reasonable request for cooperation or accommodation.

H. Lawyers should not attribute to an opponent a position not clearly taken by the opponent.

I. Letters intended to make a record should be scrupulously accurate.

J. Lawyers should not propose stipulations in the presence of the trier of fact unless previously agreed to by the opponent.

K. Lawyers should avoid interrupting an opponent's legal argument unless there is a legitimate basis for an appropriate objection.

L. Lawyers in court should address opposing lawyers through the court.

M. Lawyers should not seek sanctions against another lawyer to obtain a tactical advantage or for any other improper purpose.

N. Lawyers should inspire and encourage opposing counsel to conform to the standards in this code and to amicably resolve related disputes promptly, fairly and reasonably, with resort to the court for judicial relief only if necessary.

O. Lawyers should conduct themselves so that they may conclude each case with a handshake with the opposing lawyer.

DIVISION I
GENERAL AND ADMINISTRATIVE

CHAPTER 1
SCOPE OF RULES

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

Rule 1.1.1

Construction Citation and Effect of Rules

These rules are known and cited as the "San Diego Superior Court Rules" and are at all times supplementary to and subject to statutes, the California Rules of Court, and any rules adopted by the Judicial Council and are to be construed and applied so they do not conflict with such rules and statutes. These rules have no retroactive effect or application.

(Adopted 1/1/1998; Rev. 1/1/2000; Rev. 1/1/2004; Renum. 1/1/2006)

Rule 1.1.2

Construction and Application of Rules

These rules will be construed to secure the efficient administration of the business of the court and to promote and facilitate the administration of justice by the court. Division, section, rule, and paragraph headings do not affect the scope, meaning, or intent of the provisions of these rules. If any part of a rule is held invalid, all valid parts that are severable from the invalid parts remain in effect. If a rule is held invalid in one or more of its applications, the rule remains in effect in all valid applications that are severable from the invalid applications.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 1/1/2006)

Rule 1.1.3

Definition of Words

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

"Answer" includes response.

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

"Complaint" includes cross-complaint and petition.

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

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

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

"Defendant" includes cross-defendant and respondent.

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

"Plaintiff" includes cross-complainant and petitioner.

"Rule" refers to a rule of the San Diego Superior Court, unless otherwise indicated.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Rev. 1/1/2004; Renum. 1/1/2006)

Rule 1.1.4

New, Amended, Repealed Rules

Any rule may be amended or repealed, and new rules may be added by majority vote of the judges of the San Diego Superior Court.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 1/1/2006)

CHAPTER 2
GENERAL RULES

Rule 1.2.1

Policy Against Bias

It is the policy of the court to provide an environment free of all types of bias, prejudice, any kind of discrimination, or unfair practice. All judges, commissioners, referees, court officers, and court attachés must perform their duties in a manner calculated to prevent any such conduct, either by court personnel or by those

appearing in court in any capacity. This rule does not preclude legitimate comment or advocacy when race, gender, religion, national origin, disability, age, sexual orientation, social economy, or other similar factors are issues in court proceedings.

Any violation of this policy by any judge, commissioner, referee, court officer, or court attaché should be reported directly to the presiding judge or executive officer, or assistant executive officer of the division in which the alleged violation occurred. Any violation of this policy by persons appearing in court should be reported directly to the judicial officer before whom the proceedings were conducted.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 1.2.2

Departments, Divisions of the Court, and Venue

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

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

C. Except as set forth otherwise below or elsewhere provided in these rules, venue for all cases will be according to the zip codes found on the Court's website at http://www.sdcourt.ca.gov.

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

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

2. The return and filing of indictments;

3. False claims actions; and

4. If a case primarily involves construction defect claims, the case must be filed in the Central Division (Hall of Justice) through the court approved e-filing vendor, and will be assigned to a judge designated to hear construction defect cases.

E. Venue for CEQA Cases. Venue for CEQA (California Environmental Quality Act) cases is divided into two divisions, Central and North County. The East and South Divisions are included in the Central Division for purposes of CEQA cases only. Original petitions must show the proper venue and be filed in the appropriate court according to zip code as set forth in the zip code list accessed via the court's Internet site at: http://www.sdcourt.ca.gov, and in accordance with this rule.

F. Venue for Criminal Cases

1. Generally. Except as otherwise set forth in these rules, the People must file all criminal cases in the division in which the crime is alleged to have occurred, in accordance with the zip code list found on the court's web site at http://www.sdcourt.ca.gov. The People may make written application to the Supervising Judge of the division in which the case would be filed in accordance with the zip code list on the court's web site, setting forth good cause why that case should not be filed in accordance with this rule.

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

G. Venue for Adult Traffic/Minor Offense Cases. Except as set forth in Vehicle Code section 40502, subdivision (b), venue for traffic and minor offense cases charged against adults will be in accordance with the zip code list set forth on the court's web site (http://www.sdcourt.ca.gov), except that cases arising in the City of Coronado must be filed in the South County Division, and cases arising in the City of Del Mar must be filed in the North County Division.

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

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

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

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

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

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

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

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

J. Venue for Juvenile Dependency Cases. Juvenile dependency cases must be filed in the Central, North County, South County and East County Divisions in accordance with the zip code list that is as agreed upon by the Juvenile Court, Child Welfare Services, and County Counsel. The current list will be maintained by the Presiding Judge of the Juvenile Court.

K. Venue for Family, Domestic Violence and State Government Child Support Cases. Venue in family law, domestic violence and state government child support cases will be governed by rules 5.1.2 and 5.9.1 of Division 5 – Family Law, of these Local Rules.

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

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

The presiding judge, supervising judge, or designee (including any judge assigned for all purposes to a case), may order a transfer at any time without motion or hearing in his or her discretion for reasons stated in the order to transfer. Although transfer will ordinarily be ordered in civil matters at the time of the case management conference or in criminal matters at the time of arraignment, such transfer may be ordered at any time at the discretion of any of the judges set forth above. If the order to transfer is made without a hearing or at a time other than a hearing, any party will be entitled to be heard concerning such transfer if a request for hearing is made to the judge who ordered the transfer within ten days after notice of transfer.

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

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2002; Rev. 1/1/2003; Rev. 1/1/2004; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2013; Rev. 1/1/2015)

CHAPTER 3
EXECUTIVE OFFICER OF THE COURT

Rule 1.3.1

Appointment, Powers, and Duties

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

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

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

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

CHAPTER 4
MISCELLANEOUS PROVISIONS

Rule 1.4.1

Records

Nothing on file in any court may be taken out of the clerk's office or the civil business office unless it is going to a courtroom or chambers of a judge.
(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 1.4.2

Exhibits

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

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

1. Any type of explosive powder;

2. Explosive chemicals, toluene, ethane;

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

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

5. Canisters containing tear gas, mace;

6. Rags which have been soaked with flammable liquids;

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

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

9. Except in murder cases, foam-core boards or substantially similar material used for displaying exhibits such as, but not limited to, photographs, charts, drawings or maps.

B. No exhibits will be accepted by the exhibits custodian unless:

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

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

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

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

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

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

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

Only attorneys of record and court employees may view the exhibits; all other interested persons must obtain an order of the court. Viewing must take place in the presence of an exhibit custodian. Exhibits may not be altered or taken apart, except by court order. If the court issues an order permitting the copying of exhibits, all exhibits may be copied regardless of format (e.g., paper, photograph, DVD, CD, audiotape, videotape) unless copying of a specific exhibit, or use of a particular type of copying equipment, is prohibited by law or court order.

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

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

Unless specifically ordered by the court, all exhibits marked, identified and/or admitted into evidence in a civil case must be retrieved by the offering party at the conclusion of trial. The party introducing the exhibit is responsible for maintaining and preserving that exhibit pending any post-verdict proceedings and appeals, until there is a final disposition of the action or proceeding. All exhibit tags and other identifying markings or information concerning each exhibit must remain in place and not be disturbed. Each exhibit must remain intact and in the same

condition as during trial. In the event further proceedings of any court having jurisdiction of the matter require the presence of any exhibit, the party introducing the exhibit must promptly deliver the exhibit to the court, with notice to all parties.
(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2011; Rev. 1/1/2013)

Rule 1.4.3

Jury Lists

The jury master list for the Central Division will be comprised of those jurors residing in any of the filing districts.

The jury master list for the East, North and South County Division will be comprised of those jurors residing in the filing district as determined by zip code that corresponds with the division in which the juror lives. The zip code list may be accessed via the court's Internet site at http://www.sdcourt.ca.gov/pls/portal/docs/page/sdcourt/generalinformation/forms/adminforms/adm254.pdf.

The jury master list will be drawn so that all eligible persons have an equal chance of being selected for the court division in which they reside regardless of their place of residence. The Jury Commissioner or his or her designee may grant a temporary excuse from jury service to a prospective juror who has served on a grand or trial jury in any state or federal court during the previous thirty-six months. A prospective juror who was summoned and appeared for jury service in any state or federal court during the previous twelve months will be temporarily excused from jury service, upon request.
(Adopted 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 1.4.4

Appointment of Counsel Under the Servicemembers Civil Relief Act

If the plaintiff or defendant in an action is in the military service, the Servicemembers Civil Relief Act ("the Act") may apply. (50 U.S.C. Appen. § 501 et seq.)

A. If the defendant servicemember has not made an appearance:

1. The court may not enter a default judgment or an order of default on the merits unless the court appoints an attorney for the defendant. Default means any order, ruling or decree which is adverse to the servicemember's interest. Actions taken by the appointed attorney do not bind the servicemember or waive any defenses (including lack of jurisdiction) unless the servicemember has authorized action.

2. The court must grant a ninety-day or longer initial stay if there may be a defense to the proceeding which the servicemember cannot present without being present, or if after due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists.

3. After the ninety-day stay, the court must appoint an attorney to represent the servicemember in the action or proceeding if it refuses to grant an additional stay.

4. If the court does enter a default, plaintiff may be required to file a bond to indemnify the responding servicemember if the order is later set aside.

5. If the court enters a default judgment during a period of military service (or within sixty days after the end of service), the court must reopen the judgment to allow the servicemember to defend if:

a. The service member was materially affected due to military service in asserting a defense, and

b. The service member has a meritorious or legal defense to the action or some part of it, so long as the application is filed within ninety days after the end of military service.

B. If the plaintiff or defendant servicemember has received notice of the proceeding:

1. The court must grant a minimum ninety-day stay of the proceedings if the servicemember communicates that military duty requirements materially affect the servicemember's ability to appear, stating a date when the servicemember will be available, and if the servicemember's commanding officer communicates that the servicemember'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 servicemember in the proceeding. In cases where an attorney is appointed and the attorney is unable to locate and/or secure the servicemember's agreement to representation, actions by the attorney shall not waive any defense of the servicemember or otherwise bind the servicemember. Any actions taken by the attorney appointed pursuant to an order under the Act do not constitute an appearance for jurisdictional purposes and do not constitute a waiver of any substantive or procedural defense, including a defense relating to lack of personal jurisdiction.

C. Miscellaneous.

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

2. Any individual holding a power of attorney from the servicemember 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 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Renum. 1/1/2010; Rev. 1/1/2012)

Rule 1.4.5

Communication and Coordination Regarding Criminal Protective Orders and Restraining Orders (California Rules of Court, rule 5.445)

A. Definition and Purpose.

The definitions and purpose of this local rule are set forth in the California Rules of Court, rule 5.445.

B. Communication and Coordination.

1. The court will ensure that clerks assigned to departments that hear criminal protective and restraining orders and child custody and visitation orders, will receive training in the use of the San Diego County Sheriff's Restraining Order Index so that judicial officers have access to existing restraining orders issued in the court upon request.

2. Courts responsible for hearing criminal protective orders and courts issuing orders relating to child custody and visitation that involve the same parties are encouraged to communicate and share information in order to coordinate terms of the orders with a goal towards ensuring the safety of all parties involved in those proceedings. (Cal. Rules of Court, rule 5.445(c)(3), Pen. Code § 136.2(f).) This rule does not abrogate any requirement that a court considering modifying an order set the matter for hearing and share the information with the parties.

C. Notice by Parties to Court Handling Protective or Restraining Orders.

1. Duties of Self-Represented Parties and Attorneys Family Law, Dependency and Probate Guardianship Cases. All self-represented parties and attorneys must inform the judicial officer hearing any temporary or permanent domestic violence, family, civil harassment, juvenile, or elder abuse (i.e., "personal conduct") restraining order, or any hearing involving child custody and visitation of the existence of any temporary or permanent personal conduct restraining order, criminal protective order, or order regarding child custody and visitation, that involves any party to the case pending before that court. The parties must also provide the court with a copy of the restraining order and have a continuing duty to update the court regarding the status of such orders.

2. Prosecuting Attorney's Duty. The prosecuting attorney must investigate and disclose to the judicial officer hearing any criminal case in which a temporary or permanent criminal protective order is sought or issued, of the existence of any temporary or permanent domestic violence, family, civil harassment, juvenile or elder abuse (i.e., "personal conduct") restraining order that involves any party to the criminal case.

D. Modification of Criminal Protective Order. To request a modification of a criminal protective order, counsel or a litigant must file a Petition to Modify a Domestic Violence Protective Order (SDSC Form #CRM-248), which will then be calendared in a department whose caseload includes said hearings.

1. In Central, the petition must be filed in Room 1001 and the hearing will be set in Department 9.

2. In North County, the petition must be filed and the hearing scheduled in the Business Office, and the hearing will be set in Department 1 for misdemeanors and in Department 5 for felonies.

3. In South County, the petition must be filed in the Business Office and the hearing will be set in Department 12.

4. In East County, the petition must be filed in the Business Office and the hearing will be scheduled in a calendaring department.

(Adopted 1/1/2015)

DIVISION II
CIVIL

CHAPTER 1
GENERAL POLICIES AND PROCEDURES

Rule 2.1.1

Policy

It is the policy of the courts to manage all cases in accordance with the Standards of Judicial Administration, Appendix to the California Rules of Court. Nothing in the Appendix prevents the courts from issuing an exception order based on a specific finding that the interests of justice require a modification of the routine processes as prescribed. However, no procedure or deadline established by these rules or order of the court may be modified, extended or avoided by stipulation or agreement of the parties, except as permitted by Government Code section 68616, unless approved by the court in advance of the date sought to be altered.
(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 2.1.2

Filing and Service of Papers

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

A. Forms. Photocopies or computer generated duplicates of Judicial Council and court forms may be used only if the copies are clear, legible, easily readable, the same color as the original, and submitted on the same type of paper (e.g., NCR).

B. Conformed Copies. The court will conform only one copy of each original submitted for filing. If conformed copies are to be returned by mail or messenger, a stamped, self-addressed envelope or messenger slip must be included. Conformed copies that do not include a means of return will be retained in the pick-up box of the Civil Business Office and recycled after thirty days without pick-up.

C. Proofs of Service. Proofs of service must be signed by the person who actually accomplished the service. Where forms of service involve more than one component, declarations must be signed by each person completing a component. For example, substituted service of summons is often accomplished by one person doing the substituted service in the field while another completes the service by mailing the copies to the named defendant. In that case, declarations must be signed by each.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2015)

Rule 2.1.3

Case Assignment

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

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

A case initially assigned to an independent calendar judge for all purposes may be reassigned to the court's master calendar if, at the time of trial call, it is determined that although the case is ready for trial the assigned judge will not be trying the matter. The assigned judge or another judge, acting in his or her capacity as a "judge supervising the master calendar" (see Code Civ. Proc., § 170.6, subd. (a)(2)), will notify the parties of the name of the judge who has been assigned to try the case pursuant to the court's master calendar. Accordingly, if any of the parties intend to challenge the judge assigned for trial pursuant to Code of Civil Procedure section 170.6, subdivision (a)(2), they must do so at the time they are notified of the assignment.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2004; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2014)

Rule 2.1.4

Electronic Filing Program

The Superior Court of California, County of San Diego, has established an electronic filing program for civil cases that will allow for the electronic filing and imaging of documents through the court Civil Case Management

System (CCMS) V3 system in accordance with Code of Civil Procedure section 1010.6 and California Rules of Court, Rule 2.250, et seq. The electronic filing program applies to all cases assigned to an electronic filing department of the San Diego Superior Court. Upon filing a new action, you will be notified whether CCMS V3 electronic filing is available or required for your case, including the specific requirements and procedures for utilizing the electronic filing program. If a party is notified the case is subject to the requirements of the new CCMS V3 electronic filing program, the electronic filing requirements must be followed unless a party to the proceeding brings an ex parte application, in writing, to be excused from the program. Reference the General Order of the Presiding Department, "In Re Procedures Regarding Electronic Filing", and the Electronic Filing Requirements of the Superior Court for additional information.
(Adopted 1/1/2012; Rev.1/1/2014; Rev.1/1/2015)

Rule 2.1.5

Service of Complaint

Except for Collection Cases filed under California Rules of Court, rule 3.740, within sixty days of the filing of the complaint, all Defendants must be served and proofs of service filed showing service on the Defendants pursuant to California Rules of Court, rule 3.110. Any relief from the sixty-day requirement must be by written application as set forth in Rule 3.110(e). Compliance with this rule will be reviewed at the initial Case Management Conference and plaintiff may be sanctioned at that time for any failure to timely serve all defendants unless good cause is shown.

To qualify for other than personal service of a complaint and summons under Code of Civil Procedure section 415.20 et seq., reasonable diligence aimed at providing the defendant with actual notice must be established (e.g., personal service must be attempted on at least three different days at three different times of day. All attempts cannot be in the a.m. or all in the p.m. At least one of the three attempts must be before 8 a.m. or after 5:30 p.m., and at least one of the three attempts must be between the hours of 8 a.m. and 5:30 p.m. or on Saturday or Sunday at any time. If service is attempted at a business address, all three attempts may be made during the normal business hours of that business.).

If service by publication or some other method of service requiring leave of court cannot be completed within sixty days of the filing of the complaint, the last paragraph of the proposed order permitting such service must contain a blank space for the court to specify the date by which a proof of service must be filed.

The following must be served with the complaint:

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

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

C. A notice of the amount of punitive damages sought, if applicable;

D. A Notice of Case Management Conference (rule 2.1.9); and

E. ADR information materials (not applicable to collection cases).

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 2.1.6

Defendant's Appearance

Unless a special appearance is made, each defendant served must generally appear (as defined in Code Civ. Proc., § 1014) within the time required by the Code of Civil Procedure, or within fifteen days thereafter if the parties have stipulated to extend that time.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2013)

Rule 2.1.7

Request for Entry of Default

If a defendant does not make a general appearance within the time provided by statute, or makes an unsuccessful motion to quash, stay, or dismiss the action on the grounds of inconvenient forum or improper court, and thereafter fails to plead within the time provided by statute or in these rules, the plaintiff must request entry of default forthwith. Original and copy for conforming needs to be submitted.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 2.1.8

Default Judgment

Applications for default judgment should be submitted on declarations pursuant to Code of Civil Procedure section 585, subdivision (d) and include Judgment check list form SDSC CIV-198 or CIV-199. See the Civil forms area of the court's web site for the most recent version (http://www.sdcourt.ca.gov/pls/portal/url/page/sdcourt/generalinformation/forms/civilforms). The court will notify the parties if an oral prove-up hearing or additional documentary evidence is required. (See rule 2.5.11, Default Attorney Fee Schedule.)

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010)

Rule 2.1.9

Case Management Conference

The court expects the complaint and any cross-complaints will be served, all answers filed or defaults entered, and any challenges to the pleadings heard by the time of the initial Case Management Conference.

A. Scheduling and Notice. At the time a civil complaint (excluding unlawful detainers) is filed, the Clerk of the Court will provide plaintiff with a form "Notice of Case Management Conference" that will specify the date, time, and place of the initial Case Management Conference, which will be approximately one hundred and fifty days after the complaint is filed. At the time of service of the summons on any party, plaintiff must also serve a complete copy of said Notice of Case Management Conference upon that party; and plaintiff must also serve a copy of the Notice on plaintiffs in intervention or plaintiffs in interpleader, within ten (10) days of being served with a complaint in intervention or interpleader. All cross-complainants must serve a copy of the Notice of Case Management Conference upon each cross-defendant at the time the cross-complaint is served.

Case Management Conferences will also be set by the court in all cases transferred from another court, reclassified pursuant to the Code of Civil Procedure, or stayed as provided in rule 2.1.13, and in unlawful detainer actions in which the defendant has filed an answer and the court has been notified that possession is no longer in issue. Upon receipt of these cases, a notice of the change in status of the case, and/or, in all cases of a continuance of the Case Management Conference, the Clerk of the Court will, unless otherwise ordered, send plaintiff a form Notice of Case Management Conference and within ten (10) days of being served with the Notice plaintiff must serve all parties in the case with a copy of said Notice. Plaintiff shall be able to demonstrate compliance with this rule at the Case Management Conference.

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

This rule remains in effect after July 1, 2002, notwithstanding California Rules of Court, rule 3.20, by the authority granted in California Rules of Court, rule 3.722, to the effect that "[t]he court may provide by local rule for the time and manner of giving notice of the parties."

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

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

Parties completely familiar with the case and possessing authority to enter into stipulations must be present or appear pursuant to California Rules of Court, rule 3.670, at the Case Management Conference and must be fully prepared to discuss any issues addressed by a Case Management Statement and all other matters specified in the notice of hearing provided by the court. Any attorney making a special appearance for counsel of record must have actual knowledge of the facts and procedural history of the case. If a party is not fully prepared, the court may continue the hearing and impose sanctions against the offending party. If the hearing proceeds as scheduled, the orders made will not be subject to reconsideration due to a party's unfamiliarity with the case at the time of the hearing.

(Adopted 1/1/1998; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2013)

Rule 2.1.10

Reserved for Future Use

(Del. 1/1/2012)

Rule 2.1.11

Expert Witnesses

The court will propose deadlines for the exchange of information concerning expert witnesses and their discoverable reports and writings in accordance with Code of Civil Procedure sections 2034.260 and 2034.270 at the Case Management Conference. Although the demand requirement of that section may be dispensed with at this hearing, all other provisions of Code of Civil Procedure section 2034.210 et seq. will be strictly enforced by the court.

Excessive expert fees are limiting access to the court and undermining the quality of justice. It is the policy of the court that, in addition to the criteria required to be considered in deciding motions brought pursuant to Code of Civil Procedure section 2034.470, the court will consider the ordinary and customary fees charged by similar experts for similar services within the relevant community.

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

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

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001, Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010)

Rule 2.1.12

Reserved for Future Use

(Del. 1/1/2009)

Rule 2.1.13

Stays of Actions

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

Upon the expiration of the stay period, the court may extend the stay for good cause shown.

(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011)

Rule 2.1.14

Settlements, Taking Matters Off Calendar

If the parties have entered into a settlement agreement that resolves the case, the parties must notify the court as soon as possible.

A. Pending matters may be removed from the court calendar, in the discretion of the court, if counsel contacts the court by telephone and represents:

1. There is a signed settlement agreement; and
2. There are no unrepresented litigants; and
3. All un-served parties or parties not participating in the settlement will be dismissed.

B. Settlement agreements that provide for payment or performance more than ninety days after the agreement is signed must also provide for the immediate dismissal of the case with a reservation of jurisdiction to set aside the dismissal and enter judgment upon non-performance. Such agreements shall be presented to the court pursuant to Code of Civil Procedure section 664.6.

Trials may be taken off calendar by telephone if all of the above conditions are met and the dismissal of the entire action will be filed according to the terms of the settlement not more than ninety days from the trial date. Otherwise, the parties must appear ex parte.

(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2012)

Rule 2.1.15

Trial Readiness Conference

A trial readiness conference will generally be scheduled four weeks before the trial date. The parties must meet prior to the scheduled hearing and attempt to resolve the case, or, if that is not possible, limit issues for trial. If the case is not settled in its entirety, all parties must prepare and sign a joint trial readiness conference report in the format set forth in the joint trial readiness conference report available on the Civil forms area of the court's web site: http://www.sdcourt.ca.gov/pls/portal/url/page/sdcourt/generalinformation/forms/civilforms. Separate reports will not be accepted. Failure to disclose and identify all trial exhibits and witnesses intended to be called at trial and all other items required by the report may, in the court's discretion, result in exclusion or restriction of use at trial. The completed report must be presented to the judge at the scheduled conference. No part of the joint trial readiness conference report is to be received into evidence against any party in later proceedings.

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

During the trial readiness conference, the court will review with counsel and sign or issue the advance trial review order setting forth specific trial preparation requirements of the trial department.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 2.1.16

Jury Instructions

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

(Adopted 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.1.17

Juror Questionnaire

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

(Adopted 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.1.18

Motions in Limine

Motions in limine must be limited in scope in accordance with *Clemens v. American Warranty Corp.* (1978) 193 Cal.App.3d 444, 451; *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 670-671; and *Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1593-1595. Unless otherwise directed by the court, counsel must file and serve motions in limine and opposition thereto five court days and two court days respectively prior to trial call. The following motions in limine will be deemed granted at the time of the trial readiness conference if applicable:

A. Motion excluding evidence of collateral source;

B. Motion excluding evidence of or mention of insurance coverage;

C. Motion excluding experts not designated pursuant to Code of Civil Procedure section 2034.300 and

D. Motion excluding offers to settle and/or settlement discussions.

Written motions should not be submitted on the above issues.

(Adopted 1/1/2000; Renum. 7/1/2001, Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2012)

Rule 2.1.19

Law and Motion Procedures

A. Calendaring Hearing

Any party, or attorney for a party, who desires to have any demurrer, motion, or order to show cause set for hearing must contact the calendar clerk for the judge assigned to the case to reserve a hearing date. Failure to reserve a date for hearing will result in the demurrer, motion, or order to show cause hearing not being heard. The demurrer, motion or order to show cause should be ready to be filed when the reservation is obtained. Failure to file a Motion for Summary Judgment and/or Summary Adjudication after reserving a date with the calendar clerk, or failing to call the independent calendar clerk to take the hearing off calendar no later than two days after the last date

to serve moving papers pursuant to Code of Civil Procedure, section 437c, shall be deemed to be a waste of judicial resources and a violation of local rules. The court may set an OSC re Imposition of Monetary Sanctions under Code of Civil Procedure, section 177.5.

B. Tentative Ruling Policy

Prior to the hearing, any civil department may issue a tentative ruling in a law and motion matter, in the sole discretion of the assigned judge. The tentative ruling will be issued in conformance with the tentative ruling procedures set forth in California Rules of Court, rule 3.1308. If a tentative ruling is issued the day before the date set for hearing, this court follows rule 3.1308 and no notice of intent to appear is required to appear for argument. The tentative ruling may direct the parties to appear for oral argument and may specify the issues on which the court wishes the parties to provide further argument. The tentative ruling may be obtained through the court's website at http://www.sdcourt.ca.gov and clicking on the tentative ruling link listed under the civil tab, or by telephoning the independent calendar clerk for the assigned department. This rule does not preclude posting a tentative ruling the day of the hearing pursuant to rule 3.1308(b), nor does it mandate a tentative ruling be issued on all law and motion matters.

(Rev. 7/1/2004; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 2.1.20

Taking Motions Off Calendar

The moving party shall promptly call the independent calendar clerk if a matter will not be heard on the scheduled date. On demurrers, motions to strike and motions for judgment on the pleadings, if an amended pleading is filed in accordance with the Code of Civil Procedure, section 472 or pursuant to leave of court prior to the hearing date, the party filing the amended pleading shall call the independent calendar clerk to notify the court that an amended pleading has been filed. Failure to call the court shall be deemed a violation of the Local Rules, and may give rise to an OSC re Sanctions under Code of Civil Procedure, section 177.5.

(Adopted 1/1/2015)

CHAPTER 2
SETTLEMENT CONFERENCE

Rule 2.2.1

Voluntary Settlement Conferences

Settlement conferences may be requested if the parties represent that:

A. Settlement negotiations between the parties have been pursued, demands and offers have been exchanged, and resolution has failed.

B. A judicially supervised settlement conference presents a substantial opportunity for settlement; and

C. The case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required.

If a request for a voluntary settlement conference has been accepted by the court and a settlement conference has been scheduled, all parties must comply with the provisions of rules 2.2.2, 2.2.3, and 2.2.4 unless otherwise ordered.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2013)

Rule 2.2.2

Mandatory Appearance

A. The provisions of rules 2.2.2, 2.2.3, and 2.2.4 apply to both voluntary and mandatory settlement conferences unless otherwise ordered.

B. All parties, attorneys of record, and others whose authority is required to fully settle the case (including but not limited to insurance adjusters and right-of-way agents) must attend the settlement conference in person unless excused or permitted to attend by telephone as provided in section D below. If a party is not a natural person, a representative of that party with authority to resolve the dispute or, in the case of a governmental entity that requires an agreement to be approved by an elected official or a legislative body, a representative with authority to recommend such agreement, must attend the settlement conference in person, unless excused or permitted to attend by telephone as provided below.

C. If any party is insured under a policy of insurance that provides or may provide coverage for a claim that is a subject of this action, a representative of the insurer with authority to settle or recommend settlement of the claim

must attend the settlement conference in person, unless excused or permitted to attend by telephone as provided in section D below. The party must notify each insurance carrier of the date, time and place of the settlement conference and of the carrier's duty to attend with full settlement authority.

D. A party or participant may submit to the court a written request to be excused from personal attendance at a settlement conference provided that the party or participant will be available by telephone for the duration of the settlement conference. Such requests must be served on all parties at least five court days prior to the settlement conference. If the settlement conference is to be heard by a temporary judge, such requests must be submitted to the independent calendar department to which the case is assigned.

E. If a party is excused from personal attendance at the settlement conference, counsel appearing on behalf of the party must be completely familiar with the case and must have authority to make an initial demand or counteroffer in a specific amount.

F. If a party or participant fails to appear, is not fully prepared, or fails to participate in good faith, the court may continue the hearing and/or impose sanctions against the offending party or counsel. If the settlement conference proceeds as scheduled, the orders made will not be subject to reconsideration due to counsel's unfamiliarity with the case at the time of the hearing.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2013)

Rule 2.2.3

Settlement Statements/Briefs

Written statements of the position of each party must be lodged with the settlement conference judge and served on other parties five court days prior to the settlement conference, unless otherwise ordered. If service is by mail, all papers must be mailed not less than ten days before the court date. Settlement conference statements do not become a part of the file and will be discarded. If the settlement conference is to be heard by a temporary judge, settlement conference statements must be submitted to the independent calendar department to which the case is assigned.

Unless otherwise instructed by the court, settlement conference statements must not exceed five pages and must include the necessary information to concisely support issues of liability and damages; including a settlement demand and offer, as well as an itemization of special and general damages, and the last offer.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2013)

Rule 2.2.4

Notifications of Settlement or Continuances

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

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

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

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2012)

CHAPTER 3
ALTERNATIVE DISPUTE RESOLUTION (ADR)

ADR Policy Statement. It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e., the court's mediation and arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

Rule 2.3.1

Judicial Arbitration

A. Submission to Arbitration. The court elects to come within the provisions of Code of Civil Procedure section 1141.11 et seq. regarding judicial arbitration of all at-issue civil actions which are not exempt. All actions submitted to arbitration pursuant to these sections will be subject to the provisions contained therein, as well as rules of procedure set forth in the California Rules of Court, rule 3.810 et seq., and in these rules.

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

After a case is "at issue," the court may order it to judicial arbitration. Counsel must be prepared to discuss whether the arbitration will be binding or non-binding, and to select an arbitrator. Dismissal of all unserved, non-appearing, and fictitiously named parties will also be addressed. The court will propose dates to exchange information concerning expert witnesses and their discoverable reports and writings in accordance with rule 2.3.3. Although the demand requirement under Code of Civil Procedure section 2034.210, et seq. may be dispensed with at this hearing, all other provisions of section 2034.210 et seq. and rule 2.3.3 will be strictly enforced.

C. Exemption from Arbitration. Matters which are exempt from judicial arbitration are set forth in the California Rules of Court, rule 3.811, and Code of Civil Procedure section 1141.11.

Unless otherwise ordered by the court, the following categories of actions are also exempt from arbitration, as provided by the California Rules of Court, rule 3.811, and will be set directly for trial:

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

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

3. Collection Cases as defined by California Rules of Court, rule 3.740.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2004; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010)

Rule 2.3.2

Arbitration Procedures

Arbitration rules of procedure are set forth in the California Rules of Court, rule 3.810 et seq., and in these rules.

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

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

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

1. The arbitrator must administer the oath;

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

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

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

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

c. An arbitration brief consisting of:

(1) A concise statement of facts;

(2) Legal and factual contentions of each party;

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

(4) Copies of medical reports and bills;

(5) Copies of appraisals/repair estimates; and

(6) Copies of repair bills.

d. If the arbitration award is not filed within ten days after the arbitration hearing, or an extension of twenty days is not granted pursuant to the California Rules of Court, rule 3.825(b), either party may notify the arbitration department. The arbitrator will then be requested to submit the award or appear before the judge who ordered the case to judicial arbitration to show cause why rule 3.825(b) of the California Rules of Court was not satisfied.

(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 2.3.3

Exchange of Experts After Arbitration

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

Pursuant to the stipulation of the parties at the Case Management Conference, exchange of experts after arbitration must be made according to the following schedule:

A. Initial Exchange. Within fifteen days of the date of any method of service of a trial de novo request, pursuant to Code of Civil Procedure sections 2034.260 and 2034.270 each party must personally serve on all other parties a designation of expert witnesses who will be relied upon at the trial de novo, along with all discoverable reports and writings, if any, of those experts. However, service by mail of the above designation is permitted if made within ten days of service of the trial de novo request. Parties will be permitted to designate only those experts they in fact intend to call at trial. It is the policy of the courts that parties are limited to one expert per side per field of expertise, pursuant to Evidence Code section 723 and rule 2.1.11, absent a court order to the contrary.

B. Supplemental Exchange. Any supplemental designation of experts must be personally served within five days of any personal service of the opponent's initial list, or within ten days of any mail service of the opponent's initial list.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 2.3.4

Request for Trial De Novo

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

Withdrawal of Trial de Novo Requests. If a party has requested trial de novo, the request may be withdrawn by a written stipulation, signed by counsel for all parties appearing in the case, that the award may be ordered as a judgment.

(Adopted 1/1/1998; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 2.3.5

Prohibition Against Post Arbitration Discovery

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

(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 2.3.6

Monetary Sanctions

In addition to the provisions of the California Rules of Court, rule 3.829, regarding notification of settlement, failure of the parties to notify the arbitrator and the court of a continuance or their inability to proceed at least two court days prior to the time set for the arbitration hearing may, upon written notice given by the court, result in an order to show cause why the parties should not pay $150 or other sanctions.

(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 2.3.7

Civil Mediation Program

All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the Civil Mediation Program.

A. Stipulation to Mediation. At any time prior to the Case Management Conference, parties may stipulate to mediation. The stipulation must include the name, address and phone number of the mediator and one alternate mediator, or parties may utilize the Stipulation to Use ADR (SDSC Form CIV-359). If the stipulation is granted, Assignment of Mediator notices will be issued.

B. Case Management Conference. If parties do not stipulate to mediation prior to the Case Management Conference, the judge will encourage all parties to consider mediation or other ADR options. If the court determines a mediator would assist in the resolution of a case, parties will be asked to stipulate to mediation which will be reflected on the Case Management Conference's Minute Order.

C. Panel of Mediators. Parties may select any mediator to mediate their matter. The court maintains a panel of court-approved mediators who have satisfied training and experience requirements established by the court and who must adhere to minimum standards of practice pursuant to California Rules of Court, rule 3.850 et seq., and other program policies and procedures.

D. Payment of Mediators. Mediators must be compensated directly by the parties. The fees and expenses of mediators must be shared equally between the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to charge $150.00 per hour for each of the first two hours in a limited civil action, or $250.00 per hour for each of the first two hours in an unlimited civil action, and their regular hourly rate thereafter for court-referred mediation.

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

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

E. Selection of Mediators. Parties are encouraged to make their selection at or before the time of the Case Management Conference. Parties may utilize the on-line mediator search and submit their Mediator Selection Form (SDSC CIV-005) via e-mail within five court days of the Case Management Conference. If they are unable to make a selection, the case may be referred back to the court for the setting of a future hearing. If parties agree on a mediator and alternate and notify the court before the hearing, the hearing will be vacated.

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

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

(Adopted 2/28/2000; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2013; Rev. 1/1/2014)

Rule 2.3.8

Mediator Complaint Procedure

Pursuant to California Rules of Court, rule 3.865 et seq., the San Diego Superior Court maintains the following Mediator Complaint Procedure:

A. All grievances, complaints or issues concerning the conduct of a mediator on the San Diego Superior Court's Civil Mediation Panel must be referred initially to the ADR Administrator, who has been designated as the Complaint Coordinator. Contact information for the ADR Administrator can be obtained by calling the court's Mediation Program Office at (619) 450-7300 and/or by accessing the court's ADR webpage at the following link: http://www.sdcourt.ca.gov/adr.

B. After sending the complainant a written acknowledgment that the court has received the complaint, the ADR Administrator will conduct a preliminary review of the complaint to determine whether or not the complaint can be resolved informally and closed. If the complaint is resolved informally or closed after preliminary review, the ADR

Administrator will send the complainant written notification that the complaint has been informally resolved and/or closed.

C. If the ADR Administrator initiates a complaint against a Mediator on the Court's Panel, the complaint will be referred to the Chair(s) of the Bench ADR Committee, who will determine if the complaint can be summarily resolved and closed or if the complaint must be further investigated.

D. If it is determined that further investigation is warranted, the ADR Administrator will send the mediator written notice of the complaint, and the mediator will have twenty (20) days from the mailing of said notice to provide the court with a written response. The Chair(s) of the ADR Committee will designate an individual who has experience as a mediator and who is familiar with the rules of conduct for mediators set forth in California Rules of Court, rule 3.850 et seq., or will establish a complaint committee that has at least one such individual as a member, to conduct the investigation and prepare a written recommendation concerning court action on the complaint. The Chair(s) of the ADR Committee and/or their designee may determine that the mediator will be removed from the active/eligible list pending the final decision on the complaint.

E. The final decision on the complaint will be made by the Presiding Judge or his or her designee, who did not conduct the investigation, and the final decision will be communicated to both the complainant and the mediator in writing. The final decision-maker may take one or more of the following action(s): direct that no action be taken on the complaint; counsel, admonish, or reprimand the mediator; impose additional training requirements as a condition of the mediator remaining on the court's panel; temporarily suspend the mediator from the court's panel or otherwise temporarily prohibit the mediator from receiving future mediation referrals from the court; and/or permanently remove the mediator from the court's panel or otherwise permanently prohibit the mediator from receiving future mediation referrals from the court.

The final decision is in the sole discretion of the final decision-maker and is not subject to any subsequent review or appeal. Ultimately, mediators on the court's Civil Mediation Panel may be temporarily or permanently removed from the panel at any time at the sole discretion of the court without cause.

F. All court communications and/or proceedings relative to complaints against mediators on the court's Civil Mediation Panel will occur in private and be kept confidential except as required by law and except for authorized disclosures as follows: after the decision on a complaint against a mediator has been made, the Presiding Judge or his or her designee may authorize the disclosure of information or records concerning the complaint proceeding that do not reveal any mediation communications. The disclosures that may be authorized include the name of the mediator against whom action is being taken, the action taken and the general basis on which the action was taken.

G. A person who has participated in a complaint proceeding or otherwise received information that is publicly disclosed will not subsequently hear or determine any contested issue of law, fact, or procedure concerning the dispute that was the subject of the underlying mediation or any other dispute that arises from the mediation as a judge, arbitrator, referee, or juror, or in any other adjudicative capacity, in any court action or proceeding.
(Adopted 1/1/2010; Rev. 1/1/2012)

CHAPTER 4
SPECIAL CASE CATEGORIES

Rule 2.4.1

Judgment Debtor Examination Proceedings

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

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

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

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

D. Nonappearance of Party to be Examined. If the party to be examined fails to appear at the time and place set for examination, a warrant of attachment may issue requiring attendance forthwith, pursuant to the contempt procedure set forth in Code of Civil Procedure section 1209, et seq., or a warrant of arrest may issue requiring the debtor's attendance following the failure to appear notice procedure set forth in Code of Civil Procedure section 1993, et seq. A warrant will not be issued for the attachment or arrest of a person who failed to appear in court as directed in such order if the order, with the return of service thereon, has not been filed with the clerk of the court within the time specified herein, unless so ordered.

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

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 2.4.2

Unlawful Detainer Proceedings

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

1. The case has been set for trial;

2. The case has been designated as a general civil matter because possession is no longer in issue (Civ. Code, § 1952.3) and the case is not entitled to precedence (Code Civ. Proc., § 1179a);

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

4. A conditional settlement has been filed.

There will be no Case Management Conferences in unlawful detainer cases, unless re-designated a general civil matter or unless specifically set by order of the court

B. Trial Setting. In unlimited unlawful detainer cases, it is the responsibility of the parties to notify the court that they are entitled to an expedited trial. In limited unlawful detainer cases, there is a mandatory Judicial Council form that must be filled out and submitted to request that the case be set for trial. In addition to filling out the front of the mandatory form, the proof of service on the reverse side of the form must be filled out and submitted after the opposing party has been served with the request or counter-request to set the case for trial. A counter-request must be filed within five days of the filing of the trial request. The mandatory form to be used for a request or counter-request to set a case for trial is Judicial Council form number UD-150, and may be obtained by going to the Judicial Council website at http://www.courts.ca.gov.

C. Judgment for Money Damages after Judgment for Possession of the Premises. When the plaintiff obtains a default judgment for possession of the premises, the case may be calendared for further hearing. In the alternative, a plaintiff may file an application, default checklist SDSC CIV 200 (see forms section of http://www.sdcourt.ca.gov), along with the necessary declarations for a default money judgment including attorney fees and costs or may file a dismissal without prejudice as to the money damages. After restitution of possession of the premises to plaintiff, plaintiff's failure to seek a money judgment or to file a dismissal may result in the court calendaring a hearing for the plaintiff to show cause why the case should not be dismissed.

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

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

2. If the defendant has filed an answer, the case will be set for a Case Management Conference.

(Adopted 1/1/1998; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2004; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010)

Rule 2.4.3

Uninsured/Underinsured Motorist Actions

If a complaint includes an uninsured/underinsured motorist claim as defined under section 68609.5 of the Government Code and section 11580.2 of the Insurance Code, plaintiff must file a declaration stating the case is an uninsured/underinsured motorist case, the name of insurance carrier, and amount of coverage. The court will

suspend the time requirements and the action will be stayed for a period of one hundred and eighty days. Any party who claims to be exempt from the stay and who desires to further prosecute the action must object by noticed motion in the stayed action. Upon the expiration of the one hundred and eighty-day stay period, the action will be dismissed unless, upon noticed motion, good cause is shown to the contrary. If such motion is granted, the stay may be extended, but such an extension will not exceed one hundred and eighty days.

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

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2013)

Rule 2.4.4

Small Claims

To facilitate compliance with the Standards of Judicial Administration relating to case disposition time standards and delay reduction, a notice will be given to the plaintiff by the clerk at the time of filing a small claims case advising the following: (1) Failure to appear at the scheduled hearing may result in the case being dismissed; (2) If the defendant(s) is (are) not served by the date of trial and the plaintiff elects not to reset the matter, the case will be dismissed without prejudice when the case is called. Requests for resetting may be made at the time of trial or before. If the case is dismissed on the date of trial for lack of service and resetting, and the plaintiff wishes to further litigate the matter, the case must be refiled and a new filing fee paid.

A. Filings

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

Central Division: All filings pertaining to small claims actions must be filed at the Hall of Justice, Central Facility, 330 West Broadway, San Diego, CA 92101. Small claims trials are heard at this facility. Small Claims cases that fall within the jurisdiction of the East and South Divisions of the court will be heard in the Central Division.

The appropriate division is determined by the zip code as set forth on the Superior Court form ADM-254 zip code list (see Forms/Administrative section of www.sdcourt.ca.gov).

B. Reassignment. If the parties do not stipulate to the attorney sitting as a temporary judge to which their case is assigned, the matter will be set for hearing before another temporary judge, commissioner, or judge, when available. If the parties do not stipulate to allowing any attorney to hear the case as a temporary judge, the matter will be set for hearing before a commissioner or judge, when available.

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

D. Appeal Procedures. In addition to the requirements of the Code of Civil Procedure and the California Rules of Court, the following procedure applies in small claims appeals: Parties are not required to file trial briefs in small claims appeals. However, if a party feels a brief is necessary, it must be filed at least five court days prior to the hearing and must not exceed five pages in length.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 2.4.4.1

Copies of Attachments – Small Claims Filings

When a party files with the court a document or form, which the court is required to copy and serve, the document or form is accompanied by a/an attachment(s), the filing party must provide an adequate number of copies of the attachment(s) sufficient to allow the court to serve a copy with the form or document on all parties to the action.

(Adopted 1/1/2013)

Rule 2.4.5

Eminent Domain

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

B. Settlement Conference. A settlement conference on the issue of compensation will be set fifteen days before the trial date if the parties have complied with the settlement conference rules. The plaintiff must attend the conference with its negotiating agent, and all defendants who claim compensation must be present except lienholders, if any.

C. Trial Readiness Conference. A trial readiness conference on the issue of compensation will be set ten days before the trial date. The plaintiff and other parties presenting valuation testimony at the trial must meet prior to the scheduled conference and complete, sign, and file a joint trial readiness conference statement in the form provided by the court. The completed statement must be presented to the judge at the scheduled conference.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 2.4.6

Minors/Incompetents/Conservatees

A. Guardians ad Litem. As provided in Code of Civil Procedure section 372, a guardian ad litem must be appointed for a minor, incompetent person, or a person for whom a conservator has been appointed. Due to potential conflicts of interest, parents asserting individual claims or defenses may not serve as guardians ad litem for their minor children, absent a court order to the contrary. Petitions for appointment of a guardian ad litem must be filed at the same time as the underlying complaint is filed.

B. Petitions to Compromise the Claim of a Minor. A petition to compromise claims on behalf of minors may be filed in a limited civil case only if an action is already pending in that case. Otherwise, it must be filed as an unlimited civil case. Any petition meeting the requirements of California Rules of Court, rule 7.950.5(a) will proceed in an expedited manner pursuant to California Rules of Court, rule 7.950.5(b) and (c). In all other circumstances, the petition must be filed and set for hearing in the department designated by the presiding or supervising department unless the case has been assigned to a judge or independent calendar department, in which case the petition must be filed and heard in that department.

The person compromising the claim on behalf of the minor and the minor must be in attendance at the hearing of the petition, unless the court orders otherwise.

At the time of the hearing, the court will determine the amount of costs, expenses, and attorney's fees to be allowed from the proceeds of the settlement. The funds must be disbursed in accordance with the order approving the settlement. It is the duty of the attorney to ensure that the minor's funds are deposited in accordance with the court order referenced above. Attorney's fees are not due or payable unless and until the money is deposited in the blocked account and a receipt executed by the depository is returned to the court.

C. Trusts

1. In all cases where a petition to approve the compromise of a claim of a minor or person with disability filed under Probate Code section 3600 et. seq. proposes to have the settlement funds distributable to the minor or person with disability administered under a guardianship, conservatorship, discretionary trust or special needs trust, as provided in Probate Code sections 3602, 3604 or 3611, the petition to establish the guardianship, conservatorship, discretionary trust or special needs trust shall be filed for approval in the Probate Department of the Court. Except as provided in subdivision 2 below, no payment or transmittal of the proceeds of the settlement agreement or judgment distributable to the minor or person with disability shall be made to the guardian, conservator or trustee until a certified copy of the Order appointing the guardian, conservator, or trustee has been filed in the Civil Department of the Court approving the compromise and settlement under Probate Code section 3600 et. seq.

2. In any proceeding to approve the compromise of a claim of a minor or person with disability filed under Probate Code section 3600 et. seq., the judge in the civil proceeding approving the compromise petition may order that the settlement funds distributable to the minor or person with disability be distributed to a temporary guardian, temporary conservator or temporary trustee appointed by a judge of the Probate Department of the court, pending Probate court determination of the petition to establish the guardianship, conservatorship, discretionary trust or special needs trust. In no event shall any funds distributable to a minor or person with disability in a proceeding

under Probate Code section 3600 et. seq. be distributed to any person not authorized by court order pursuant to the provisions set forth in Probate Code section 3602, 3604 or 3611.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Rev. 1/1/2004; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011)

Rule 2.4.7

"Other" Civil Actions

Civil actions classified as "other," including but not limited to petitions for extraordinary relief and small claims appeals, will be noticed for dismissal one hundred and eighty days after the filing of the first document conferring court jurisdiction, unless the parties appear ex parte in the appropriate department and obtain an extension of time. The court, on its own motion, may at any time reclassify such cases as "unlimited civil." Cases designated as "eminent domain" must follow the procedures under rule 2.4.5.
(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2004; Renum. 1/1/2006)

Rule 2.4.8

Extraordinary Writs

A. In seeking mandamus or prohibition relief, it is not necessary to obtain an alternative writ (Code Civ. Proc., § 1088). The noticed motion procedure should be used whenever possible.

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

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

D. Petitions for extraordinary writs arising out of all other criminal cases are governed by Division III rules (Criminal).
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 2.4.9

EADACPA Proceedings

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

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

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

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

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

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

a. A Certificate of Service of summons must be filed prior to the hearing.

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

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

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

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

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

b. A first appearance fee for the substituted party will be required.

(Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2013)

Rule 2.4.10

Collection Cases

Case management in Collection Cases is handled in accordance with the California Rules of Court, rules 3.740 and 3.741.

(Adopted 1/1/2009; Rev. 1/1/2010)

Rule 2.4.11

Class Actions Deemed Complex

Due to the complexities involved with class actions, including multiple plaintiffs, specialized case management, extensive pre-trial activity, difficult and/or novel issues, extended trial times, and extensive post judgment supervision, class actions filed with the San Diego Superior Court are deemed provisionally a complex action pursuant to California Rules of Court, rule 3.400, subdivision (c)(6) and remain a complex case until the Independent Calendar Judge to whom the case is assigned has the opportunity to decide whether the action meets the definition in California Rules of Court, Rule 3.400, subdivision (a).

Pursuant to Government Code section 70616(a), a complex case fee shall be paid in addition to the first appearance fee at the time of the filing of the first paper in a class action proceeding.

(Adopted 1/1/2012)

CHAPTER 5
MISCELLANEOUS PROVISIONS

Rule 2.5.1

Public Inspection and Copying **of Files**

A. File Review.

1. Civil files may be reviewed in the civil business office of each division in accordance with the California Rules of Court and the following:

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

b. Cases must be requested by case number;

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

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

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

f. No random searches will be accommodated.

2. Imaged files may be viewed at the public kiosks at each Civil Business Office or remotely through the website.

3. Persons requesting to copy documents in a case file must comply with the General Order of the Presiding Department: In Re Prohibiting The Use of Cameras and Other Digital Image-Capturing Devices in Courthouse.

4. If a party has a current fee waiver granted, the clerk will provide a maximum of one complete copy of the party's case.

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

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

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

3. Pass a background check as designated by the court. All expenses related to the background check are the responsibility of the applicant, must be paid in advance and are non-refundable.

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

Applicants who are denied access will be permitted to inspect cases in the same manner as set forth under subdivision "A" of this rule.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2004; Renum. 1/1/2006; Rev. & Renum. 1/1/2010; Rev. 1/1/2015)

Rule 2.5.2

Fax Filings

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

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

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

C. Confirmation Fee. Confirmation of the receipt of documents for filing, beyond that given by the standard confirmation option of the facsimile machines, shall be given upon payment of the fee adopted by the Court ($3.50).

D. Facsimile Filing Usage Fee. The Court shall charge a facsimile usage fee of $.50 per page, including the cover sheet and all tab pages.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2010)

Rule 2.5.3

Procedure Upon Death of Plaintiff

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

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

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

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

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

(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2010)

Rule 2.5.4

Receivers

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

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

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

Employment of counsel by the receiver requires the approval of the court. In this regard, the application must comply with the provisions of the California Rules of Court, rule 3.1180. In addition, the application and the proposed order must set forth the attorney's hourly rate and a good faith estimate of the number of hours the attorney will expend on behalf of the receivership estate.

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

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

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

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

This rule is not an exhaustive treatment of receivership law and procedure. For applicable law, also see Code of Civil Procedure sections 564-570 and the California Rules of Court, rules 3.1175-3.1184.

(Adopted 1/1/1998; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. & Renum. 1/1/2010)

Rule 2.5.5

Confidentiality Agreements, Protective Orders, Sealed Documents

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

A. Requests to approve a confidentiality agreement that involves documents submitted to or filed with the court must be made pursuant to rules 2.550–2.585 of the California Rules of Court.

B. To the extent any request to seal court records falls outside the scope of rules 2.550–2.585 of the California Rules of Court and is not covered by a specific statute, rules 2.550–2.585 must be followed as closely as is practicable.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Renum. 1/1/2010; Rev. 1/1/2014)

Rule 2.5.6

Reserved For Future Use

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2010; Del. 1/1/2013)

Rule 2.5.7

Depositions

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

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

(Adopted 1/1/1998; Renum. 7/1/2001; Renum. 1/1/2006; Renum. 1/1/2010)

Rule 2.5.8

Telephonic Appearances

In accordance with the provisions of California Rules of Court, rule 3.670(o), the court designates CourtCall, LLC, as the provider that must be used for telephonic court appearances. A party that intends to appear telephonically for a hearing listed in the rule must provide notice as specified in California Rules of Court, rule 3.670(h). The party must also arrange the appearance with CourtCall, including following any notice requirements and payment of fees as required by CourtCall. Information on arranging an appearance and payment of fees may be obtained directly from CourtCall at (888) 882-6878.

The court may deny a request to appear telephonically and require the parties to appear in person pursuant to California Rules of Court, rule 3.670(h).

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2009; Renum. 1/1/2010; Rev. 1/1/2014)

Rule 2.5.9

Reserved for Future Use

(Del. 1/1/2010)

Rule 2.5.10

Default Attorney Fee Schedule

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

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

Over 25,000	Add 2% of the next 25,000
Over 50,000	Add 1% of the next 50,000
Over 100,000	Add .5%

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

In contested matters, the court will determine the reasonable attorney fees as proved by the prevailing party after trial in accordance with Code of Civil Procedure section 1021 et seq., Civil Code sections 1717 and 1717.5, and the California Rules of Court, rule 3.1702.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2010)

Rule 2.5.11

Elisors

Where one of the parties will not or cannot execute a document necessary to carry out a court order, the clerk of the court, or his or her authorized representative or designee may be appointed as an elisor to sign the document. An application for appointment of an elisor may be made ex parte. When applying for an appointment of an elisor, the application and proposed order must designate "The Clerk of the Court or Clerk's Designee" as the elisor and indicate for whom the elisor is being appointed and in what capacity they are to sign the document. The application must not set forth a specific court employee. The order must expressly identify the document being signed and a copy of the document must be attached to the proposed order. The original document, presented for signature by the elisor, must match the copy of the document attached to the proposed order. The declaration supporting the application must include specific facts establishing the necessity for the appointment of the elisor. If the elisor is

signing documents requiring notarization, the applicant must arrange for a notary public to be present when the elisor signs the document(s).
(Adopted 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2010; Rev.1/1/2015)

Rule 2.5.12

Sanctions

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

B. If a failure to comply with the rules in Division II is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto.
(Adopted 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2010)

DIVISION III
CRIMINAL

CHAPTER 1
GENERAL

Rule 3.1.1

Police Reports Containing Confidential Personal Information

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

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

All agencies should bear in mind that the court will not undertake the task of redacting any confidential personal information of victims or witnesses from documents submitted for the court's consideration. Rather, the burden to ensure that this information is not included within any documents presented falls squarely on the agencies preparing and presenting them to the court. In this respect, the court may exercise its discretion to accept or reject a police, arrest or investigative report containing confidential personal information that is submitted in support of a criminal complaint, indictment, or information; or in support of a search or arrest warrant.
(Adopted 1/1/2006)

Rule 3.1.2

Arraignment Options on Misdemeanors and Infractions

Attorneys appearing in propria persona or who are retained to represent defendants charged with misdemeanors or infractions may, in lieu of a court appearance, arraign matters informally, at the counter or by fax, if the attorney, as authorized by the defendant, enters a plea of not guilty and waives time for trial.

Attorneys using the counter arraignment option must personally appear in the clerk's office. Forms and other rules governing counter and fax arraignment procedures may be obtained from the clerk's office or the court's website.

The clerk will assign settlement conference, trial readiness conference, and trial dates as directed by the court.

Exceptions. These arraignment options are not available for:

A. Defendants in custody on this or any other matter.

B. Cases charging child abuse or domestic violence.

C. Cases prosecuted by the consumer fraud or code enforcement divisions of the San Diego City Attorney's Office.

D. Cases on which a victim has elected to exercise the right to be present at the arraignment.

E. Cases on which any previously posted cash bail or bond has been forfeited.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2011)

Rule 3.1.3

Failure to Appear in Misdemeanor "Notify Letter" Cases

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

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

(Adopted 1/1/2006)

Rule 3.1.4

Bail Reductions or Increases and Confidentiality of Pretrial Services Records

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

B. Confidentiality of Pretrial Services Records and Information. Information supplied by a defendant to a representative of the San Diego Superior Court Pretrial Services Department during the defendant's initial interview or subsequent contacts, or information obtained by Pretrial Services as a result of the interview or subsequent contacts, will be deemed confidential and will not be subject to subpoena or to disclosure, and will not subject any employee or attaché of the Pretrial Services Department to subpoena, with the following exceptions:

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

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

3. As otherwise ordered by the court in the interest of justice, upon noticed motion of the party seeking disclosure and a showing of good cause.

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 3.1.5

Trial by Declaration

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

(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 3.1.6

Juror Questionnaires

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

(Adopted 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.1.7

Prohibition Against Ex Parte Contacts

The court will not entertain or engage in any ex parte communications with any party or a party's attorney regarding the merits of a pending criminal case, a motion, a petition for writ of habeas corpus, or an extraordinary writ. However, a party or a party's attorney and the court's staff attorney may discuss procedural matters ex parte.
(Rev. & Renum. 1/1/2006)

CHAPTER 2
MOTIONS

Rule 3.2.1

General Requirements

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

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

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

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

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

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

C. Points and Authorities.

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

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

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

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

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

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

E. Concession That Motion is Meritorious. If the responding party elects not to oppose the motion, respondent must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard.

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

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

H. Length of Points and Authorities. No opening or responding memorandum of points and authorities exceeding 15 pages will be filed, absent an order from the judge of the court in which the motion is calendared. Such an order will be granted only upon a written application including a declaration setting forth good cause for the order.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 3.2.2

Additional Requirements - Special Motions

A. Motions to Dismiss or Strike (Pen. Code, § 995) and Demurrers.

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

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

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

C. Suppression Motions (Pen. Code, § 1538.5).

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

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

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

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

5. Motions Made in All Other Cases.

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

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

(Adopted 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007)

Rule 3.2.3

Additional Requirements - Felonies

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

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

C. No moving papers will be accepted thereafter for filing except by order of the supervising criminal judge extending time or granting relief from default.

(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.2.4

Motions Settings - Misdemeanors and Infractions

Except where there is an order setting a hearing date, the moving party may request a date for the hearing. Dates are subject to confirmation by the clerk's office and mandatory time provisions of statutes, the California Rules of Court, and these rules.

(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.2.5

Discovery Motions for Jury Services Information and/or Related Motions to Challenge Jury Selection System.

A. All discovery motions for jury services information and/or related motions to challenge the jury selection system must be filed in the department of the Supervising Criminal Judge, located in the County Courthouse downtown, whether or not the criminal case has been assigned to a judge for all purposes.

B. Moving papers relating to such motions must identify arguments as to why the jury selection system is defective.

C. All moving papers relating to such motions must be separately served on the Jury Commissioner or Manager of Jury Services, the same date the moving papers are served on responding party. Proof of service must be filed with the original moving papers.

D. The Jury Commissioner, Manager of Jury Services, or court employees whose primary employment is in the Jury Services Office will not be called to testify at a hearing on a discovery motion for jury services information and/or related motions to challenge the jury selection system unless given three court days prior notice.

E. For good cause shown, the Supervising Criminal Judge may waive any of the above requirements.
(Adopted 1/1/2008)

CHAPTER 3
HABEAS CORPUS AND ERROR CORAM NOBIS PETITIONS

Rule 3.3.1

Application

This chapter does not apply to extraordinary writs in misdemeanor or infraction cases in which the San Diego Superior Court is named as respondent. Such writs are governed by Division VII rules (Appellate).
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.3.2

Place for Filing

A. Habeas Corpus Petitions.

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

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

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

C. Subsequent Pleadings. Unless otherwise ordered, any pleadings filed by any party after the original petition must be filed at the same location as the original petition, not in the department to which the petition has been assigned.
(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2003; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 3.3.3

Service of Petition

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

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

C. When a petitioner is an incarcerated prisoner, the clerk will accept the petition for filing without requiring a proof of service.
(Adopted 1/1/1998; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.3.4

Supporting Documents

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

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

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

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

B. If a petitioner does not submit the required documents or does not provide facts sufficient to excuse the failure to submit the required documents, the court may summarily deny the petition.

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 3.3.5

Disposition of Petition

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

B. Error Coram Nobis Petitions.

1. Within thirty days after the filing of the petition, the court will either summarily deny the petition or set the matter for hearing.

2. If the matter is set for hearing, the court will allow at least fifteen days for the respondent and any real party in interest to file a responsive pleading.

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

(Adopted 1/1/1998; Rev. 1/1/1999; Rev. 1/1/2001; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2009)

DIVISION IV
PROBATE

CHAPTER 1
DEPARTMENTAL ADMINISTRATION AND ORGANIZATION

Rule 4.1.1

Address, Phone and Hours for Probate Examining Division

The addresses, phone numbers, hours and examiners' email addresses for the Probate Court can be found at the court's website, http://www.sdcourt.ca.gov.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2013)

Rule 4.1.2

Filing Location

A. Probate matters shall be filed in the Probate department located in the Madge Bradley Building at 1409 Fourth Avenue, San Diego, CA 92101.

B. Documents may be filed electronically to initiate new cases or to file subsequent documents in cases that have been imaged by the court. If a case has been imaged by the court, the case title will be updated to reflect "[IMAGED]". Parties who wish to e-file must comply with the Electronic Filing Requirements posted on the Court's website.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev 1/1/2010; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 4.1.3

Viewing Paper and/or Electronic Files in the Probate Business Office.

Files may be reviewed in the business office in accordance with the California Rules of Court 2.400 (a) and the following:

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

B. Cases must be requested by case number, using form SDSC ADM-11;

C. If requested in non-sequential order, a maximum of ten cases per day will be pulled by the clerk;

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

E. No random searches will be accommodated.

F. Use of the Register of Actions Kiosk (ROAK) will be limited to 20 minutes if there are other members of the public waiting to use the terminal.

G. Cellular phone use is prohibited within the viewing room.

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

CHAPTER 2
TESTAMENTARY DOCUMENTS; CONSOLIDATION; SANCTIONS

Rule 4.2.1

Backing on Papers Filed

All wills and other testamentary documents submitted for filing must be attached to a stiff backing cover, the right side margin of which contains the document's caption (title) which must be fully visible.

(Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008.)

Rule 4.2.2

Consolidation with the Lowest Number and Notice of Related Case/Petition

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

B. Where a complete consolidation of proceedings under the Probate Code is ordered, the clerk, unless otherwise ordered by the court, must file such consolidated proceeding and all subsequent papers relating thereto under the number assigned to the case which was filed first and therefore has the lowest number.

C. Rules of Court, rule 3.300, respecting the requirements for Notice of Related Case, applies to all petitions or applications filed with the Probate Divisions of the Court.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. & Renum. 1/1/2009)

Rule 4.2.3

Sanctions

A. If any counsel, a party represented by counsel, or a party in pro per, fails to comply with any of the requirements of Division IV of these rules, without good cause or substantial justification, the court, on motion of a party or on its own motion, after notice and hearing, may strike all or any part of any pleadings of that party; or dismiss the action or proceeding or any part thereof; or enter a judgment by default against that party; or impose other penalties of a lesser nature or as otherwise provided by law; and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees.

B. If a failure to comply with the rules in Division IV is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto.

(Adopted 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2012)

CHAPTER 3
PLEADINGS: FORM OF PAPERS PRESENTED FOR FILING

Rule 4.3.1

Format Requirements and Copies

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

B. A "Register of Actions" number (ROA) will be assigned at the time the petition is set for hearing. The ROA must be stated near the case number in the caption of all subsequently filed documents related to that petition. The party giving notice of the hearing on the petition must include the ROA in the notice.

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

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 4.3.2

Electronic Filing (e-Filing)

A. e-Filing Requirements

1. All documents electronically filed must be submitted in a PDF format using Adobe Acrobat version 7 or higher and must also be in a text searchable format, i.e. Optical Character Recognition (OCR).
2. Fillable forms are not accepted.
3. Each document should be filed as a stand-alone document.
4. Documents that contain exhibits must be bookmarked.
5. Notices of lodgment shall not have the lodged documents attached. The submitting party must provide the business office with hard copies of the lodged documents with a copy of the notice of lodgment and must include the e-Filing Transaction ID # noted in the upper right hand corner.
6. When submitting an original Will to the business office for a Petition for Probate of Will and for Letters Testamentary or Letters of Administration with Will Annexed that was e-Filed, the submitting party must provide a cover letter that includes the case number assigned to the petition.
7. If submitting a proposed order in the same transaction as other documents (i.e. petitions or other subsequent documents, an attorney service must be noted in the, "Message to the e-Filing Clerk," section for a conformed copy to be returned.
8. Any document that is filed on a day that the Court is closed or after 5:00 p.m. shall be deemed to have been filed on the next court business day.
9. Original signatures are not required on e-Filed documents, but must be maintained by the filing party, pursuant to CRC 2.257.

B. Documents Ineligible for e-Filing

1. Wills
2. Letters of Appointment
3. Bonds
4. Out-of-State Commission Subpoena
5. Request for Payment of Trust Funds
6. Writs
7. Abstracts
8. Compromise of Minor Claim
9. Settlement Conference Briefs
10. Confidential Documents Lodged Conditionally Under Seal
11. Affidavit re: Real Property of Small Value
12. Warrants

(Adopted 1/1/2015)

Rule 4.3.3

Filing Documents for Calendared Matters

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

1. On all pleadings filed after the initial case originating filing, the words "IMAGED FILE" shall be placed in all capital letters immediately under the title of the pleading for the duration of the case.

2. The paper filings that are imaged and stored electronically will be physically stored by the Court for thirty days after filing, after which time they will be shredded and recycled, except for original wills and bonds which will be physically retained by the Court for the period required by law. During this thirty-day period, these documents will not be stored in a manner that will allow a party or its attorney to access them.

B. Petitions, Applications and Accountings. In order to be considered at the calendared hearing, documents filed after the calendared petition must be filed no later than 5:00 p.m. three full court days prior to the hearing. This does not include the date of filing or the date of hearing (e.g. for a court hearing on Wednesday, the documents must be filed by 5:00 p.m. the preceding Thursday). Any document filed after the deadline will be considered late and will not be reviewed by Probate Examining for the calendared hearing.

C. Accounting Format. Accounting schedules must be attached to the Petition. They may not be lodged. You must lodge originals of account statements, closing escrow statements, and bill statements for a residential or long-term care facility in support of Probate Code section 2620. Lodged documents will not be imaged or made part of the Court file.

D. Form and Lodging of Exhibits. Other than accounting schedules and copies of documents sought to be approved, construed or modified by the court, if the exhibits accompanying a petition, motion, or other filing exceed

ten pages cumulatively, on non-imaged cases they must be lodged with the court, rather than attached to the pleadings, which will remain in the court file. Such exhibits must be lodged at the same time as the corresponding papers are filed with the court. For e-filed and imaged cases no limit will be enforced with regard to number of pages.

E. The following items must accompany lodged material: (1) An original notice of lodgment, which includes a numbered listing of all of the items lodged; (2) The numbered exhibits, with a copy of the notice of lodgment and form SDSC PR-163 (should be printed on pink paper) on top; and (3) A means of return, as specified in item F., below. The notice of lodgment must be filed with the court. An additional copy may be submitted to be conformed and returned. The lodgment and notice of lodgment must be served on all parties.

F. Return and Retention of Lodged Exhibits. Lodged materials will be returned to the tendering party after the resolution of the calendared matter, unless the party requests their destruction. Therefore, when submitted, lodgments must be accompanied either by a stamped, self-addressed envelope or an attorney service pick-up slip. Following the return of the lodged documents by the court, the tendering party should retain them until the applicable appeal period has expired.

G. Fax Filing. A faxed document may be filed in accordance with the California Rules of Court, rule 2.300 et seq. However, direct fax filing under California Rule of Court 2.304 is not available.

H. A copy of the Trust and any amendments must be submitted for filing with all trust cases. The copy of the Trust and/or amendments must be submitted with a coversheet. The coversheet may indicate that the Trust is confidential and will then be retained at a security level that is not available to the general public. Any after filed petitions shall reference the date of filing of the copy of the Trust.

I. On Petitions for Probate of Will and for Letters Testamentary or Letters of Administration With Will Annexed a copy of the receipt for deposit must be provided.

(Adopted 1/1/1990; Rev. 7/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. & Renum. 1/1/2015)

Rule 4.3.4

Use of Judicial Council Forms

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

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

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. & Renum. 1/1/2012; Rev. & Renum. 1/1/2015)

Rule 4.3.5

Affidavits and Declarations Under Penalty of Perjury

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

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

_____
[signature of fiduciary]

_____
[name of fiduciary]"

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

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

_____
[signature of fiduciary]

_____
[name of fiduciary]"

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

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

_____
[signature of officer]

_____
[name of officer]"
(Adopted 1/1/1990; Renum. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2012; Renum. 1/1/2015)

Rule 4.3.6

Complete Address in Petition or Report

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

B. If a Post Office Box is the only known address, a statement of due diligence must accompany the petition or report.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012; Renum. 1/1/2015)

Rule 4.3.7

Multiple Minors and Conservatees

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

B. Where a husband and wife are to be conserved, a separate Petition for Conservatorship for each may be filed under the same case number if all of the assets of the estate are community property. If both petitions are approved, separate Order and Letters must be submitted for each conservatee. In all other cases, the conserved husband and wife must have separate case numbers.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Renum. 1/1/2015)

CHAPTER 4
SETTINGS, ASSIGNMENTS AND CONTINUANCES

Rule 4.4.1

Calendar Settings of Probate Matters

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

B. Calendar times may be obtained from the court's website at http://www.sdcourt.ca.gov or by calling the Probate Court Business Office.

C. Calendar times are subject to change. (Cross Reference: Contested Matters, Chapter 22.)

D. All petitions for appointment of a Personal Representative, Conservator or Guardian must be filed along with the appropriate completed form outlining the duties of the proposed fiduciary. The duties must be signed by the proposed fiduciary.
(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2015)

Rule 4.4.2

Probate Hearing Once Noticed Cannot be Advanced

When a hearing on a probate matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, either by means of a new petition, an amended petition, or by a new notice.
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.4.3

Continuances of Hearings on Petitions in Uncontested Matters

A. Any request for a continuance before the time of the hearing, must be made by or with the permission of petitioner if self-represented, or by petitioner's counsel.

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

C. A first and second continuance of two weeks or more may be obtained by contacting the Probate Examiner. After two continuances have been granted, further continuances must be approved by the court.

D. For matters set forth in subsection 1 below, Probate Examiners have authority to continue the hearing date on non-contested petitions. However, Probate Examiners do not have authority to grant requests for continuance that are made later than 5:00 p.m. three court days prior to the hearing, or which are set forth in subsection 2 below. For non-contested matters, counsel seeking a continuance must inform all counsel and any parties who may appear of the continuance at the earliest possible date so as to avoid unnecessary appearances, inconvenience and expense.

1. Matters Examiners CAN Continue

a. Petition for Probate;
b. Petition to Determine Succession to Real Property;
c. Spousal Property Petition;
d. Accountings/Waiver of Accountings;
e. Status Report;
f. 850 Petition;
g. Petition for Appointment of Temporary Conservator;
h. Petition for Appointment of Temporary Guardian;
i. Petition for Appointment of General Guardian (If there is no Temporary Guardianship in place);
j. Petition for Termination of Guardianship;
k. Most miscellaneous petitions;
l. Review Hearing- first continuance only;

2. Matters Examiners CANNOT Continue

a. Sale of Real Property;
b. Petition for Appointment of General Conservator;
c. Petition for Removal of Trustee;
d. Petition for Removal of Personal Representative;
e. 3100 Petition;
f. Order to Show Cause;
g. Motion;
h. Ex Parte Petition

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

G. For contested matters, counsel seeking the continuance must obtain the advance agreement of all parties who have appeared in the matter prior to making a continuance request.

(Adopted 1/1/1990; Rev. 1/1/1996; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev & Renum. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2015)

Rule 4.4.4

Setting Matters Already on File

A. "Off Calendar." A petition may be taken "off calendar" by the petitioner or by order of the court. Taking a petition "off calendar" vacates all future hearing dates for that petition, although the petition remains a pending proceeding. A petition may be re-set for hearing only upon the written, signed and verified request of the petitioner filed with the court no later than three months from the hearing date previously taken off calendar. In the absence of such a timely request, the matter will be deemed dismissed without prejudice. A petition may not be re-set for hearing unless all defects, with the exception of notice, have been cured. Proof of proper notice of the new hearing date must be provided in accordance with applicable provisions of law.

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

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2013)

Rule 4.4.5

Telephonic Appearances

In accordance with the provisions of the California Rules of Court, rule 3.670(l), the court designates CourtCall, LLC, as the provider that must be used for telephonic court appearances. A party who intends to appear telephonically must provide notice as specified in the California Rules of Court, rule 3.670(g). The party also must arrange the appearance with CourtCall, including following any notice requirements and payment of fees as required by CourtCall. Information on arranging an appearance and payment of fees may be obtained directly from CourtCall at (888) 882-6878.

The court may deny a request to appear telephonically and require the parties to appear in person pursuant to the California Rules of Court, rule 3.670(h).

(Adopted 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2012)

CHAPTER 5
NOTICES

Rule 4.5.1

General

All notices must include the complete caption of the pleading.

So that the court may determine the adequacy of notice given, all petitions must allege the names and addresses of all persons entitled to notice, including persons who have submitted Requests for Special Notice.

(Adopted 1/1/2012; Renum. & Moved on 1/1/2014)

Rule 4.5.2

Additional Notice Requirements

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

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

C. Additional notice must include the full caption, as well as the time and place of hearing. The court may require a summary of the matters to be determined, or it may require a copy of the petition to be served with the notice.

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

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

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

G. Parties filing a new action shall serve on all parties a copy of the “Notice of Assignment to Imaging Department,” with the petition or other case initiating pleading. A copy of this notice will be provided to the filing party by the court clerk when case originating filings are processed.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2013; Renum. 1/1/2014; Rev. 1/1/2015)

Rule 4.5.3

Proof of Service

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

B. Where notice must be served other than by regular mail, the proof of service must show that notice was served by airmail, by registered or certified mail, by mail with a written acknowledgment of receipt of the notice, or by personal service.

C. Any counsel seeking to be relieved as counsel of record for a fiduciary or a person requesting that the court surcharge, suspend or remove a conservator, guardian, trustee, or personal representative, or objecting to an account by such fiduciary must file proof of service of the Notice to Surety required by Probate Code section 1213 prior to the hearing on their Petition or Objection.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010; Renum. 1/1/2014)

Rule 4.5.4

Notice Re Letters of Special Administration

A petition for letters of special administration will not be granted without notice to the surviving spouse, the person nominated as executor and any other person who, in the discretion of the court, appears to be equitably entitled to notice.
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2010; Renum. 1/1/2014)

Rule 4.5.5

Notice to Persons Requesting Special Notice

Notice must be given to or waived by any person requesting special notice, whether or not the matter is one for which special notice was specifically requested.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2014)

Rule 4.5.6

Notices to Trust Beneficiaries

If a personal representative is also the sole named trustee of a testamentary or non-testamentary trust, and the estate or any part thereof is to be distributed to the trustee of the trust, then notice must be sent to the beneficiaries of the trust. In addition, the names and addresses of the beneficiaries must be listed in the petition.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2014)

Rule 4.5.7

Reserved for Future Use

(Adopted 1/1/2012; Former Rules 4.5.6 & 4.5.7 moved to 4.5.1 on 1/1/2014)

Rule 4.5.8

Compliance with Notice – Medi-Cal and California Victim Compensation and Government Claims Board

Before the court will authorize distribution from a decedent estate, there must be a showing of compliance with notice requirements of Probate Code section 9202 to:

A. The Director of Health Services or a showing that the notice thereunder is not required because neither decedent nor predeceased spouse received Medi-Cal, or that no claim can be made by the Department of Health Services because decedent died before June 28, 1981, was under age 65, or was survived by a spouse, minor child, or disabled child.

B. The Director of the California Victim Compensation and Government Claims Board or a showing that the notice thereunder is not required because an heir <u>or beneficiary</u> is not confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation or confined in any county or city jail, road camp, industrial farm or other local correctional facility.

C. The Franchise Tax Board, for estates for which letters were issued on or after July 1, 2008.
(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009; Renum. 1/1/2013; Rev. 1/1/2015)

Rule 4.5.9

Notice to Prior Representative or Counsel or Attorney Firm

If there has been a change of personal representative or a substitution of counsel, or a change in attorney firms, notice of hearing must be given to such prior representative or counsel or firm of any petition in which fees or commissions are requested by the present personal representative or counsel unless:

A. A waiver of notice executed by the prior personal representative or counsel or firm is on file; or

B. A written agreement on the allocation of fees and/or commissions is on file or included in the petition; or

C. The file and the petition demonstrate that the fees and/or commissions of the prior personal representative or counsel have been provided for and allowed by the court.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Renum. 1/1/2006; Renum. 1/1/2013; Rev. 1/1/2014)

Rule 4.5.10

Conservatorship Notices

A. Notice must be given to a former conservatee or the personal representative of a deceased conservatee upon the settlement of the final account.

B. In circumstances where the Conservatee does not have a spouse or domestic partner, or such person is incapacitated, notice must be given to all relatives within the second degree.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2009; Renum. 1/1/2013)

CHAPTER 6
CALENDAR NOTES AND HEARINGS

Rule 4.6.1

Availability of Probate Examiner's Notes and Clearing of Defects

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

B. The notes are available on the San Diego Superior Court website, http://www.sdcourt.ca.gov. When the examiner receives additional pleadings and updates the notes, the new notes will be posted to the website.

C. Persons who do not have access to the internet may request that the notes be mailed by attaching SDSC PR-114, "Mail Option" form which is available in Probate Services, to the petition, with a self-addressed, stamped envelope or a messenger slip.

D. After checking the notes, counsel and self-represented parties are encouraged to contact the assigned Probate Examiner with any questions or explanations that may assist in the clearing of any defects. Examiners may be contacted by email, phone, or in person. Instructions and hours for contacting examiners can be found on the court's web site at http://www.sdcourt.ca.gov.

E. Amended petitions supersede any prior petitions and will be set for hearing in due course.

(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2009; Rev. 1/1/2010; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014)

Rule 4.6.2

Telecourt

If an uncontested matter has not been pre-approved or continued by the examiner, counsel may appear by a telephone call, at such date, time and telephone number as designated by the probate judge and posted on the court's website, http://www.sdcourt.ca.gov, to seek pre-approval or a continuance. Counsel must be on the phone line when the call is answered, prepared with case number and hearing date and time.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2012)

Rule 4.6.3

Appearances

A. An appearance is required on all matters not preapproved, even if no defects appear on the Examiner's Notes.

B. No appearance is necessary if the matter has been continued by the Probate Examiners or in telecourt.

C. If a continuance request will be made at the hearing, all counsel must appear, unless all counsel have agreed in advance to the continuance and have designated one counsel to appear and make the request.

(Adopted 1/1/2012)

CHAPTER 7
ORDERS AND BONDS

Rule 4.7.1

Preparation of Orders

A. In guardianship, conservatorship and decedent's estate appointment hearings, the petitioner shall prepare and submit the applicable mandatory Judicial Council order for appointment form as follows:

1. In conservatorship and decedent's estate matters, the proposed order shall be submitted to the Probate Business Office three weeks prior to the hearing.

2. In guardianships, a proposed order shall be submitted at the time of hearing. Self-represented litigants shall bring a self-addressed stamped envelope on the date of the hearing. Represented litigants shall bring a prepared order and a means of return on the date of the hearing.

B. In non-appointment hearings and non-contested matters, the minute order shall constitute the order of the court unless:

1. A mandatory judicial council form exists;

2. The court's minute order indicates that a formal written order is to be prepared; or

3. A party desires a formal order.

a. if a party desires a formal order following a hearing on a petition, the order must be submitted to the Probate Business Office three weeks prior to the hearing, along with the following items: 1) Submitted Order Coversheet (SDSC PR-162, should be printed on blue paper); 2) Proposed Order; 3) Copies for conforming, together with a means of return for conformed copies; 4) Check for certified copies, if applicable; and 5) Bond and/or Letters, if applicable.

b. if a party desires a formal order following a hearing on a motion, the party must notify the court at the time of the hearing that a formal order is desired and must thereafter submit a formal order in accordance with the procedure set forth in the California Rules of Court, rule 3.1312.

C. In all contested matters, unless otherwise ordered by the court, counsel for the prevailing party must prepare and submit a formal order, using a procedure analogous to the procedure for motions as set forth in Rule 3.1312 of the California Rules of Court.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; 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 4.7.2

Material to be Included in Probate Orders

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

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

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

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

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

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

G. All orders for distribution must contain the following:

1. A list of the assets on hand;

2. The beneficiaries under the will or, in the event of intestacy, the heirs at law and their specific relationship to the decedent. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest must be fully set forth.

3. The person or persons entitled to distribution of the assets. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest in an estate must be fully set forth;

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

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

6. The fees and commissions allowed by the court.

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

8. The order should not include language that the fiduciary is discharged and the bond exonerated. This can only be ordered upon the filing of proper receipts and the Ex Parte Petition and Order for Final Discharge. It is

acceptable to include language that the fiduciary may be discharged and bond exonerated upon the filing of proper receipts and the Ex Parte Petition and Order for Final Discharge.

H. The court will only approve actions presented in a petition. The order should **not** include language that all acts taken by the representative are approved. It is acceptable to include language that all acts reported in this petition are approved.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 4.7.3

Riders and Exhibits

No riders or exhibits may be attached to any order, except as may be otherwise provided on Judicial Council forms.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.7.4

Orders for Continuing Payment Must Have a Maximum Time Limit

The court will not make orders for continuing payments to run "until further order of the court." All such orders must provide for payments that "commence as of _____ and continue for a period not to exceed _____ months or until further order of the court, whichever shall first occur."

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

Rule 4.7.5

Application for Ex Parte Orders - Generally

A. All ex parte applications must comply with rule 3.1200 et seq. of the California Rules of Court.

B. All applications for ex parte orders must be reviewed by Probate Examining before presentation to the judge.

C. Any request must be accompanied by: (1) form SDSC PR-136, Probate Ex Parte Coversheet & Instructions (should be printed on green paper); (2) the ex parte petition; (3) supporting declaration; (4) declaration regarding notice; (5) a separate order setting forth the specific relief sought in the petition; and (6) appropriate fees. Points and authorities may be filed to support the application.

D. Requirements of the Probate Code and policy of the court are determinative of whether a matter may be heard ex parte.

E. Notice.

1. Contested applications and applications regarding discovery motions in accordance with departmental rules require an appearance. When an appearance is required, a written declaration of notice or of the reason it was not given as required by California Rules of Court, rule 3.1202(a) must be filed pursuant to departmental rules. The court may take the ex parte matter off calendar for failure to file the notice declaration.

2. Uncontested applications (dropped) do not require an appearance. Notice must comply with California Rules of Court, rule 3.1202(a) and accompany the dropped application.

F. Dropped ex parte applications must be filed pursuant to departmental rules.

(Adopted 1/1/1990; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; 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 4.7.6

A. Matters Which May be Heard Ex Parte

Matters which may be heard ex parte include the following:

1. Appointment of Elisor;
2. Appointment of Guardian Ad Litem;
3. Authorization to Invest in Units of a Common Trust Fund
4. Authorization to Enter into or Extend Exclusive Listing Agreement for Sale of Real Property;
5. Extend/Reissue Letters;
6. Extend Time to File Receipt and Acknowledgement of Order for the Deposit of Money into Blocked Account;
7. Extension of Time to Comply with a Notice of Failure to Perform Duties;
8. Guardianship and Conservatorship Investments;
9. Increase in Bond;

10. Order Shortening Time;
11. Place Funds in Blocked Account;
12. Preliminary Distribution of Estate Pursuant to Probate Code section 11623 on Proof that Inventory and Appraisal has been Filed;
13. Request for Continuance of Mandatory Settlement Conference;
14. Request for Dismissal;
15. Sale of Depreciating Assets;
16. Sale of Securities;
17. Waiver of Investigation (Guardianship); and
18. Matters as allowed at the discretion of the court. The court will not hear contested matters in the absence of extraordinary circumstances.

B. Matters Which May be Heard Ex Parte and Carry an Additional Petition Fee

Matters which may be heard ex parte and carry an additional fee for the underlying petition include the following:

1. Appointment of Temporary Conservator or Guardian. Such applications may be made without five days' notice to the proposed conservatee only for good cause and only if the Petition for Appointment of the General Conservator or Guardian is on file or is filed with the Petition for Appointment of the Temporary. See Local Rules 4.18.2 and 4.19.1 for further requirements;
2. Appointment of Special Administrator;
3. Authority to Sell Residence;
4. Transfer of Deposited Will; and
5. Matters as allowed at the discretion of the court. The court will not hear contested matters in the absence of extraordinary circumstances.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. & Renum. 1/1/2012; Rev. 1/1/2015)

Rule 4.7.7

Communications with the Court

Documents presented to the Probate Court for filing must comply with applicable Probate Codes and Rules of Court, and notice of filing must be given as required. Other communications such as letters and notes directed to the court or staff are subject to California Rules of Court, rule 7.10(c). (See Code of Judicial Ethics.)

(Adopted 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.7.8

Nunc Pro Tunc Orders Correcting Clerical Errors

A. If, through inadvertence, the minute order or the signed decree fails to state the order actually made by the court, and such inadvertence is brought to the attention of the court by declaration, the court may make a nunc pro tunc order correcting the mistake, which will relate back to the date of the original order.

B. The order must not take the form of an amended order. Local Forms SDSC PR-137 (Declaration to Correct Order Nunc Pro Tunc) and SDSC PR-138 (Nunc Pro Tunc Order) are available on the court's website and may be used. If declaration and order are submitted on pleading, the pleading must substantially set forth the language used in the local forms.

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

D. To prevent further errors, a complete clause or sentence must be stricken, even if it is intended to correct only one word or a single figure.

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

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2015)

Rule 4.7.9

Bond Requirements/Blocked Accounts

A. Cash may be blocked as provided in Rule 4.7.11, and such blocked funds excluded from the bond amount.

B. Bond Review Hearing. If, at the hearing for the appointment of a temporary or permanent conservator of the estate, the proposed conservator does not have sufficient information regarding the proposed conservatee's

income or assets to enable the court to set an appropriate bond, the court may appoint the temporary or permanent conservator and continue the hearing to a specified date so that the conservator can provide the required information and a proper bond can be set. Where appropriate, the court may place limitations on the letters of conservatorship until a proper bond has been posted. This rule also applies to appointments of guardians of the estate.
(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. & Renum. 1/1/2013)

Rule 4.7.10

Bonds; Additional Bond

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

B. Conservators or guardians are required to seek ex parte authority to increase the amount of bond whenever the conditions of Probate Code section 2320.1 are met, and may not defer a request for such increase to a current account.
(Adopted 1/1/1990; Rev. 1/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.7.11

Deposited Funds

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

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

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

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

E. When there is good cause for failure to comply with paragraph D, a party may present an ex parte petition to extend the time to return the receipt.
(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009)

CHAPTER 8
APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

Rule 4.8.1

Letters Issued in Decedent's Estates

A. Letters issued in a decedent's estate will expire eighteen months after the date the underlying petition is approved. Thereafter, letters may be issued or reissued upon the discretion of the court.

B. Eighteen months after the issuance of letters, if the final accounting or the report required by Probate Code section 12200 has not been filed, a review hearing will be set. A notice of Failure to Perform Duties will be mailed to the attorney of record and the personal representative.

C. At the time of the review hearing, if the final accounting or the report required by Probate Code section 12200 has been filed, the review hearing will be taken off calendar. If the estate has not been closed and the report required by Probate Code section 12200 has not been filed, the petitioner will be ordered to file a Status Report under Probate Code section 12200 and may be required to show cause why sanctions should not be imposed pursuant to Code of Civil Procedure section 177.5, or statutory fee reduced, for failure to file a Status Report prior to the review hearing. The court may make additional orders as, in the court's discretion, is appropriate.
(Adopted 7/1/2002; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; 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)

Rule 4.8.2

Allegations in Petitions Re: Beneficiaries

All petitions pertaining to the administrative duties of a fiduciary must include:

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

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

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

D. The street address and relationship of the proposed personal representative to the decedent.

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

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014)

Rule 4.8.3

Notice to Foreign Consul

A. When notice is required to be given to foreign consul, the identity of the proper consul must be set forth in Petition for Probate.

B. If an heir of an intestate estate or a beneficiary whose address is in a foreign nation is an American citizen, that fact must be alleged to avoid having to set forth that nation's foreign consul.

C. Notices pursuant to this rule will be required only for an original petition for probate. This notice is in addition to that given to heirs and devisees under section 8110 and fifteen-day notice is required.

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

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2013)

Rule 4.8.4

Multiple Testamentary Instruments - Proof

Each proffered instrument must be proved by a separate affidavit or declaration pursuant to Probate Code sections 8220-8223. Nevertheless, an instrument, as defined by Probate Code section 88, which has been republished by a subsequent instrument, need not be proven independently of the subsequent instrument.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Renum. 2014)

Rule 4.8.5

Will With Deletions or Interlineations

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

"Proof of Holographic Instrument," Judicial Council form DE-135, is required whenever the petitioner alleges that the deletion or interlineation is in the handwriting of the testator and should be admitted. (Prob. Code §§ 8221, 8222.)

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010; Renum. 2014; Rev. 1/1/2015)

Rule 4.8.6

Bonding of Personal Representatives

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

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

C. Any request for a waiver of bond must include a statement by the petitioner regarding knowledge of any creditors of the decedent and the amount of the claim.

D. Non-resident personal representatives are subject to no less than the minimum bond notwithstanding a waiver of the bond by beneficiaries, heirs or by waiver in the will.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Renum. 2014)

Rule 4.8.7

Declinations and Consents to Serve

A. It is insufficient merely to allege that the person or non-California bank or trust company named in the decedent's will as executor thereof is not qualified or declines to act. A written declination to act, signed by such person or entity, must be filed with the court. If the entity is no longer in business, the petitioner should file the declination of its successor entity, if any.

B. If a petition for issuance of letters to one or more personal representatives is filed and any of the named personal representatives for whom letters are sought is not a petitioner, then a consent to act, signed by each such non-petitioning personal representative must be filed with the court. If a consent to act cannot be obtained, the petition must state facts regarding both the efforts to obtain consent and the results of those efforts.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2012; Renum. 2014)

Rule 4.8.8

Continuance to Permit Filing of Contest

If an interested party appears in person or by counsel when a petition for probate is called for hearing and declares a desire to file a written contest, the court will continue the hearing with the understanding that if a contest is not actually on file at the new hearing date, the hearing will proceed.
(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Renum. 1/1/2006; Renum. 2014)

Rule 4.8.9

Multiple Representatives

The clerk will not allow less than all appointed representatives to qualify and will only issue letters jointly to all appointed representatives, unless the order of appointment specifically provides for separate qualification.
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Renum. 2014)

CHAPTER 9
SUMMARY PROCEEDINGS

Rule 4.9.1

Petition to Set Aside Small Estate

A petition to set aside a small estate (under Prob. Code, § 6602) must be filed as a separate petition and must not be worded in the alternative with a petition for probate. If a petition to set aside a small estate is filed concurrently with a petition for probate, the petitions may be set for hearing for the same date and time.
(Adopted 1/1/1990; Renum.7/1/2001; Rev. 7/1/2002; Renum.1/1/2006; Rev. 1/1/2012)

Rule 4.9.2

Spousal Property Petition

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

1. Date and place of marriage;

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

3. Decedent's net worth at time of marriage;

4. Decedent's occupation at time of marriage;

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

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

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

8. Any additional facts upon which the claim that property is community or quasi-community property is based.

9. Facts that rebut Evidence Code § 662.

B. If a Petition references a will, the will must be on deposit with the court pursuant to Probate Code section 8200.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 4.9.3

Proceedings to Establish Fact of Death

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

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

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

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

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

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

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

H. Petitions to establish the fact of birth or marriage under Health & Safety Code section 103450 are set in the same manner as F.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2011)

CHAPTER 10
INDEPENDENT ADMINISTRATION

Rule 4.10.1

Independent Administration

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

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2011)

CHAPTER 11
MISCELLANEOUS PETITIONS

Rule 4.11.1

Petition for Instructions

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

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

C. The petitioner must set forth in the petition the specific instructions which petitioner believes the court should give.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 4.11.2

Petition to Determine Title to Real or Personal Property (Prob. Code, § 850)

Petitions filed pursuant to Probate Code section 850 will be set for hearing at least forty days from the date of filing. If difficulties in effecting personal service are anticipated, a later hearing date may be obtained from the clerk so as to avoid continuances.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.11.3

Petition to Determine Persons Entitled to Distribution (Prob. Code, §§ 11700-11705)

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

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

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

D. When a determination of persons entitled to distribution is requested and it appears that there may be an escheat, notice of hearing and a copy of the petition must be sent to the Attorney General. If any of the heirs are unknown in the petition for probate, then there will be a presumption of possible escheat and notice to the Attorney General is required.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.11.4

Petition for Family Allowance (Prob. Code §§ 6540-6545)

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

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

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

D. All orders for family allowance will be limited to a definite period and must provide for the allowance to be "for _____ months from the date of the order or until further order of the court, whichever occurs first."
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 4.11.5

Petition for Authority to Operate a Business (Prob. Code § 9760)

The court may direct that at least fifteen days' notice be given to the three largest creditors of the business and to the beneficiaries of the estate when the personal representative petitions for authority to continue the operation of the decedent's business.
(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 4.11.6

Petition for Authority to Borrow (Prob. Code §§ 9800-9807)

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

B. If a loan is to be secured by the property of the estate, an inventory for that property must be on file prior to the hearing.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.11.7

Petition for Authority to Retain an Attorney

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

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

C. The Petition must be accompanied by a declaration by counsel detailing why the fees are properly a charge against the estate or trust, rather than a personal charge against the Petitioner. See *Whittlesey v. Aiello* (2002) 104 Cal.App.4th 1221 and *Terry v. Conlan* (2005) 131 Cal.App.4th 1445.
(Adopted 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.11.8

Joinder in Pleadings

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

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

C. The Joinder in Pleading must be served upon all parties and interested persons as evidenced by a Proof of Service filed with the court prior to the hearing on the Joined Pleading.

D. A filing fee equal to the fee required by the original filed petition is required.
(Adopted 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2015)

Rule 4.11.9

Community Property Transactions

Absent good cause, the court will appoint a guardian ad litem for the incapacitated spouse in all proceedings pursuant to section 3100 et seq. The report of the attorney or guardian ad litem shall discuss the ultimate testamentary disposition of the involved assets.
(Adopted 1/1/2007; Rev. 1/1/2012; Rev. 1/1/2013)

Rule 4.11.10

Petition for Transfer of Case to Another County

A. There must be a signed order to transfer. If a stipulation is filed, it must be signed by all parties who have appeared on the case. The order or stipulation must include the name and address of the superior court to which the case is being transferred.

B. Separate fees are required to be submitted with the order or stipulation to transfer, unless fees have been waived by the court.

1. Change of Venue fee for San Diego Superior Court

2. Initial filing fee for the receiving court.

These fees are to be paid by the moving party, unless otherwise noted on the order or minutes.

C. Any future hearing dates will be vacated.
(Adopted 1/1/2008; Rev. 1/1/2012)

Rule 4.11.11

Petition for Authority to Continue Administration

Requests for authority to continue the administration of an estate must be made by a status report. The court will limit the extension to a period not to exceed twelve months from date of the order. The court may require an accounting before approving a subsequent extension request. Refer to section 12201 of the Probate Code for notice requirements.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2013)

Rule 4.11.12

Petition to Appoint Guardian ad Litem

Any party petitioning for appointment of a guardian ad litem may suggest an independent individual to be appointed or request the court make such appointment. Due to the potential conflicts of interests, parents asserting individual claims or defenses may not serve as guardians ad litem for their children, absent a court order to the contrary. Appointment of a guardian ad litem may be requested by ex parte petition.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev. & Renum. 1/1/2013)

CHAPTER 12
CREDITOR'S CLAIMS

Rule 4.12.1

Notice to Creditors

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

B. In an interim or final accounting, the personal representative must describe the compliance with Probate Code section 9050 and *Tulsa*. (See Rule 4.15.4.)

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/2006)

Rule 4.12.2

Filing Creditors' Claims

Counsel are advised to review the court file for creditors' claims prior to filing the final accounting. (See Prob. Code, § 9250.)

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

Rule 4.12.3

Creditors' Claims of Personal Representatives or Counsel

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

B. A proposed allowance or rejection form must be attached for the court's action, with copies to be returned to counsel.

C. The court on its own motion may set the creditor’s claim for hearing and require fifteen days’ written notice be given by the creditor to all heirs and devisees.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2013)

Rule 4.12.4

Payment of Claims and Debts

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

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

Payment pursuant to Probate Code section 11005 assumes that the debt is undisputed and the estate is solvent. Prudence may dictate caution before paying such claims.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.12.5

Special Creditors' Claims

A. Funeral expenses must be reasonable and interest is allowed on such claims commencing sixty days after the date of death (H&S Code 7101).

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

C. Notice to the Director of Health Services for Medi-Cal claims must comply with Probate Code section 9202 and Welfare and Institutions Code section 14009.5.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2015)

CHAPTER 13
SALES

Rule 4.13.1

Publication of Notice of Sale of Real Property

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

B. The notice of sale of real property must set forth the assessor's parcel number as well as the street address or other common designation of the property, if any, or if there is none, the legal description.

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

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

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

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

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

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. & Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 4.13.2

Vesting of Title to Property

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

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

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

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 4.13.3

Bond on Sale of Real Property

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

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

C. In a conservatorship or guardianship, a Recovery bond must be included in the total bond as required by Probate Code section 2320 and California Rules of Court, rule 7.207.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 4.13.4

Exclusive Listings for the Sale of Real Property

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

B. In decedent's estates, a personal representative with limited authority under the Independent Administration of Estates Act shall not enter into an exclusive listing agreement or contract to sell real property of the estate without prior court approval.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 4.13.5

Commissions on Sale of Real Property

A. In all cases, a reasonable broker's commission will be determined by the court at the time of confirmation and must be paid from proceeds of the sale confirmed by the court. The court may consider current community practices and standards in making its determination. The court may not allow a commission in excess of five percent (5%) on improved property or ten percent (10%) on unimproved property absent good cause shown for a larger commission.

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

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 4.13.6

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

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

B. The court requires a ten percent (10%) deposit be made prior to confirmation on any sale of real property, such deposit to be held by the personal representative.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 4.13.7

Sale of Specifically Devised Property

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

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006)

Rule 4.13.8

Personal Property Must Be Appraised Before Sale

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

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

Rule 4.13.9

Sales of Mobile Homes

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

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

Rule 4.13.10

Sales of Securities

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

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

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

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

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

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

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

Rule 4.13.11

Overbids

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

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

Rule 4.13.12

Increased Bid Forms

When there is a successful overbid in open court on a sale of real property, an “Increased Bid in Open Court” (SDSC PR-065) must be completed, signed, and filed with the court before the conclusion of the hearing; otherwise, confirmation is not effective.

(Rev. & Renum. 7/1/2001; Rev. & Renum. 1/1/2006)

Rule 4.13.13

Allowance of Commissions Upon Overbid

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

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006)

CHAPTER 14
INVENTORY AND APPRAISAL

Rule 4.14.1

Preparation of Inventory and Appraisal

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

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

1. Complete legal description;

2. Common address;

3. Assessor's Parcel Number;

4. Description of type of property (i.e., single family residential, multi-family residential, commercial, industrial, agricultural timber, mining, mineral interests, unimproved land).

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

1. Insurance proceeds payable to named beneficiaries.

2. Individual retirement accounts payable to named beneficiaries.

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

4. Assets held in joint tenancy, if there is a surviving joint tenant.

5. Out-of-state real property.

D. Petitioner shall characterize each item of property listed in the Inventory and Appraisal pursuant to Probate Code § 8850.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. & Renum. 1/1/2010; Rev.& Renum. 1/1/2012)

Rule 4.14.2

Correcting Inventory and Appraisal

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

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

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

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

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

For example:

ITEM NO.	DESCRIPTION	APPRAISED VALUE
4	Item 4 was previously described as:	400 shares XYZ common stock
	Item 4 is correctly described as:	300 shares XYZ common stock
	Previously appraised value:	$4,000.00
	Correct appraised value:	$3,000.00
	Change in appraised value:	($1,000.00)

(Adopted 1/1/1990; Rev. 7/1/1996; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.14.3

Petition for Waiver of Appraisal by Referee

When no referee has been designated for the case, fifteen days' notice of the filing of a petition for waiver of appraisal by referee must be given to the referee designated by the San Diego Probate Referees to represent them, in the same manner as would be given to a referee designated for the case.
(Adopted 7/1/1996; Rev. & Renum. 7/1/2001; Renum. 1/1/2006)

CHAPTER 15
ACCOUNTS AND REPORTS

Rule 4.15.1

Required Form of Accounts

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

B. Schedules for receipts and disbursements to be set forth in subject-matter categories for: Trusts, Conservatorships, and Guardianships

C. Dispositive provisions of the Will, if any, must be set forth in the Final Accounting.
(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011; Rev. & Renum. 1/1/2015)

Rule 4.15.2

Bank Letters and Statements

A. All interim accounts must be supported by bank statements or financial statements verifying the balances of accounts at financial institutions as of the closing date of the accounting. The statements must be the originals, must

show the vesting of the account, date of balance and the amount of balance. If a financial institution will not produce records required by this rule, petitioner must submit a declaration setting forth the due diligence efforts undertaken to obtain the required records.

B. If bank statements and/or residential care facility statements are only received electronically, report should so allege and copies should be provided.

C. The appropriate balance must be clearly highlighted or otherwise marked. (Renum 1/1/2015)

D. Balances shown in the accounting, if different, must be reconciled to the letters or statements. (Renum 1/1/2015)

E. Bank or financial statements containing personal information that would not otherwise be kept in a public file (i.e. social security number) must be filed under a separate pleading marked "Confidential Bank and/or Financial Statements." Bank or financial statements substantiating accountings must be lodged with the court until the date of the hearing at which the account is approved. The court may return the statements to the tendering party to hold until the account becomes final. These statements must be marked "Confidential Bank and/or Financial Statements for Accounting Purposes" and follow local rule 4.3.2 for lodging documents. (Renum 1/1/2015)

F. For purposes of this section, "institutions" is defined in Probate Code section 2890, subdivision (c). (Renum 1/1/2015)

G. For purposes of this section, "financial institutions" is defined in Probate Code section 2892, subdivision (b). (Renum 1/1/2015)

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 4.15.3

Allegations Re: Claims

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

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

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

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

Rule 4.15.4

Reporting Payment of Debts

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

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

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

C. The debt was timely paid in good faith;

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

E. The estate is solvent.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.15.5

Allegation Re: Character of Property

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

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

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

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

(Adopted 1/1/1990; Rev. 7/1/1991; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 2014)

Rule 4.15.6

Vouchers

Vouchers supporting accounts are not to be filed with the clerk unless the court specifically orders them filed.
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Renum. 2014)

Rule 4.15.7

Damages for Wrongful Death and for Physical Injury of Decedent

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

B. The disposition of such damages for wrongful death, and the amount of attorneys' fees and costs, may be determined by the court on a petition for authority to compromise. Notice of said petition must be mailed by the personal representative. This procedure is applicable to any action by the personal representative under federal as well as state law.

C. Damages and costs arising out of the physical injury to the decedent or property damage, as distinguished from wrongful death, must be held by the personal representative as the property of the estate and must be inventoried.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2014)

Rule 4.15.8

Supplemental Accountings with Final Discharge

Unless the accounting is waived by the heirs or beneficiaries, supplemental accountings must be submitted for review when $2,500 or more is withheld at the time of the final accountings. The court will set a review hearing for amounts withheld in excess of $10,000. Notice of the hearing on the supplemental accounting must be given to all persons entitled to notice of the hearing of Final Accounting. The starting balance of the supplemental accounting must be for the amount withheld only, and receipts and disbursements shall be reported, starting with the date after the ending date of the final account.
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 1/1/2005; Rev. & Renum. 1/1/2000; Rev. 1/1/2009; Rev. 1/1/2010; Rev. & Renum. 1/1/2013; Renum. 2014)

Rule 4.15.9

Accounts and Reports of Conservators and Guardians of Estate

A. All accounts must follow the format prescribed in these rules for decedents' estates and in Probate Code sections 2620 and 1060-1064 and California Rules of Court, rule 7.575, unless ordered by the court. If funds are maintained in a blocked account, the court may order proof of continued deposits in lieu of a full accounting.

B. Reports must contain the current address and whereabouts of the conservatee or minor, and describe the conservatee's or minor's status and condition. Guardian's Report must set forth guardian's address and minor's age.

C. Reports must reference the amount of the current bond and state whether additional bond is necessary to cover unblocked personal property plus one year's estimated income, plus the recovery bond as set forth in California Rules of Court, rule 7.207.

D. The report must also show any blocked bank accounts.

E. Counsel shall submit an additional copy of any current account for the court investigator with a completed and updated Referral Information and List of Relatives form [SDSC PR-020] attached to the front of the accounting.
(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. & Renum. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. & Renum. 1/1/2013; Renum. 2014; Rev. 1/1/2015)

Rule 4.15.10

Required Form of Conservator and Guardian Accounts

A. The first accounting must be for a period not to exceed one year from the date of appointment.

B. A final account must set forth a list of assets on hand for distribution and the specific proposed distribution. If distribution is proposed pursuant to Probate Code section 13100, the necessary affidavits must be filed before the court orders distribution, consistent with the relevant portions of rule 4.7.2(G).

C. The final account must allege whether or not all income and other taxes which became due and payable during the conservatorship or guardianship have been paid.

D. In the final conservatorship account, an allegation must be made as to whether or not the conservatee or predeceased spouse, if any, were Medi-Cal recipients and if so, appropriate notice must be given per Probate Code section 215, unless distribution is to a personal representative of a deceased conservatee.

E. In all cases, notice must be given to all persons entitled to receive property.

F. All conservatorship accounts must disclose the existence of a trust where the conservatee is a vested beneficiary, the current fair market value of the conservatee's interest, whether the conservator is a trustee, whether counsel for the petitioner is also attorney for the trust and/or trustee, and whether fees approved in the account are to be paid from the trust.

G. Where a guardian accounts for assets of more than one minor, the accounting for each minor must be set forth separately within one report.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011; Rev. & Renum. 1/1/2013; Renum. 2014)

Rule 4.15.11

Waiver of Account Involving Public Benefit Payments

The court may enter an order that the Conservator need not present an account pursuant to Probate Code section 2628. The order may be obtained, in advance of, or subsequent to, the account due date, by filing and serving a petition requesting an order waiving account. The petition must contain allegations for the current account period as required by Probate Code section 2628, subdivision (b). If authority is granted to waive future accounts, the conservator must annually file, prior to the review hearing required by Local Rule 4.18.17, a verified declaration stating that the conditions specified in Probate Code section 2628, subdivision (b), have been met for the applicable accounting period. If the conditions have not been met for any subsequent accounting period, an account must be filed for that account period as required by Probate Code section 2620.

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

Rule 4.15.12

Report of Guardian of Person

Every guardian of the person of a minor must file a Confidential Guardianship Status Report (Judicial Council Form GC-251). The first report is due not later than one year after the initial appointment. Thereafter, reports will be due annually. Failure to file the report and appear in court when required to do so may constitute "good cause" for the court to remove the guardian from his or her office.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Renum. 1/1/2013; Renum. 2014)

Rule 4.15.13

Report of Court Appointed Attorney

Counsel appointed by the court must prepare and file a written report to the court at least five days prior to the hearing. Said report must:

A. Discuss the pending issues, to the extent such discussion would not constitute a disclosure that would be restricted by or prohibited by Evidence Code sections 950 et seq.

B. Document the services performed, specifying the dates the services were performed, and setting forth the categories of services rendered including the amount of hours expended and the hourly rate requested for each category.

C. Include a fee request in the prayer.

D. Include a recommendation regarding the ability or inability of the parents to pay the fee, in order to enable the court to make a finding regarding such ability or inability, and to order payment by the parent(s) or by the County of San Diego.

E. Make a recommendation whether or not counsel may be discharged.

F. State that counsel has met the qualifications and continuing education requirements pursuant to California Rules of Court, rule 7.1101.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev. & Renum. 1/1/2013; Rev. & Renum. 1/1/2014)

CHAPTER 16
FEES, COMMISSIONS AND COST REIMBURSEMENT

Rule 4.16.1

Probate Estate Administration

A. Ordinary office expenses and travel expenses incurred by a fiduciary or counsel are deemed to be compensated by the statutory fee, and the court will not allow further reimbursement except:

1. An exception may be made for the reasonable expenses of fiduciaries for travel on estate business.

2. For good cause shown, the court may allow office expenses such as photocopying, express mail, postage, or long distance phone expenses, if the court considers such expenses necessary and reasonable in view of the amount of the statutory fee and work required in the administration of the estate.

B. Travel and office expenses appearing in any account must be explained in the report.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011)

Rule 4.16.2

Fees and Commissions in Trusts, Conservatorships, and Guardianships

A. The court will not grant a fee request without an accounting, absent good cause.

B. Fees for court appointed counsel should be requested in the hearing as part of counsel's report and comply with the requirements of Local Rule 4.15.13.

C. Any Requests for Court Approval and/or confirmation of compensation must be set forth in a declaration that is separate from the Petition or Account.

1. Conservators seeking compensation must submit the following:

a. A completed "Fee Request Declaration" (form SDSCPR-96) for all requests for compensation in excess of $750.00.

b. Must state whether or not funds from any outside sources have been received by the Conservator, which cover in whole or in part, the costs of administration of the conservatorship.

2. Institutional fiduciaries seeking approval of fees premised upon fee schedules must submit a declaration that sets forth the published fee schedule for the period involved; the compensation paid to the fiduciary during the period; and the dates of such payment(s).

3. In guardianships and conservatorships in which the Public Guardian or County Counsel seek compensation, a declaration must be filed that sets forth information regarding the factors listed in Probate Code Section 2942 together with the information required in Rule 4.16.2(C)(4) of these rules, except that the hours expended and an hourly rate of service need not be set forth.

4. In all other fee requests, the declaration must:

a. Specify the specific dates during which the services were performed;

b. Set forth categories of services rendered, together with the amount of hours expended for each such category and the hourly rate sought for each such category;

c. Each category to set forth the total number of hours performed by each person who performed the services and the hours spent by each of them;

d. Set forth the total cumulative amount of hours for each of the following: the attorney, paralegal, law clerk, legal assistant or any other person who performed the services set forth in the declaration;

e. Use of paralegals must include the requirements listed in Rule 7.703(e) of the California Rules of Court

f. Set forth information that will assist the court in determining whether the hours incurred and the rate sought are just and reasonable, including a discussion of the nature and difficulty of the tasks performed; the results achieved; the benefit to the trust, ward or conservatee; the background, skill and experience of the person rendering the service; an explanation of why the work required more than ordinary skill or judgment; and the standard rate in the community for such tasks.

5. If a trustee wishes the court to consider the factors set forth in California Rule of Court 7.776 in assessing the fee request, his or her declaration should include allegations regarding such factors.

6. If a conservator or guardian wishes the court to consider the factors set forth in California Rule of Court 7.756 in assessing the fee request, his or her declaration should include allegations regarding such factors.

7. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Fiduciaries and counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the court and include such authority in the prior order approving the account.

8. Fees may be sought for work related to the report and accounting for the current period.

9. In trust accountings, an allegation must be made as to the total amount of attorneys' fees and trustee's fees paid during the applicable accounting period.

D. A fee declaration is not required if court approval of attorney or fiduciary fees is not required by statute and such approval is not otherwise sought in the pleadings; unless the court orders that a fee declaration be prepared and filed.
(Adopted 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 4.16.3
Periodic Payments to Trustees
On petition, the court may authorize periodic payments on account to the trustee. The petition must describe the services to be rendered on a periodic basis, the value of the services to be performed, the method of calculating the value, and the reason why authority to make payments is requested. If the court authorizes such payments, the trustee may receive such payments only if the services described in the petition are actually rendered. The payments are subject to review by the court upon the next succeeding account to determine that the services were actually rendered and that the amount paid on account was not unreasonable. If the court finds that the amount paid on account was either excessive or inadequate in view of the services actually rendered, the court may make such additional orders as appropriate.
(Adopted 1/1/2011)

Rule 4.16.4
Payments From Other Sources
Any request for a court order approving fees, costs, and compensation to be paid from a source other than the estate must set forth an allegation of the total amount to be paid and disclose the source of the payment. If funds are to be paid from a court-supervised source in probate, the case number shall be set forth.
(Adopted 1/1/2015)

CHAPTER 17
DISTRIBUTION

Rule 4.17.1
Distribution to Minor
When a beneficiary is a minor or a disabled adult, the court requires the following documents to be filed in conjunction with the accounting and petition for final distribution:
A. A certified copy of the Letters of Guardianship or Conservatorship when distribution is to be made to the guardian of the minor **or** to the conservator of a disabled adult.
B. The written assurance of a parent that the minor's estate, including the bequest, does not exceed $5,000 when distribution is made pursuant to Probate Code section 3401.
C. The consent of the custodian to act if distribution is to be made to a custodian under the California Uniform Transfers to Minors Act (Prob. Code, § 3900 et seq.).
(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011)

Rule 4.17.2
Distribution Under Probate Code Section 13101 Affidavit
If distribution is to be made to a person collecting assets under Probate Code section 13100, the required affidavit or declaration pursuant to Probate Code section 13101 must be filed before distribution will be ordered.
(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 4.17.3
Blocked Accounts
In any case in which funds are to be placed in a blocked account, Rule 4.7.11 of these rules must be followed.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.17.4
Distribution to Deceased Beneficiary

A. When an heir or beneficiary dies during administration of an estate, the Petition for Distribution must request distribution to the personal representative of the estate of the heir or beneficiary, pursuant to Probate Code sections 11801 and 11802, or, if applicable, to the person(s) entitled to the property in a summary proceeding pursuant to a declaration or affidavit under Probate Code section 13101.

B. The Petition for Distribution shall include a copy of letters for personal representative of deceased beneficiary/heir's estate and case number.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2015)

Rule 4.17.5

Assignment of Interest in Estate

When distribution is requested pursuant to an assignment by a distributee, the court will require that the assignment be filed in the proceeding. The court will require additional information, including consideration paid, to assure that the assignor fully comprehends the effect of the assignment, that it was voluntarily made and was not grossly unreasonable. The terms of said assignment will be set forth in the Order for Distribution as set forth in Rule 4.7.2, infra.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011)

Rule 4.17.6

Preliminary Distribution Bond

A. If a preliminary distribution is made before the time for filing creditors' claims has expired, a bond must be furnished by the distributees.

B. When a bond is not required by the court, the order must include a finding that the time for filing or presenting claims against the estate has expired and that all uncontested claims have been paid or are sufficiently secured.

C. An allegation and showing will be required concerning notice to any additional known or reasonably ascertainable creditors pursuant to *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478. Unless such notices have been given, the time to file claims will not be considered to have expired and the court will impose a bond upon each distributee of the preliminary distribution.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006)

Rule 4.17.7

Receipts on Preliminary Distribution

Receipts for property received in Preliminary distributions must be filed with the court before the final account, and follow the requirements of Rule 4.17.8 of these rules.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2013)

Rule 4.17.8

Receipts on Final Distribution

A. Receipts for property received on final distribution must be signed by the (1) distributee, unless there is a showing of good cause why the distributee cannot or will not sign the receipt, (2) the attorney-in-fact for the distributee under a valid power of attorney where a true copy of the power of attorney is attached to the receipt and the attorney-in-fact certifies under penalty of perjury that the power of attorney is in full force and effect, or (3) the conservator or guardian of the estate of the distributee, or (4) the personal representative of the estate of the distributee.

B. A receipt must be specifically itemized, giving the valuation of each asset and the total value of all the property received.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011)

Rule 4.17.9

Property to be Distributed Must Be Listed

A. The petition for distribution must list and describe in detail all property to be distributed, including cash. The proposed distribution of cash must specify the exact dollar amount to be distributed to each recipient. Proposed distribution of non-cash assets must specify the percentage to be distributed to each recipient..

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

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

D. The description must be set forth either in the body of the petition or in the prayer, or by a schedule in the accounting and incorporated in the petition by reference.

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

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

(Adopted 1/1/1990; Renum.7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011; Rev. 1/1/2012; Renum. 1/1/2013)

Rule 4.17.10

Requests to Withhold Funds from Final Distribution

In every case where the Petitioner requests to withhold $10,000 or more, the Petitioner must specify the items for which the withholding is required, together with an estimate of each item.

(Adopted 1/1/2006; Rev. 1/1/2009)

CHAPTER 18
CONSERVATORSHIPS

Rule 4.18.1

Conservatorship Orientation Program

All conservators, excluding limited conservators of the person, who are not Private Professional Conservators as defined by Probate Code section 2340, must complete an education class if ordered at the time of their appointment as conservator. Classes must be completed within six months of appointment as a conservator, and a certificate evidencing completion must be filed with the court. Classes must be designed to explain the duties and responsibilities of Conservator of the Person and/or Estate and include information on healthcare, safety, living arrangements, management of assets, accountings and other legal obligations. A list of providers is available in the Probate Business Office. Failure to complete this requirement may be grounds for removal as ordered by the court. In addition to removal, failure to comply with these requirements may result in the imposition of sanctions.

(Adopted 1/1/2006; Rev. 1/1/2011)

Rule 4.18.2

Temporary Conservatorships

A. The court will not consider the appointment of a temporary conservator ex parte and will set the petition for hearing with a five day notice requirement unless proper showing is made as follows:

1. Good cause and an immediate necessity is affirmatively shown in a declaration containing competent evidence based on personal knowledge;

2. The proposed conservatee is present or if the proposed conservatee is unable to attend;

a. the proposed conservatee is hospitalized, has notice of the ex parte hearing and its purpose, and cannot attend for medical reasons that must be supported by a physician's declaration;

b. evidence is presented that the proposed conservatee has notice of the ex parte hearing and its purpose and cannot appear; or,

c. in appropriate circumstances where capacity is not an issue, the proposed conservatee has consented and waived notice.

3. There are no relatives in equal or closer relationship than the petitioner, or such relatives nominated or consented to petitioner's appointment. This requirement may be waived by the court upon a showing of good cause.

4. Petitioner must state in the Ex Parte Application whether there are known objectors.

a. If there are known objections, absent good cause, the matter will be set for a noticed hearing; or

b. If the petitioner desires to proceed without notice to a known objector, the petitioner must demonstrate by competent evidence the need to waive notice based on good cause.

5. Unless good cause is shown, the reports of a court appointed attorney and court investigator are on file.

6. Absent good cause, 24-hour notice has been given to the proposed conservatee's spouse or domestic partner, and all relatives within the second degree.

7. In matters where the application is made primarily to make health care decisions a declaration is on file by petitioner and court appointed counsel setting forth reasons why temporary conservatorship is more appropriate than proceeding under Probate Code section 3200 et seq.

B. Upon request, a petition for temporary conservatorship may be "short set" by the probate business office on the next available moving calendar. The petition will be set at a shortened date and time to allow five days' notice to parties entitled.

C. No initial appointment of a temporary conservator may exceed a period of thirty days, but such appointment may be extended by the court to the date of the hearing on the permanent conservatorship. If a continuance of the hearing on the general conservatorship petition is necessary, counsel may appear at the hearing and request the extension of the temporary conservatorship. Alternatively a request to extend may be made ex parte, if the request is presented before the expiration of the initial appointment and there are no objections.

D. Good cause must be shown for special powers to be granted without a hearing. When special powers are sought, they must be specifically requested and supported by factual allegations.

E. Good cause is defined as those circumstances where it is essential to protect the proposed conservatee, or the proposed conservatee's estate, from immediate and substantial harm.

F. Whenever an ex parte temporary conservatorship is sought and a waiver of notice is requested, or presence of the proposed temporary conservatee is not excused by statute, it must be accompanied by a proposed order which includes factual findings reflecting the substantial harm posed to the proposed conservatee, or the proposed conservatee's estate.

G. The court must set a review hearing within six court days whenever an ex parte temporary conservatorship is granted. The court may reconsider the propriety of the temporary conservatorship, or other matters as appropriate, at the review hearing.

H. A petition for appointment of a temporary Conservatorship of the person or estate or both must be made in a separate pleading. It may not be included in, and may not be filed prior to the filing of, the petition for appointment of a permanent conservator.

I. All petitions for temporary conservatorships, including "short set" temporary conservatorships must be submitted with an extra copy of the petition and all related documents for the Court Investigator.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 4.18.3

Petition for Appointment of Conservator; Allegations and Notice Requirements; Supplemental Information

A. All petitions for appointment of conservator must state whether or not there is presently a conservator appointed under the Lanterman-Petris Short Act ("LPS") and, if so, the number of the Mental Health action, the name of the conservator, when the conservatorship expires, and that court's findings regarding the proposed conservatee's ability to complete the affidavit of voter registration.

B. If an LPS conservatorship exists, notice must be given to: (1) The LPS conservator; (2) counsel representing the LPS conservatee; and (3) all persons otherwise required by Probate Code section 1460 et seq.

C. When the conservatee has a spouse, the petition must allege whether any property is community property. If community, the petition should state what portion, if any, is to be included in the conservatorship. (Prob. Code, § 3051.)

D. Spouses, registered domestic partners, children, grandchildren, parents, grandparents and siblings are relatives within the second degree. The petition must allege all relatives within the second degree and must list their names, current addresses and telephone numbers, relationship to the proposed conservatee, and whether they are minors or adults (e.g., "John Smith, adult grandchild," or "John Smith, grandchild age 13").

E. Unless the petitioner is a bank, any petition for appointment must be accompanied by the forms required by the California Rules of Court, rule 7.1050, Investigator Referral and, the Duties and Liabilities form. The petition will be rejected for filing if required forms are not submitted with the petition. For non-imaged cases, a copy of such forms must also be filed for the Court Investigator who must review the allegations in the supplemental information. A temporary appointment will not be made unless the petition for permanent conservatorship which is to be filed is accompanied by such supplemental information.

F. Any petition for appointment of conservator must disclose whether the proposed conservator is a private professional fiduciary (PPF), their current licensing status, the expiration date of their current registration, their state license number. If the proposed conservator is not PPF and is not related to the proposed conservatee, the proposed

conservator must allege facts in a declaration under penalty of perjury to aid the court in determining whether he or she is a "professional fiduciary," as defined in Business and Professions Code § 6501 (f).

G. The Petition for Conservatorship must state, with specificity, evidence to support a finding of lack of capacity to make decisions or do other acts as required by Probate Code section 811. The petition should set forth evidence attesting to a deficit in at least one of the mental functions set forth in Probate Code section 811. This evidence may, however, be set forth in a separate declaration attached to the petition.

H. When the proposed conservatee is, or was, the subject of a guardianship, the "Petition for Appointment of a Conservator" must include the case number of the prior guardianship, the name of the prior guardian(s), and the name(s) of the attorneys for the prior guardian(s) and ward, if any.

I. When the petitioner, or the proposed conservator, also serves as the trustee of a trust in which the conservatee has a beneficial interest, the existence, name of the trust, location of the trust, the date the trust was established, whether the trust is under court supervision, the existing case number, as well as the petitioner or proposed conservatee's status and interest therein must be disclosed in the petition. Additionally, the Petition for Conservatorship must state whether the petitioner, or the proposed conservator, also serves as attorney in fact under a Power of Attorney in which the conservatee is the principle.

J. The Petition for Conservatorship must state, with specificity, evidence to support a finding that petitioner has standing pursuant to Probate Code section 1820. The court generally considers an "interested person" and/or "friend" to include the proposed conservatee's physician, accountant, stockbroker, neighbor, or other such acquaintance. (Prob. Code, § 1820, subd. (a)(5).) Where petitioner's relationship to the proposed conservatee may not confer standing sufficient to meet this criteria, notice of the proceedings shall be given to the Public Guardian.

K. Whenever the petitioner is not a family member a separate verified declaration containing the following information must be submitted:

1. The due diligence efforts of the petitioner to locate family members, friends and neighbors, and to ascertain the proposed conservatee's preferences in appointing a conservator, or explain why it was not feasible to do so.

2. The efforts of the petitioner to discuss with family members and friends the proposed conservatee's preferences in appointing a conservator.

3. A description of the petitioner's prior relationship, and contacts with, the proposed conservatee. If the petitioner was not nominated by a relative, or the proposed conservatee, the petitioner must set forth the specific circumstances under which he or she became involved with the proposed conservatee.

L. When filing a petition for the appointment of a conservator or successor-conservator, the petitioner must file an extra copy of the petition and all subsequent documents regarding the petition for use by the Court Investigator, including copies of Trusts and Powers of Attorney if those documents are ordered to be filed.

(Adopted 1/1/1990; Rev. 1/1/1991; 7/1/1996, Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & 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. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 4.18.4

Capacity to Give Informed Consent for Medical Treatment

A. Any petition seeking a determination that the proposed Conservatee lacks capacity to give informed medical consent must contain facts to support the finding and must be accompanied by a declaration of a licensed physician, or, where appropriate, an accredited practitioner, as to Conservatee's lack of capacity to consent to medical treatment.

B. Medical authority for a limited conservator is granted pursuant to Probate Code section 2351.5, not Probate Code section 2355, and the Petition for Limited Conservatorship may not ask for 2355 authority.

C. If any conservatorship petition, including a temporary conservatorship is premised on the need to exercise medical authority, the petitioner must explain why a Probate Code Section 3200 Petition is not the least restrictive alternative.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1996; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Renum. 1/1/2014; Rev. 1/1/2015)

Rule 4.18.5

Dementia Authority

A. A request for dementia authority per Probate Code section 2356.5 may be contained in the petition for appointment of conservator, a petition for exclusive medical authority, or in a petition asking only for dementia authority.

B. A petition for appointment of conservator which includes such request must be a petition for appointment of conservator of the person, must also include a request for exclusive medical authority and must have sufficient specific examples and allegations to be clear and convincing evidence of dementia as defined by the last edition of Diagnostic and Statistical Manual of Mental Disorders (DSM V).

C. A Capacity Declaration – Conservatorship (GC-335) and Dementia Attachment (GC-335A) must be filed in support, and must address each required finding per Probate Code section 2356.5, subdivision (f)(3).

D. A request for dementia authority can be contained in a petition for exclusive medical authority if there is a conservator of the person in place.

E. A request for dementia authority only can be the subject of a petition where there is already a conservator of the person who has exclusive medical authority.

F. Counsel will be appointed to represent the conservatee or proposed conservatee in any case where dementia authority is requested and a written report from that attorney must be filed five days in advance of the hearing before the court acts on the dementia request. (See also Rule 4.18.10.)

G. A request for placement in a secured facility must indicate the specific facility and a showing it is the least restrictive placement available.

H. A request to authorize medications must show the specific medications currently prescribed, however no further relief will be required if changes to medication are required.

I. Dementia authority will not be granted where the petitioner is the proposed conservatee as there is a conflict in a person having sufficient capacity to file a petition and the court finding dementia per DSM IV.

J. The court finds that notice required on a petition for appointment of conservator is sufficient notice of a request for dementia authority and an additional "Order Prescribing Notice" need not be submitted.

K. The court will require fifteen days' notice, with a copy of the petition, to the conservatee, conservatee's spouse, registered domestic partner, and relatives within the second degree. (Adopted 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011; Rev. & Renum.1/1/2014)

Rule 4.18.6

Independent Powers: Sale of Residence

A. The court will grant individual powers as authorized by Probate Code sections 2590 and 2591 only in response to specific allegations regarding their necessity.

B. Where power is granted to sell real property, the court requires that the sale be returned to the court for overbidding and confirmation. If independent power of sale of real property is requested, an allegation must be made whether the real property is conservatee's residence, as described in Probate Code section 2540.

C. The independent powers granted must be set forth in the order and in the letters of conservatorship.

D. If conservatee's present or former residence, including a mobile home or recreational vehicle, is to be sold, authority must first be obtained from the court. The petition must indicate the conservatee's support or opposition, including whether the conservatee opposed the sale in the past, the necessity for the sale, whether conservatee has the ability to reside therein and alternatives to the sale. In addition, the tax issues are to be discussed, particularly the impact of capital gains tax.

E. The court will consider the petition for authority to sell a residence on an ex parte basis, upon showing of immediate need, if there are no requests for special notice or if the persons requesting special notice waive notice and it is shown the conservatee does not object or does not have the capacity to object.

(Adopted 1/1/1990; Rev. 1/1/1991; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Renum. 1/1/2014)

Rule 4.18.7

Consent of Conservator to Act

When a proposed conservator is not petitioning, written consent of the proposed conservator to act must be on file before the appointment is made.

(Adopted 1/1/1990; Rev. 7/1/1991; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Renum. 1/1/2014)

Rule 4.18.8

Court Investigation/Response to Court Investigator's Report

A. Unless an exception to the general requirements regarding a Court Investigator's Report applies (i.e. as provided in California Probate Code sections 1826, 1848 or other appropriate section), a Referral Information and List of Relatives (Confidential) [form SDSC PR-020] must be filed with the Petition for Appointment of Probate

Conservator. An updated Referral Information and List of Relatives must be filed with each accounting or subsequent hearing following the establishment of a conservatorship if any contact information has changed.

B. No Order Appointing Court Investigator is required because the court has made a general order appointing the court investigators for all cases.

C. If it is alleged that the petitioning or nominating proposed conservatee will attend the hearing, but before the hearing becomes unable or unwilling to attend, the petition must be supplemented and the referral must be filed. Counsel must call the Court Investigator to alert him or her of the need for an investigation. If this is not accomplished at least ten days before the hearing date, a continuance ordinarily will be required.

D. Petitioner must cooperate with the Court Investigator in the preparation of a Court Investigator's Report and must use all reasonable efforts to timely provide appropriate information as requested by the Court Investigator, to include the proposed conservatee is made available to be interviewed by the Court Investigator.

E. When an investigator's report or report of the court appointed attorney for the conservatee is mailed to counsel and/or the conservator subsequent to the establishment of the conservatorship, the conservator must promptly file a report responsive to the concerns addressed by the investigator or court appointed attorney.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1991; Rev. 7/1/1995; Rev. 7/1/1996; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2012; Rev. 1/1/2013; Renum. 1/1/2014; Rev. 1/1/2015)

Rule 4.18.9

Limited Conservatorships

Upon a petition for appointment of limited conservator, and under proper circumstances, the court may appoint a general conservator for a developmentally disabled person.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Renum. 1/1/2014)

Rule 4.18.10

Appointment of Counsel for Conservatee or Patient

The court will appoint counsel for the person who is the subject of a conservatorship petition as required by law or for good cause.

(Adopted 1/1/1990; Rev. 1/1/2000; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2012; Rev. & Renum. 1/1/2013; Renum. 1/1/2014)

Rule 4.18.11

Successor Conservator

Appointment of a successor conservator does not require service of a citation or personal service of notice on the conservatee, nor does it require a physician's affidavit of inability to attend the hearing or an 811 declaration per Rule 4.18.3, subsection G. Unless the petition for appointment of successor states that the conservatee will attend the hearing, it will be necessary to file a Referral for Court Investigator. The investigator must interview the conservatee and file a report; before the hearing. The notice of hearing and a copy of the petition must be served on the conservatee, either personally or by mail, at least fifteen days prior to the hearing, and other notice given pursuant to Probate Code section 2683.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Renum. 1/1/2014)

Rule 4.18.12

Conservatorship Assessments

An assessment will be made against the estate of each conservatee for the cost of any investigation made by the court investigator under appropriate statutes. The assessment for investigations by the court investigator is set by the court. Absent proof of Medi-Cal benefits or unless the court orders otherwise, the assessment is due and must be paid immediately upon receipt of the investigator's report. The court will routinely check for the payment of assessments when any petition in a conservatorship in a conservatorship is before the court and no order will be processed until all assessments are paid unless the court grants a request to defer payment for good cause shown. If it is proven the conservatee receives Medi-Cal benefits and also has a Trust, an assessment will be made against the conservatee's Trust for the cost of any investigation made by the court investigator.

(Adopted 1/1/1990; Rev. 1/1/1991; Rev. 7/1/1995; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2013; Rev. & Renum. 1/1/2014)

Rule 4.18.13

Investments by Conservator

A. In accordance with Probate Code section 16040, investments by conservators must be prudent and in keeping with the size and character of the conservatee's estate.

B. The court will not approve the following:

1. Unsecured loans.

2. Loans to relatives.

3. Bonds or obligations of foreign governments or corporations.

C. The court will not authorize investments in real estate, either by purchase or encumbrance, unless supported by an appraisal by the court-appointed probate referee or other qualified appraiser.

D. A conservator may continue managing investments specified in Probate Code section 2459, subdivision (b), which pre-existed the conservatorship, but may not make additional investments without court authority. A conservator may petition the court for instructions and authority to make a specific investment, including investments in Certificate of Deposit Account Registry Service (CDARS.)

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Renum. 1/1/2014)

Rule 4.18.14

Substituted Judgments in Conservatorships Probate Code section 2580

A. Absent good cause, the court will appoint an attorney or a guardian ad litem for the Conservatee in all proceedings pursuant to Probate Code section 2580 et seq.

B. Where the petitioner seeks to establish a trust with conservatorship assets under substituted judgment, the trust must provide, unless otherwise ordered, that the trust is subject to continuing court supervision under the Probate Code. Absent an order of the court to the contrary, all trust assets must remain within the State of California. In the case of securities, cash and other items of intangible personal property, the assets must remain on deposit with an entity registered with the California Secretary of State to do business in California.

C. A request for approval under PRC 2580, for a substituted judgment, must be filed in a separate petition and cannot be combined in the initial petition for an appointment of a conservator.

(Adopted 1/1/1990; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2004; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2013; Rev. & Renum. 1/1/2014)

Rule 4.18.15

Fees for Conservators and Counsel

See Chapter 16 regarding fees and commissions generally.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011; Renum. 1/1/2014)

Rule 4.18.16

EADACPA Proceedings

When a civil action has been filed which cites the "Elder Abuse and Dependent Adult Civil Protection Act" (EADACPA), pursuant to Welfare & Institutions Code sections 15600 et seq., that action will be transferred to the Probate Court for litigation as required by Rule 2.4.9.

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

Rule 4.18.17

Court Ordered Review Hearings

A. A the hearing approving a Petition for Conservatorship of the Person or Estate, the court will set compliance dates follows:

1. Within ninety days, the conservator of the Person is to provide proof of the filing with the court of a Level of Care Evaluation (Prob. Code, § 2352.5) and the Notice of Rights of Conservatee (Prob. Code, § 1830). The conservator of the Estate is to file an inventory and appraisal (Prob. Code, § 2610) at or before the ninety-day compliance date.

2. Within four hundred and twenty-five days of appointment, the Conservator of the Estate is to file the first account required under Probate Code 2620.

3. Within seven hundred and ninety days of filing the previous accounting, the Conservator of the Estate is to file subsequent account required under Probate Code 2620, unless otherwise directed by the court.

4. If any of the above required materials are not filed prior to the compliance date, the court will set the matter for review hearing. If the materials are filed three days prior to the review hearing, the review hearing will be

taken off-calendar. Counsel who file the materials less than three days prior to the hearing must attend and bring evidence of compliance to the review hearing.

B. If materials required by Paragraph A above have not been filed by the date of the review hearing, the conservator and counsel, if any, must appear at the review hearing and must show cause why the conservator should not be suspended, removed, or otherwise sanctioned pursuant to Code of Civil Procedure section 177.5 or 575.5 and/or why counsel should not be appointed to represent the conservatee. The court, in its discretion, may make additional orders as appropriate.

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

Rule 4.18.18

Death of Conservatee

No later than forty-five days after the death of a conservatee, the conservator shall file a notice of death of conservatee, setting forth the date of death, and shall cause such notice to be served on all interested parties, including, if applicable, the court appointed attorney, and all known heirs at law, and all successors in interest, including other fiduciaries for the conservatee.

(Adopted 1/1/2015.)

CHAPTER 19
GUARDIANSHIPS

Rule 4.19.1

Temporary Guardianships

A. A petition for appointment of temporary guardian must be a separate pleading and may not be filed prior to the filing of a petition for appointment of a general guardian.

B. The court will require a full bond from the temporary guardian of the estate unless waived for good cause.

C. The court will not consider the appointment of a temporary guardian ex parte unless proper showing is made by separate declaration and order as set forth at California Rules of Court, rule 7.1012. Upon granting of an ex parte temporary guardianship a reconsideration hearing will be set if the petition for general guardianship is more than thirty days from date of temporary appointment order.

D. Upon request, a petition for temporary guardianship may be "short set" by the probate business office on the next available moving calendar. The petition will be set at a shortened date and time to allow five days' notice to parties entitled.

E. The filing fee required for petitions for temporary guardianship is due at filing in addition to the ex parte filing fee, if any.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2015)

Rule 4.19.2

Petition for Appointment of Guardian: Jurisdiction

A. If there is a proceeding regarding the minor pending in Juvenile Court or Family Court, counsel must refer to the Guardianship Protocol available in the Probate Business Office.

B. When an appointment is requested for guardianship of the estate only, the petition must be filed in the Probate Court.

C. Any proposed guardian not related to the minor must disclose if they are serving as guardian for any other minors to whom they are not related.

D. It is the petitioner's responsibility to ensure that allegations that parental custody would be detrimental to the minor child, other than a statement of ultimate fact, not appear in the petition. Allegations of this nature must be submitted on a separate document which will be maintained in a confidential envelope. (Fam. Code, § 3041.)

(Adopted 1/1/1990, Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011)

Rule 4.19.3

Co-Habitant of Proposed Guardian

A. If the minor resides with the proposed guardian and the proposed guardian is co-habiting with another adult who will share in the physical custody of the minor, the court must presume that the co-habiting adult is a person having care of the minor and a copy of the petition and notice must be served by mail on said co-habiting adult. The co-habiting adult is subject to a background screening by the investigating agency.

B. Written consent of the co-habiting adult must be filed with the court.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011)

Rule 4.19.4

Proceedings to Have Child Declared Free From Custody and Control of One or Both Parents

Probate proceedings authorized by Probate Code section 1516.5 will be filed and heard in the Juvenile Division. The guardianship file will be consolidated into the juvenile proceedings pursuant to the request and direction of the Juvenile Court.
(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006)

Rule 4.19.5

Investigation

Probate Code section 1513 requires that, unless waived by the court, in each proposed appointment of guardian, an investigation be made and a report submitted to the court. These investigations will be done by Family Court Services, the Court Investigator (Probate Department) or Department of Social Services as follows:

Guardianship Of	Proposed Guardian	Agency
1. Person or Person/Estate	Relative	Family Court Services
2. Person or Person/Estate	Non-relative	HHSA
3. Estate only	Relative or Non-relative	Court Investigator
4. Estate Only-Waiver	Relative or Non-relative	No Investigation

For these purposes, relative is defined in Probate Code Section 1513(g).
PARTY IS TO SUBMIT DOCUMENTS AND FOLLOW PROCEDURES BELOW FOR CORRESPONDING NUMBERS ABOVE:

1. RELATIVE GUARDIAN - PERSON OR PERSON/ESTATE

a. Submit Order Directing or Waiving Investigation, PR-63. Fill out order, check #1.

b. Go to Family Court Services immediately to make an appointment. The investigation process will ordinarily take at minimum six weeks. TAKE COPIES OF ALL GUARDIANSHIP DOCUMENTS WITH YOU including a completed Guardianship Questionnaire (form SDCS FCS-045). Locations and phone numbers can be found at http://www.sdcourt.ca.gov. The investigation fee must be paid prior to the investigation.

2. NON-RELATIVE GUARDIAN - PERSON OR PERSON/ESTATE

a. Per Probate Code 1542, notice is to be given to the Director of Social Services in Sacramento and to the local agency investigating guardianships.

b. Party to submit the Order Directing or Waiving Investigation PR-63 to the Probate department. Fill out order, check #2.

c. Send a second copy of the petition to: Health and Human Services Agency, Children's Services, Guardianship Clerk, 6950 Levant Street, San Diego, CA 92111.

3. RELATIVE OR NON-RELATIVE GUARDIAN - ESTATE ONLY (NON-WAIVER)

a. Submit Order Directing or Waiving Investigation PR-63 to the probate department. Fill out order, check #3.

b. Send copy of order to Court Investigator to initiate investigation.

c. Pay the investigation fee to the probate department and send receipt with a copy of the petition and Order Directing Investigation to the Probate Department, attention Court Investigator.

4. RELATIVE OR NON-RELATIVE GUARDIAN - ESTATE - WAIVER REQUESTED

a. Submit a Probate Ex Parte Coversheet and Instructions PR-136, Ex parte Petition for Waiver of Investigation (on pleading paper-no form), Guardianship Questionnaire (FCS-039) , and Order Directing or Waiving Investigation (PR-63) to the Probate Department. Fill out order but do NOT check a box.

b. If waiver is denied, the party will receive a copy of the Order Directing or Waiving Investigation (PR-63). The party will pay the investigation fee to the probate department and send of copy of the Order to the probate department, attention: Court Investigator.

All non-relative guardianship petitions of the person require you to send notice to the local agency investigating guardianships (per Probate Code 1516). The actual screening for neglect or abuse will be done by either San Diego Department of Social Services or Family Court Services, depending upon which agency is responsible for the investigation of the guardianship of the person. Since Family Court Services conducts screenings for prior referrals of neglect or abuse of minors in relative guardianship petitions, notice pursuant to Probate Code 1516(a) for relative guardianships is not required.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2011; Rev & Renum. 1/1/2012; Rev. 1/1/2013)

Rule 4.19.6

Additional Powers

A. The court may, on the petition of the guardian of the estate, either at the time of appointment or later, grant additional powers to the guardian as authorized by sections 2590 and 2591 of the Probate Code. Such powers are not granted unless sufficient reason is shown for their necessity. The court will grant only those additional powers necessary or proper under the specific circumstances of each case. The powers so granted must be set forth in the order and in the letters of guardianship.

B. A petition to fix the residence of the minor in another state, once approved by the court, will be continued for a sixty day review. Upon showing a guardianship has been established in the new state of residence, the matter will be taken off calendar.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2011; Renum. 1/1/2014)

Rule 4.19.7

Investments by Guardian

A. See Rule 4.18.13.

B. The guardian should also consider the circumstances of the estate, indicated cash needs, the age of the minor and the date of prospective termination of the guardianship.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2011; Renum. 1/1/2014)

Rule 4.19.8

Request for Use of Minor's Assets

A. If a minor has a living parent or receives or is entitled to support from another source, prior court approval must be obtained before using guardianship assets for the minor's support, maintenance or education pursuant to Probate Code section 2422. The father and mother of a minor child have an equal responsibility to support the minor.

B. A request to expend funds may be made at the time of appointment of guardian, in a separate noticed petition, or included in an accounting and report.

C. The petition must set forth in detail the parents' financial inability or other circumstances which in the minor's interest would justify use of the guardianship assets.

D. The request must be for a specific and limited purpose and for a limited period of time.

E. The petition must be accompanied by a statement describing income, expenses, assets and liabilities of any parent and must include the receipt of Social Security if applicable.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011; Renum. 1/1/2014)

Rule 4.19.9

Fees and Commissions in Guardianships

See Chapter 16 regarding fees and commissions generally.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. & Renum. 1/1/2011; Renum. 1/1/2014)

Rule 4.19.10

Petitions for Visitation or to Modify Visitation

If a party other than the parent requests visitation or modification of existing visitation orders, notice to the parent(s) is required.

(Adopted 1/1/2015.)

CHAPTER 20
TRUSTS

Rule 4.20.1

Testamentary Trust Accounts

A. Unless the testator provides otherwise in the will, or the court specifically orders otherwise, a trust created by will executed on or after July 1, 1977, is not subject to the continuing jurisdiction of the court and the court will require an accounting and report only when the same has been requested by someone beneficially interested in the trust.

B. Testamentary trust accounts and related proceedings must be filed in the estate case; but an inter vivos trust must be filed as a new proceeding, even if it is the beneficiary of a pour-over will.

(Adopted 1/1/1990; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. 7/1/2003; Renum. 1/1/2006; Rev. & Renum. 1/1/2007; Rev. 1/1/2011; Renum. 1/1/2014)

Rule 4.20.2

Petition to Determine Title in Trust Matters (Probate Code section 850-Heggstad)

In trust matters filed with the court to determine the title to property under Probate Code section 850, the following allegations are required to be set forth in the petition:

A. The vesting of each asset at all relevant times;

B. Evidence that each asset was placed in trust;

C. Evidence of every transaction affecting title to each asset in question during the relevant time;

D. Where a transaction takes legal title to an asset out of the trust or occurs when title is not held by the trustee, evidence to overcome the inference that the Trustor intended that the transaction be considered a non-trust transaction;

E. The value of each asset to be transferred.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Renum. 1/1/2014)

Rule 4.20.3

Identification of Persons Entitled to Notice

In addition to the requirements of Probate Code section 17201 and California Rules of Court, Rule 7.902, to state the names and addresses of each person entitled to notice of a trust petition, the petition must also contain the relationships of those persons to the trustor(s). The trustee or petitioner will likewise be identified by name, address and relationship to the trustor(s).

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2011; Renum. 1/1/2014)

Rule 4.20.4

Trusts Established Before Decree of Distribution

A. Probate Code section 6321 provides that a decedent may designate as beneficiary of a life insurance policy a trustee named in decedent's will. The statutes also apply to certain employment and other benefits which may be payable to such a trustee.

B. A trustee named in a will admitted to probate may be appointed before the decree of distribution is made, upon the filing of a petition and proper notice pursuant to Probate Code sections 17200 and 17203, and Local Rule 4.20.4.

C. Where a vacancy exists in the office of the trustee before distribution, a trustee not named in the will may be appointed upon the filing of a petition and proper notice pursuant to Probate Code sections 17200 and 17203, and Local Rule 4.20.4.

D. The order appointing the trustee must contain all the terms of the trust and the trustee must have all the powers and duties in respect to the trust corpus set forth in the order.

E. Any matters governing the trust not specifically covered by these sections must be governed by the provisions of Probate Code section 15000 et seq.

F. If no trustee claims the trust corpus or can qualify to receive the same and there is no indication in the will as to where the proceeds are to be distributed, a petition to determine heirship may be filed to determine to whom distribution shall be made.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2012; Renum. 1/1/2014)

Rule 4.20.5

Special Needs Trusts

A. With respect to Special Needs Trusts and Discretionary Trusts presented for establishment pursuant to Local Civil Rule 2.4.6 (c) or otherwise, the following must be included in the proposed trust:

1. Provisions for appointment of successor trustee on approval of the Probate Court.

2. A payback provision must be inserted as required by title 42 of the United States Code section 1396p(d)(4)(A).

3. Notice requirements on termination or death of beneficiary, and for any additions to the trust.

4. Dispositive provisions (i.e. disposition to heirs at law after payback) required by title 42 of the United States Code section 1396p(d)(4)(A).

B. Any trust presented for establishment by the court, including trusts established under Probate Code sections 3600, 2580 and 3100, must include the requirements listed in Rule 7.903 of the California Rules of Court and as set forth in subsection A (1-4) above.

C. Third Party Special Needs Trusts need not be presented for court approval or include the requirements listed in listed in Rule 7.903 of the California Rules of Court and as set forth in subsection A (1-4) above.

(Adopted 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2011; Rev. & Renum. 1/1/2012; Renum. 1/1/2014)

Rule 4.20.6

Fees and Commissions in Trusts

See Chapter 16 regarding fees and commissions generally.

(Adopted 1/1/2007; Rev. 1/1/2009; Rev. 1/1/2010; Rev. & Renum. 1/1/2011; Renum. 1/1/2014)

Rule 4.20.7

Petitions for Modifications or Termination of Trusts

A. Petitions seeking the amendment of a trust must set forth the portion of the trust to be amended by designating language to be deleted in strikeout format, and language to be added by underlining.

B. Petitions seeking authority to terminate a trust pursuant to Probate Code section 15403 must affirmatively allege that the trust is not subject to a valid restraint on transfer of the beneficiary's interest as provided in Probate Code section 15300 et seq.

C. Petitions seeking to amend the provisions of a trust relating to the identification of a successor trustee must contain a provision requiring a trustee's bond unless the petition contains allegations upon which the court may make the finding required by Probate Code section 15602, subdivision (b).

(Adopted 1/1/2008; Rev. & Renum. 1/1/2014)

Rule 4.20.8

Petitions for Appointment of a Successor Trustee

A. Petitions requesting appointment of a successor trustee must include related documents, such as declination to act, resignation, nomination, or consent; said documents must be filed, not lodged.

(Adopted 1/1/2014)

CHAPTER 21
MISCELLANEOUS

Rule 4.21.1

Withdrawal of Counsel of Record

The following provisions apply to attorneys appointed by the court to serve as appointed counsel and guardians ad litem and also attorneys for guardians of the estate, conservators of the estate, personal representatives in estates, and trustees of trusts under court supervision.

A. Counsel wishing to withdraw from a probate proceeding as counsel of record must file and serve a Motion to Withdraw in accordance with the provisions of Code of Civil Procedure section 284 and California Rules of Court, rule 3.1362.

B. The filing in the case file of a substitution in pro per without prior court approval will not effectively relieve the counsel of record. Such counsel will only be relieved by substitution of another counsel or by court order upon showing that the person wishing to act in pro per is not precluded from doing so by virtue of his or her capacity in the pending proceeding. See, for example, Ziegler v. Nickel (1998) 64 Cal.App.4th 545. Court approval may be obtained by noticed motion.

C. Motions for withdrawal where a bond has been filed by a surety must be accompanied by proof of service of the Notice required by Probate Code section 1213.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2014)

Rule 4.21.2

Appointment of Probate Referees

A. Probate referees will be appointed in rotation.

B. A probate referee may be designated out of rotation where the property has already been appraised by the probate referee or interests in the property are part of two pending proceedings. Examples of such proceedings would be the conservatorship of husband and wife, simultaneous deaths or death of husband and wife within one year of each other, decedent's estate following conservatorship, guardianships of siblings and court proceedings following non-judicial proceedings.

C. A declaration must be presented with the order designating probate referee which sets forth the relevant circumstances.

(Adopted 1/1/1990; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006)

Rule 4.21.3

Settlements Involving Charities

The Attorney General is a party to and is entitled to notice of probate matters involving interests of charities. Attention is directed, for example, to Government Code section 12591, as well as to the Probate Code.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2003; Renum. 1/1/2006; Renum. 1/1/2014)

Rule 4.21.4

Dismissal of Proceedings

A. Once a fiduciary has been appointed by the court in decedent's estates, conservatorships of an estate, and guardianships of an estate, the entire proceeding may not be dismissed except upon duly noticed petition and order of the court. If a fiduciary has not yet been appointed, refer to item C.

B. Once a fiduciary has been appointed by the court in conservatorships of the person and guardianships of the person, unless the matter has terminated by operation of law, the entire proceeding may not be dismissed except upon duly noticed petition and order of the court. If a fiduciary has not yet been appointed, refer to item C.

C. Petitions may be dismissed only upon an order of the court. Such order shall be made upon oral request prior to commencement of trial, with such notice as the court requires; or by stipulation signed by the parties and presented to the court; or by noticed petition, which may be submitted to the court ex parte with proper notice.

D. Individuals may be dismissed from a petition or proceeding upon the submission of Judicial Council form CIV-110-Request for Dismissal and upon approval of the assigned Judicial Officer. Alternatively, such requests can be made orally, prior to commencement of trial with such notice as the court requires.

E. Objections and Responses. An objection and/or response may be withdrawn by the party originally filing it upon filing of a verified statement of withdrawal, and providing notice of such withdrawal to all persons entitled to notice of the original filing.

(Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. & Renum. 1/1/2011; Rev. 1/1/2013; Rev. & Renum. 1/1/2014; Rev. 1/1/2015.)

Rule 4.21.5

Disclosure by Conservators, Guardians, and Attorneys

Conservatees and Wards are generally not in a position to give their informed consent to representation by attorneys, or the appointment of a Conservator and/or Guardian. To avoid the appearance of a conflict of interest in duty, a Conservator, proposed Conservator, Guardian, proposed Guardian, and/or attorney who appears in matters involving a Conservatee, Ward, or their estate, must disclose all present and past relationships to the court at their earliest opportunity in the following circumstances:

A. Conservators. A person who is or has served in the past as a Conservator of the individual or estate which is the subject of the pending proceeding [Trust or Decedent's Estate] must disclose all present and past relationships.

B. Attorneys.

1. An attorney for a Conservatee or proposed Conservatee, or a Conservator or proposed Conservator, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

2. An attorney for a Ward or proposed Ward, or a Guardian or proposed Guardian, must disclose all present or past attorney-client relationships with any other person appearing in the matter.

3. In complying with this rule an attorney shall not be required to violate an existing attorney-client privilege, but should consider that continued participation in the matter may constitute a violation of the Professional Rules of Conduct.

C. Guardians. A person who is or has served in the past as a Guardian of the individual or estate which is the subject of the pending proceeding (Conservatorship, Trust, or Decedent's Estate) must disclose all present and past relationships.

D. Court appointed Attorneys and guardian ad litems are appointed on a rotational basis. At times, the court appointed attorney or guardian ad litem may have represented another party in the proceeding. The court appointment is conditional on a conflict check by the proposed court appointed attorney or guardian ad litem. The appointment is effective ten days after the proposed appointment pending communication with the court by contacting the court investigator support clerk in the business office that a conflict exists at which time new counsel will be appointed.

(Adopted 1/1/2006; Rev. 1/1/2013; Renum. 1/1/2014)

Rule 4.21.6

Court Appointment:

A. Proof of Insurance: In addition to submitting the appropriate Judicial Council form(s), attorneys seeking initial appointment or reappointment as Court-Appointed Attorneys in Probate Conservatorships and Guardianships must submit a report of insurance setting forth the amount of the insurance coverage and its effective dates as well as the Court Appointed Attorney Coversheet (PR-150).

B. Court Appointed Attorneys are appointed on a rotational basis.

C. Court appointments have a ten-day provisional clause to allow the attorney to research for conflicts of interest. If there is a conflict of interest, counsel is to notify the probate business office.

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

Rule 4.21.7

Elisors

A. When a party will not or cannot execute a document necessary to carry out a court order, the clerk of the court, or his or her authorized representative or designee may be appointed as an elisor to sign the document. An application for appointment of an elisor may be made ex parte (See Rules 4.7.5 and 4.7.6 for Ex Parte requirements).

B. When applying for an appointment of an elisor, the application and proposed order must designate "The Clerk of the Court or the Clerk's Designee" but must not name a specific court employee. The application and proposed order must also indicate for whom the elisor is being appointed. The declaration supporting the application must include specific facts establishing the necessity for the appointment of the elisor.

C. If the court grants the order, the party must contact the business office to make an appointment for the actual signing of the document(s) to ensure the availability of an authorized elisor. If the elisor is signing documents that require notarization, the party must arrange for a notary to be present when the elisor signs the document(s).

(Adopted 1/1/2015)

CHAPTER 22
CONTESTED MATTERS

Rule 4.22.1

Introduction

When objections are filed to a petition or other pleading seeking affirmative relief in the Probate Court, the matter becomes a "contested matter" as the term is used in these rules. These rules apply to all contested matters. They supplement applicable general statutes and other rules of court and are intended to further the policies of the Legislature and the San Diego Superior Court for the prompt completion of probate administration and efficient resolution of disputes.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2012)

Rule 4.22.2

Filing of Petitions and Contests and Setting Contested Matters for Hearing

All petitions, will contests and other pleadings seeking affirmative relief or adjudication by the Probate Court must be set as follows:

A. By Statute or Rule of Court.

B. Notice Not Prescribed. If the time for notice of hearing on a particular matter is not set forth in a statute or a rule of court, the time for notice of hearing must be thirty days. The provisions of CCP § 1013 apply.

C. Will Contests. A probate summons must be presented by the contestant and issued by the court at the time of filing of a will contest. A will contest filed before admission of the will to probate constitutes an objection to the petition to admit the will, and the hearing on the petition to admit the will must be continued to a date no less than thirty days from the date of filing the will contest, in order to allow sufficient time to complete service in the will contest. If all service, including personal service of the summons as required by law, is not completed by the date of the continued hearing on the petition to admit the will, contestant must appear ex parte at least two court days prior to the hearing to request additional time for service. If a continuance is granted ex parte and service is not thereafter completed prior to the continued hearing, the court at the hearing may further continue the matter or may impose sanctions. When service has been completed, the will contest will be set for trial or short cause hearing pursuant to these rules. The petition to admit the will may be continued until the date of trial or short cause hearing on the will contest.

(Adopted 1/1/1993; Rev. 7/1/1995; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 4.22.3

Service of Notice

All notice requirements on contested matters, including personal service when required, must be completed prior to the date of the hearing (whether the hearing date originally assigned to the matter by the clerk of the court or a later date if the matter has been continued). If a party on whom personal service is required has not been served timely, the contestant must appear ex parte at least two court days prior to the hearing and set forth the cause for the lack of service.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/12/2002; Renum. 1/1/2006; Rev. 1/1/2015)

Rule 4.22.4

Filing of Objections

A person with standing may appear and object orally at the first hearing on any matter before the Probate Court. Thereafter objections, including grounds of opposition, to any petition or other pleading filed in Probate Court must be set forth in writing, filed and served either as required by statute or, in the absence of specific statutory requirements, by 4:30 pm at least three full court days before the next scheduled hearing date on the petition or pleading, e.g., for a court hearing on Wednesday, the objections must be filed by 4:30 p.m. the preceding Thursday. If written objections have not been filed in accordance with this rule, the court may decide the matter pursuant to California Rules of Court, Rule 7.801 as if no objection had been made. In any event, written objections may not thereafter be made without leave of court by the party orally objecting.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2013)

Rule 4.22.5

Determination of Contested Matters

A. General. Contested matters will be determined as set forth herein. At the earliest appropriate hearing after a contested matter is at issue, the court may determine the type of hearing required, the length of the hearing and the manner of disposition.

B. Submission Without Evidentiary Hearing. If all parties agree in writing or on the record in open court, the court may decide the matter based on the pleadings, evidentiary materials filed prior to the conclusion of the hearing, and the arguments of counsel, or as otherwise agreed.

C. Short Cause Matter Hearing. If the court determines that the matter will require an evidentiary hearing of three hours or less (a "hearing"), the court may establish guidelines to govern discovery proceedings, if any are required, and may set the matter for hearing as a "short cause" matter. Trial briefs must be filed in the trial department and faxed (in accordance with Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for the short cause hearing unless the court orders otherwise.

Due to the "Short cause" nature of this hearing, the court will not entertain, receive or read responses to said trial briefs. The trial briefs submitted are deemed sufficient to allow the parties the opportunity to state their positions regarding the contested issue(s) to be addressed at the short cause hearing. The provisions of rule 4.22.11 and 4.22.9 do not apply to short cause hearings.

D. Trial. If the court determines that the matter will require an evidentiary hearing of more than three hours (a "trial"), the court may set the matter for a Case Management Conference (see Rule 4.22.7 below).

E. EADACPA Complaints. When filing a civil action citing the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) involving an individual whose estate or person is under conservatorship, refer to rule 2.4.9 for procedural guidelines.

F. Other Procedural Orders. If none of the foregoing procedures are appropriate for the matter before the court, the court may make any other procedural orders the court deems appropriate.

(Adopted 1/1/1993; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2013)

Rule 4.22.6

Meet and Confer, Joint Case Management Report

If a contested matter is set for a Case Management Conference, counsel must, unless excused by the court:

A. Meet and confer no later than twenty days before the Case Management Conference.

B. File with the court a "Case Management Statement" (PR-157).

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2015)

Rule 4.22.7

Case Management Conference

At the Case Management Conference, the court may take any one or more of the following actions:

A. Determine whether or not all applicable procedures have been complied with and, if not, order appropriate remedial action, including the imposition of sanctions considered appropriate in the court's discretion;

B. Set the following dates based upon review of the "Case Management Statement" (PR-157) and the representations of counsel:

1. Trial date;
2. Trial readiness conference date;
3. Discovery cut-off date;
4. Law and motion cut-off date;
5. Dates for the exchange of experts;
6. Settlement conference date, if requested (see Rule 4.22.10).

C. Make appropriate assignments and orders upon approval of a written agreement to refer the dispute to a temporary judge or to arbitration (Prob. Code, §§ 9620-9621) or to a Special Master or Referee (Prob. Code, § 1000; Code Civ. Proc., §§ 638-645.1).

D. Dispense with any of the procedures provided for herein for good cause, which includes agreement of the parties.

E. Direct counsel to submit an order setting forth the dates and directives of the court.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 4.22.8

Trial Readiness Conference Report/Advance Trial Review Order

A. Unless dispensed with by the court at the Case Management Conference, no later than five days prior to the trial readiness conference, counsel must meet and confer in person to prepare in good faith a Trial Readiness Conference Report/Advance Trial Review Order. The Trial Readiness Conference Report/Advance Trial Review Order shall be in the format set forth on CIV-252 which can be viewed under the Civil Forms Section of the San Diego Superior Court's website, http://www.sdcourt.ca.gov.

B. Matters deemed too lengthy to be heard by one of the Probate Departments shall be sent to the master civil assignments department or to one of the civil departments as appropriate. Counsel shall file the Trial Readiness Conference Report/Advance Trial Review Order at least two days prior to the Trial Readiness Conference. Failure to complete the Trial Readiness Conference Report/Advance Trial Review Orders may cause the Court to vacate the trial date and set another Trial Readiness Conference.

(Adopted 1/1/1993; Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013)

Rule 4.22.9

Trial Readiness Conference; Sanctions

A. Counsel completely familiar with the case and possessing authority to enter into stipulations must be present at the scheduled hearing; however, clients need not appear unless specifically ordered by the court. Orders made will be binding on trial counsel and will not be subject to reconsideration due to counsel's unfamiliarity with the case at the time of the trial readiness conference.

B. If the court determines that a party, or counsel, has failed to reasonably comply with these rules, including the diligent preparation of a Trial Readiness Conference Report/Advance Trial Review Order, the court may impose appropriate sanctions against that party or counsel including a summary determination of any contested issues in accordance with the other party's papers filed in compliance with these rules, the levy of sanctions pursuant to Code of Civil Procedure section 575.2, the issuance of citations or bench warrants, or any other appropriate action.

(Adopted 1/1/1993; Rev. 7/1/1995, 7/1/1996; Rev. & Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 2010; Rev. 1/1/2011)

Rule 4.22.10

Mandatory Settlement Conference (MSC)

A. Calendaring: Before the court will set a trial date, and unless otherwise ordered by the court, a Mandatory Settlement Conference (MSC) will be scheduled by the court in all contested matters except in guardianships and conservatorships of the person only. The MSC will be set at the CMC. Absent a court order allowing a party to appear by telephone, the parties and their attorneys of record must personally attend the MSC. Counsel and all parties must be present for the calendar call. The court will continue the MSC only for demonstrated good cause. A party seeking a continuance of the MSC must appear ex parte in the department to which the case is assigned. There will be no continuances on the day of the MSC absent extraordinary circumstances.

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

C. Meet and Confer Requirements: Counsel must meet and confer either in person or by telephone at least ten calendar days before the MSC to resolve as many issues as possible and to identify those issues which remain unresolved. The results of this conference will be included in the Settlement Conference Brief.

D. Settlement Conference Briefs: Each party must prepare a Settlement Conference Brief which will be submitted to all parties, plus the required number of additional copies submitted to the designated MSC clerk, no later than 4:00 p.m. seven calendar days before the MSC. Email submission is acceptable. This Brief shall not exceed ten pages in length. At a minimum, the Brief shall contain a summary of the dispute, the procedural background of the case, any pending motions or other dispositive pleadings, a brief description of any legal issues or material facts which are not in dispute, any stipulations reached by the parties affecting trial of the matter, a specific proposal for the resolution of each contested issue and the reasons for the proposed resolution, and an addendum listing all witnesses expected to be called at trial, all documents expected to be introduced at trial, and any evidentiary objections by the opposing party. The Settlement Conference Brief shall not become part of the court file and will be available for retrieval by the filing party at the MSC.

(Adopted 1/1/1993; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2014)

Rule 4.22.11

Trial Briefs and Motions in Limine

A. Unless otherwise directed by the court, all motions in limine (as authorized by law) and trial briefs must be filed with the clerk of the trial court and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for trial. Opposition pleadings to in limine motions must be filed and faxed (in accordance with the Cal. Rules of Court, rule 2.306) or personally served on opposing counsel no later than 12 noon of the day prior to the date set for trial.

B. Unless otherwise directed by the court, three court days before trial, the parties must provide the clerk of the trial court with a final joint witness list and joint exhibit list.

C. At trial call, the parties must provide two joint exhibit binders, one for the court and one for the witnesses, containing a complete set of all exhibits. The exhibits must be marked to correspond to the joint exhibit list. Copies of exhibits to be offered by the petitioner must not be duplicated by the respondent.

(Adopted 1/1/1993, Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. & Renum. 1/1/2012; Rev. 1/1/2013)

Rule 4.22.12

Mediation Statements and Documents not Admissible Evidence

All responsive pleadings and all other documents filed with the court or with an ADR neutral concerning mediation under these rules, and all matters disclosed verbally concerning any such mediation, are not admissible evidence in any later contested proceeding between the parties solely by reason of their disclosure under these rules. Evidence Code section 1119 governs statements and documents disclosed in mediation.

(Adopted 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2012; Rev. 1/1/2013; Rev. & Renum. 1/1/2014)

Rules 4.22.13 – 4.22.17

(Del. 1/1/2014)

CHAPTER 23
LAW AND MOTION

Rule 4.23.1

Preliminary Definitions and Procedure

A. An application for relief based upon the Probate Code must be brought as a petition. An application for relief based upon the Code of Civil Procedure or Civil Code must be brought as a motion.

B. Parties may not bring unrelated requests for relief in a single motion but must file each in a separate motion.

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

Rule 4.23.2

Applicability of Division Two in Probate Proceedings

A. Except to the extent the Probate Code provides otherwise, counsel and parties appearing in propria persona must comply with the pertinent sections (as amended from time to time) of Division II of these Rules and the California Rules of Court beginning at rule 3.1100 et seq., with respect to demurrers, motions to strike, requests to take judicial notice, motions for summary judgment, and all other pretrial motions. Counsel and parties appearing in propria persona must also consult Department Rules of the various Probate Departments for further requirements.

B. The form and format of discovery proceedings in probate are governed by the California Rules of Court, rule 3.1000 et seq., which will be enforced in all probate proceedings.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009)

Rule 4.23.3

Filing Motion Papers

A. Unless a specific greater or lesser time is authorized by statute, court rule, or order, moving papers must be filed at least sixteen court days prior to the scheduled hearing. This rule may be waived by an order shortening time upon ex parte application.

B. Unless otherwise ordered by the court, motions must be presented to the Probate Business Office prior to the issuance of a hearing date.

C. The phrase "LAW & MOTION" must appear at the beginning of the title of all papers submitted to the court in support of the motion.

D. Pursuant to section 4.3.2 of these rules, all cases initiated on or after 01/01/2010 will be imaged. Within ninety days of the date of filing, with the exception of lodged documents, all documents filed with the court will be shredded and recycled without further notice.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2013)

Rule 4.23.4

Hearings

Once set, a matter may be continued only with a written order of approval from the court. A matter "continued" by stipulation without court approval will be taken off calendar. Once the court publishes a Tentative Ruling, the motion may not be taken off calendar or withdrawn.

(Adopted 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010)

Rule 4.23.5

Filing and Serving Opposition or Support Papers on Motion

A. Opposition, joinder and reply papers must be filed and served as provided in Code of Civil Procedure section 1005. In this regard, the court is not obligated to, and may not without good cause shown, consider any late-filed or surreply papers in a matter.

B. The phrase "LAW & MOTION" must appear at the beginning of the title of all papers submitted to the Court in opposition, joinder and reply to a pending motion.

(Adopted 1/1/2006; Rev. & Renum. 1/1/2009; Rev. 1/1/2010)

Rule 4.23.6

Filing of Proof of Service

Proof of service of the moving papers must be filed no later than five calendar days before the time set for hearing.

(Adopted 1/1/2006; Renum. 1/1/2014)

Rule 4.23.7

Tentative Rulings

At the option of the Judicial Officer sitting in Probate, tentative law and motion rulings will be made available in accordance with rule 2.1.19. Tentative rulings will be made available on the court's website at http://www.sdcourt..ca.gov (click on "tentative rulings" from the probate webpage) by 3:00 p.m. on the day prior to the hearing.

(Rev. & Renum. 1/1/2006; Renum. 1/1/2007; Rev. 1/1/2009; Rev 1/1/2011; Rev. 1/1/2012; Renum. 1/1/2014)

DIVISION V
FAMILY LAW

CHAPTER 1
GENERAL

Rule 5.1.1

Application of Rules and Sanctions.

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

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

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

Rule 5.1.2

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

1. "party" includes a self-represented litigant or a person represented by an attorney.

2. "person" is as defined in California Rules of Court, rule 5.14.

3. "self-represented litigant" means any party who is representing himself or herself.

4. "must" is mandatory; "may" is permissive.

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

Rule 5.1.3

Abbreviations. The following abbreviations are used throughout these rules:

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

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

Rule 5.1.4

A. Website Information.

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

2. The "California Courts Web Site" address is http://www.courts.ca.gov.

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

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

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

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

Rule 5.1.5

Family Law Courts and Venue.

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

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

C. The Family Court does not handle matters of adoption or freedom from parental control.

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

Rule 5.1.6

Notice to Court and Sanctions.

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

B. Notice to the court must be made on the on-line webform. If an SRL has no access to the internet, notice must be given to the courtroom clerk by telephone.

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

Rule 5.1.7

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

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

Rule 5.1.8

Official Court Reporters and Reporters Pro Tempore.

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

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

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

1. The fee must be paid at the time the RFO is filed.

2. If the matter is continued before the case is called, the fee continues over to the next hearing.

3. If the matter is continued after the case is called, the party requesting the continuance must pay a new and separate fee for the next hearing and submit proof of payment before the next hearing.

4. If a hearing is taken off-calendar before the case is called, the fee will be refunded.

a. Claiming a refund is solely the responsibility of the party.

b. Refunds may be requested by filing a *Request for Payment of Trust Funds/Refund* (form SDSC CIV-180).

D. Parties may arrange with a private provider for the appointment of an official court reporter pro tempore for hearings at which the court does not provide an official court reporter. The policies and mandatory procedures for a court appointed official reporter pro tempore are on the court's website.

(Adopted 1/1/2013; Rev. 1/1/2014; Rev1/1/2015)

CHAPTER 2
CASE MANAGEMENT

Rule 5.2.1

Case Assignment for All Purposes.

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

B. Notice of Reassignment. All case reassignments initiated by the court as a result of the change of a judicial officer in a department are posted online and in the courthouse lobbies approximately thirty days in advance of the reassignment.

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

Rule 5.2.2

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

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

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

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

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

B. **Attendance.**

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

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

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

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

Rule 5.2.3

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

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

B. Collaborative Law Process.

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

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

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

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

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

Rule 5.2.4

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

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

Rule 5.2.5

Mandatory Settlement Conference (MSC).

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

B. Settlement Conference Brief.

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

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

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

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

E. Personal Appearance and Sanctions. All parties must personally appear at the MSC unless excused in advance by the court. The court may sanction a person who fails to personally appear at the MSC.
(Adopted 2005; Rev. 2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. & Renum. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.2.6

Telephone Appearances in Family Court.

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

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

C. All telephonic appearances must be made through CourtCall. All arrangements for a telephonic appearance are the obligation of the attorney or party who intends to appear by telephone. CourtCall can be contacted at (888) 882-6878 or at www.courtcall.com
(Adopted 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev.& Renum. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

CHAPTER 3
EMERGENCY ORDERS
(EX PARTE ORDERS)

Rule 5.3.1

Emergency Orders (Ex Parte Orders).

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

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

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

D. The telephone numbers for the business office of each branch court can be found on the court's website.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.3.2

Non-Emergency Orders Not Requiring Notice. The business office at each division has a drop box where a request for a non-emergency order may be deposited for processing. An attorney service slip or stamped self-addressed envelope must be included if conformed copies are requested.
(Adopted 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

CHAPTER 4
DOMESTIC VIOLENCE RESTRAINING ORDERS (DVRO)

Rule 5.4.1

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

Rule 5.4.2

Residence Removal Orders. If a party seeks to have the restrained party removed from the residence, the protected party must prepare and submit for the court's signature a separate order on the *Order for Removal from Residence* (form SDSC D-072). If the order is granted, the protected party must give the Sheriff two certified copies of the removal order for service.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2012; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.4.3

Requests by Protected Party to Modify or Terminate Permanent Restraining Order(s). A request by a protected party to modify or terminate a restraining order before its expiration date may be made by filing an *Ex Parte Request and Order to Terminate Restraining Order* (form SDSC D-001). If granted, the court will deliver a copy of the order to the sheriff for removal from CLETS.
(Adopted 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

CHAPTER 5
REQUEST FOR ORDER (RFO)

Rule 5.5.1

Hearings on Request for Order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Continuance of Hearing When Reissuance Not Required.

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

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

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

a. Filing a stipulation stating good cause and signed by all parties; or

b. Completing the online continuance web form. If an SRL has no access to the internet, the request must be made to the courtroom clerk by telephone.

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

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

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

Rule 5.5.2

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

Rule 5.5.3

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

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

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

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

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

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

Rule 5.5.4

Exhibits and Lodged Documents.

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

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

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

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

CHAPTER 6
PARTIES' INCOME

Rule 5.6.1

Parties' Income

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

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

1. Salaried Employees:
    a. The prior calendar year's W-2
    b. All pay stubs for the last two months showing all forms of year-to-date earned income

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

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

CHAPTER 7
TRIALS AND LONG-CAUSE HEARINGS

Rule 5.7.1

Trials and Long-Cause Hearings.

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

B. Procedures.

1. Issues related directly to the trial/long-cause hearing (ex: motions in limine), shall be directed to the judicial officer assigned to the trial/long-cause hearing.

2. A request for a continuance must be directed to the judicial officer assigned to the case for all purposes.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

CHAPTER 8
PARENTAGE ACTIONS

Rule 5.8.1

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

B. Inspection and Copying of Court Files. The inspection of a court file and the copying of documents in these court file are governed by both state and federal law, orders within the file and general orders by the Presiding

Judge of the San Diego Superior Court. Any dispute as to who can inspect a parentage file and/or what documents may be copied without a prior court order must be determined by a judicial officer.
(Adopted 1/1/2010; Renum. 1/1/2012; Rev. & Renum. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

CHAPTER 9
FAMILY SUPPORT DIVISION

Rule 5.9.1

Family Support Division.

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

1. Referred to as "FSD" matters, and

2. Case files are delineated and referred to as “DF” files.

B. Unless otherwise stated in this Chapter, FSD matters are governed by the California Rules of Court on Title IV-D Support Cases and these local rules.
(Adopted 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.9.2

Pre-Hearing Procedures.

Mandatory Meet and Confer. All parties and/or counsel must meet and confer with DCSS on the day of a hearing and prior to appearing in court.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 5.9.3

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

Rule 5.9.4

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

Rule 5.9.5

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

Rules 5.9.6

Reserved for Future Use
(Adopted 1/1/2014; Del. 1/1/15)

Rule 5.9.7

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

CHAPTER 10
CHILD CUSTODY AND VISITATION

Rule 5.10.1

Child Custody Recommending Counseling.

A. FCS Counseling Sessions. Detailed and important information about FCS counseling procedures before, during and after the counseling session is available online or from FCS (*Family Court Services Child Custody*

Recommended Counseling Information Sheet, form SDSC FCS-022) and should be read by the parties no later than one week before the session.

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

C Cancellation, Rescheduling and Sanctions.

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

a. The custody/visitation issue is settled.

b. The parties are using a private counselor.

c. The other party has not received timely notice of the session date.

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

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

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

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

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

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

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

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

Rule 5.10.2

Non-Confidentiality and Recommendation.

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

B. San Diego is a "Recommending" County.

1. FCS Report.

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

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

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

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

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

2. Hearing Off-Calendar or Continued.

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

b. If the counselor's appearance will still be required, but for a continued hearing date, a new subpoena will not be necessary *if* the subpoenaing party does both of the following: (1) contacts FCS, at their earliest

opportunity, to determine the counselor's availability on the continued hearing date; and (2) immediately provides FCS written notice that the counselor's appearance is required on the new date and time.

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

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

5. FCS Files. Certain privileges attach to FCS files. The court will not order the production of any FCS documents without a prior in-camera review. A party desiring an in-camera review shall serve FCS with a subpoena duces tecum for the file/documents at least fifteen calendar days before the trial or hearing. If an objection is received, the subpoenaing party must file a request for order compelling the in-camera review.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Renum. & Rev.1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 5.10.3

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

Rule 5.10.4

Private (non court-connected) Child Custody Counseling.

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

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

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

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

E. Unresolved Issues.

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

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

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

F. Ex Parte Communication with the Private Counselor. Communications between private counselor, parties, and attorneys, including minors' counsel, are governed by the provisions of Family Code sections 216 and 1818.
(Adopted 1/1/2008; Rev. 1/1/2010; Renum. & Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2015)

Rule 5.10.5

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

A. Order Appointing Evaluator.

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

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

B. Finding a Qualified Private Child Custody Evaluator. The specific criteria required under the law, including licensing, education and training, for a private, mental health professional to be qualified as a court-

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

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

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

E. Peremptory Challenges and Challenges for Cause.

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

2. A party may challenge an evaluator for cause by noticed motion upon a substantial showing that the evaluator is biased or prejudiced against one of the parties or otherwise unable to render a fair and impartial evaluation.

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

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

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

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

Rule 5.10.6

Supervised Visitation Providers.

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

B. Declaration of Qualifications.

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

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

CHAPTER 11
JUDGMENTS AND ORDERS AFTER HEARING

Rule 5.11.1

Reserved for Future Use

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

Rule 5.11.2

Preparation of Orders After Hearing, Judgments, and Stipulations.

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

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

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

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

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

CHAPTER 12
Reserved for Future Use

CHAPTER 13
MINOR'S COUNSEL

Rule 5.13.1

Minor's Counsel.

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

B. Review Hearings and Compensation.

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

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

C. Complaint Procedure.

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

a. Case name and number

b. Name of the judicial officer assigned to the case

c. Name of the minor's counsel

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

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

3. Court Response. The supervising judge has the discretion to respond to the complaint directly, to consult with other judges, or to refer the complaint to the chairperson of the Minor's Counsel Subcommittee of the San Diego County Bar Association. If referred to the chairperson, the chairperson will attempt to resolve the complaint informally.

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

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

CHAPTER 14
MISCELLANEOUS

Rule 5.14.1

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

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

Rule 5.14.2

Elisors. A motion and proposed order for appointment of an elisor must designate "The Clerk of the Court or the Clerk's Designee" as the elisor and not a specific court employee. If the court grants the order, the party must contact the business office to make an appointment for the actual signing of the document(s) to ensure the availability of an authorized elisor. If the elisor is signing documents requiring notarization, the party must arrange for a notary to be present when the elisor signs the document(s).

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

Rule 5.14.3

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

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

Rule 5.14.4

Family Law Facilitator.

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

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

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

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

Rule 5.14.5

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

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

Rule 5.14.6

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

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

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

Rule 5.14.7

Reserved for Future Use

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

DIVISION VI
JUVENILE

CHAPTER 1
JUVENILE RULES

Rule 6.1.1

Preliminary Provisions

A. These rules, together with the rules promulgated by the Judicial Council for the juvenile courts, the Welfare and Institutions Code, those sections of other codes specifically made applicable to juvenile proceedings by the Welfare and Institutions Code, and relevant case law, are the controlling body of law which governs proceedings in the San Diego Superior Court Juvenile Division.

B. Insofar as these rules are substantially the same as existing statutory provisions relating to the same subject matter, they are to be construed as restatements thereof.

Insofar as these rules may add to existing statutory provisions relating to the same subject matter, they are to be construed so as to implement the purposes of the juvenile court law.

C. To the extent that these rules may affect or declare substantive rights, these rules are intended to be a reflection of existing constitutional, statutory, case law, and Judicial Council rules of court, and are to be interpreted consistent with such law.

D. These rules are intended to be applied in a fair and equitable manner consistent with the best interest of the children and families appearing before the juvenile court.

E. Severability clause. If a rule or subdivision thereof in this division is invalid, all valid parts that are severable from the invalid part remain in effect. If a rule or subdivision thereof in this division is invalid in one or more of its applications, the rule or subdivision thereof remains in effect in all valid applications that are severable from the invalid applications.

F. These rules have prospective application only.

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

Rule 6.1.2

Definitions, Construction of Terms, Nature of Hearings

A. As used in these rules, unless the context or subject matter otherwise requires:

1. "CASA" means a court-appointed special advocate;

2. "Child" means a person under the age of 18 years;

3. "Clerk" means the clerk of the juvenile court;

4. “Court” means the juvenile court, and includes any judge, commissioner, referee, or referee pro tem of the juvenile court;

5. "Foster Parent" means an adult relative or non-relative with whom a dependent child is placed;

6. "Guardian" means the legal guardian of the child;

7. "HHSA" means the Health and Human Services Agency of San Diego County (formerly called "Department of Social Services, Children’s Services Bureau");

8. "Notify" means to inform, either orally or in writing;

9. "Petitioner" means the San Diego County Health and Human Services Agency ("HHSA") or its employees.

B. Construction of terms

1. "Shall" or "must" is mandatory; "may" is permissive.

2. The past, present, and future tenses include the others.

3. The singular and plural numbers include the other.

C. Nature of Hearings

1. A jurisdictional settlement conference is a jurisdiction hearing on the uncontested calendar.

2. A contested jurisdiction hearing is a trial where testimonial and documentary evidence may be submitted on the issue of jurisdiction.

(Adopted 1/1/1990; Rev. 1/1/1997; Rev. 1/1/2002; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010)

Rule 6.1.3

Standing, Rights, and Levels of Participation in Dependency Cases

Unless otherwise expressly granted by constitutional, statutory, or case law, or rule of court, the standing, rights, and levels of participation of the following persons in dependency cases are limited to those provided in this rule.

A. Parents and/or guardian(s). The biological parents, adoptive parents, guardian(s), and/or person(s) having legal custody of a child who is the subject of a dependency action have standing as parties to the proceedings.

B. Child. The child who is the subject of a dependency action has standing as a party to the proceedings.

C. De facto parent. For purposes of this rule, a de facto parent is defined in California Rules of Court, rule 5.502(10). No person will be granted de facto parent status who has inflicted or allowed to be inflicted serious harm on the child, including but not limited to physical, sexual, or emotional harm.

De facto parent status will be granted by the court only upon a written application using Judicial Council forms JV-295 ("De Facto Parent Request") and JV-296 ("De Facto Parent Statement"). Instructions for completing the forms are provided on Judicial Council form JV-299 ("De Facto Parent Pamphlet"). Notice of such application and hearing date will be given to the parties or their counsel of record by the court clerk. At the hearing on such application, the court will consider the contents of the dependency file, any report filed by the social worker or the CASA for the child, and any other relevant and admissible evidence presented by the parties. The court may consider the declarations filed in support of or in opposition to such application if the declarants are made available for cross-examination. Before granting de facto parent status, the court must find, by a preponderance of the evidence, that the moving party meets the criteria set forth in this rule. An application for de facto parent status will not, in and of itself, constitute good cause for continuing any other hearing in the dependency action.

The de facto parent of a child who is the subject of a dependency action has standing as a party to the proceedings to the degree that the proceedings directly affect the de facto parent's legally recognizable interest in the child.

A de facto parent's right to discovery in the dependency proceeding is pursuant to Welfare and Institutions Code section 827 (see rule 6.6.2). Upon granting de facto parent status, the court may make such discovery orders pursuant to that section as are necessary and appropriate.

Upon granting de facto parent status, the court may appoint counsel on a pro bono basis for the de facto parent. No right to the appointment of counsel exists for the bringing of this application.

In any case in which a child is removed from the physical custody of his or her parents or legal guardians pursuant to Welfare and Institutions Code section 361, a de facto parent, if a relative or licensed foster care provider, will also receive preferential consideration for placement of the child over all other relatives and foster parents if such placement is in the best interest of the child and is conducive to any reunification efforts ordered by the court.

De facto parent status will continue only so long as the psychological bond continues to exist between the de facto parent and the child. De facto parent status automatically terminates upon the termination of dependency jurisdiction or when the child reaches 18 years of age.

D. Relative. For purposes of this rule, a "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including all relatives described in Welfare and Institutions Code, sections 319(f)(2) and 361.3(c)(2). However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.

A relative whose presence is known to the court will receive notice of juvenile court proceedings as otherwise provided by law, and may be present at such proceedings if the court finds that his or her presence would not disrupt the orderly court process and would be consistent with the best interests of the child.

Participation in the court process for relatives is limited to the submission of a written or oral statement regarding their interest in the child, any information they might have that relates to the child or the dependency action, and their recommendation regarding the child. The court may not consider such unsworn statements as evidence, but may consider such statements as a basis for ordering further investigation or services.

At the detention and disposition hearings, the home of a relative will be given preferential consideration for placement of the child, as provided in Welfare and Institutions Code section 361.3.

E. Foster parent. A foster parent of a child who is the subject of a dependency action will receive notice of proceedings as required by Welfare and Institutions Code sections 291, 293, 294, and 295.

Participation in the court process for foster parents is as described in California Rules of Court, rule 5.534(n). Written information about the child may be submitted in a letter to the court or by using Judicial Council form JV-290 ("Caregiver Information Form"). (See also form JV-290-INFO ("Instruction Sheet for Caregiver Information Form").) The court may not consider such unsworn statements as evidence, but may consider such statements as a basis for ordering further investigation or services.

(Adopted 1/1/1990; Rev. 1/1/1994; Rev. 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014)

Rule 6.1.4

Assignment of Cases and Peremptory Challenges

The court assigns dependency cases on an independent calendar system. Under that system, a dependency case assigned to a particular judge, commissioner, or referee will remain with that judicial officer until the termination of jurisdiction, unless otherwise ordered. Under the independent calendar system, a peremptory challenge to any judge, commissioner, or referee must be made pursuant to Code of Civil Procedure section 170.6. Such a challenge must be made prior to any determination of contested issues of fact relating to the merits and within fifteen days after notice of the assignment of the case to a specific judge, commissioner, or referee, or it will be deemed untimely. Notice of the assignment is complete upon service of such notice or initial appearance in court. Each party will be allowed only one peremptory challenge per case. (This rule is adopted pursuant to *Daniel V. v. Superior Court* (2006) 139 Cal.App.4th 28.)

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2012)

Rule 6.1.5

Objection to the Sufficiency of the Petition

A party may file an objection to challenge the sufficiency of a Welfare and Institutions Code section 300 petition on the ground that the petition alleges facts which, even if determined to be true, (a) are not sufficient to state a cause of action, or (b) are not stated with sufficient clarity and precision to enable the party to determine what must be defended against. (For purposes of this rule, "petition" includes amended petitions and subsequent petitions filed under Welf. & Inst. Code, §§ 342, 360, subd. (c), or 364.)

Such an objection may be made orally or in writing. However, it must be made at either: (a) the detention hearing or (b) the initial appearance after the filing of a petition but before the court makes a true finding. The court may entertain the objection by oral argument when made or may set it for further hearing.

If the court sets a hearing on the objection, counsel for the moving party may file a supporting memorandum of points and authorities. To be considered timely, the memorandum must be filed at least 48 hours before the hearing. Petitioner may file a responsive memorandum of points and authorities. To be considered timely, the responsive memorandum must be filed by 8:30 a.m. on the day of the hearing.

When an objection to the sufficiency of a petition is overruled and no plea has been filed, the court will allow the plea to be entered at the conclusion of the hearing or upon such terms as may be just.

When an objection to the sufficiency of a petition is sustained, the court may grant leave to amend the petition upon any terms as may be just and will fix the time within which the amended petition must be filed.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. 1/1/2002; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 6.1.6

Amendment of the Welfare and Institutions Code Section 300 Petition

A. Petitioner may amend the petition once without leave of court, either: (1) before a plea is entered or an objection is filed, or (2) after a denial is entered but before the trial on the issue of jurisdiction, by filing the amended petition and serving a copy on all parties at the jurisdictional settlement conference.

B. The court may, in furtherance of justice, and on such terms as may be proper, allow the petitioner to amend the petition or any allegation in the petition by adding or striking the name of any party or by correcting statistical information, clerical mistake(s), or typographical error(s). (Cal. Rules of Court, rule 5.560(f).)

C. The court may, upon noticed motion or upon stipulation of all parties, and in furtherance of justice, amend the petition.

D. The court may, upon a finding that the variance is not material, amend the petition to conform to the evidence received by the court at the jurisdiction hearing.

E. Except as otherwise provided by law, the court may not amend the petition over the objection of petitioner.

(Adopted 1/1/1990; Rev. 1/1/1997; Rev. 1/1/2002; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.1.7

Prehearing Discovery in Dependency Matter

A. Prehearing discovery will be conducted informally. Except as protected by statute, claim of privilege, or other good cause, all relevant material held by any party must be disclosed in a timely fashion to all parties to the litigation or made available to the parties upon request.

B. Only after all informal means have been exhausted may a party move the court for an order requiring disclosure.

The motion must identify with specificity the information sought, state the efforts which have been made to obtain the information through informal means, and explain why the information is relevant and material.

The original of the motion, with supporting declaration(s) and a memorandum of points and authorities, must be filed with the clerk of the assigned department. No motion will be accepted for filing or heard unless accompanied by a declaration by the movant or the movant's counsel, setting forth the following:

1. That the informal request for discovery was made at least five court days before the motion was filed;

2. The response, if any, to the informal request by the party to whom the request was directed or that party's counsel;

3. That the movant has met and conferred with the party to whom the request was directed or that party's counsel, or the facts showing that movant has attempted in good faith to meet and confer with the party to whom the request was directed or that party's counsel.

The clerk will assign a hearing date within ten court days of the date the informal request was made, but not less than five days before the next hearing, whichever is sooner. Responsive pleadings must be filed and served at least two court days before the assigned hearing date.

C. Materials released by the HHSA pursuant to an informal request for discovery, or after a formal motion to compel discovery has been granted, will be subject to the following conditions unless the conditions are modified by a judicial officer:

1. All records and information obtained through discovery and any copies thereof are in the constructive possession and custody of the court and must be returned to the court at the conclusion of the court proceedings, including all appeals and writs brought in the case, if requested by the judicial officer.

2. Use of records and information obtained through discovery for use in a juvenile court proceeding is limited to that proceeding only.

3. Counsel for the parties may make such copies of the records and information obtained through discovery as are necessary for the preparation and presentation of the case. Counsel is responsible for returning all such copies to the court at the conclusion of the proceeding, if requested by the judicial officer.

4. Records and information obtained through discovery must be kept in a confidential manner and must not be released, directly or indirectly, to members of the media or any other individuals not directly connected with the court proceeding.

5. Records and information may be reviewed by the parties, their counsel, and any investigator or expert witness retained by counsel to assist in the preparation of the case. Any such person reviewing the records or information must be made familiar with the terms of this rule.

6. All reasonable costs incurred in the reproduction of records under this rule will be the responsibility of the party seeking the records.

D. Any discovery matters not addressed here by this rule or California Rules of Court, rule 5.546 will be treated as a Request for Disclosure of Juvenile Case File (Judicial Council form JV-570) pursuant to Welfare and Institutions Code section 827 and California Rules of Court, rule 5.552, upon a noticed motion showing good cause as set forth in subdivision B. above.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012)

Rule 6.1.8

Pretrial Status Conference

A. At the discretion of the court, a pretrial status conference may be heard in the trial-setting department at least ten calendar days before the date set for trial. Upon stipulation of all parties, the pretrial status conference may be heard within ten calendar days before the date set for trial.

B. At the status conference, all attorneys must be prepared to address pretrial matters such as the continuing necessity for trial, the identification of contested and uncontested issues, the time estimated for trial, the exchange of witness lists, the filing of motions, the presentation of stipulated and documentary evidence, and requests for judicial notice. The court will establish a date and time certain for trial if one has not been previously set.

(Adopted 1/1/1990; Rev. 7/1/1990; Rev. 1/1/1997; Rev. 1/1/2002; Renum. 7/1/2001; Renum. 1/1/2006)

Rule 6.1.9

Settlement Conference

A. The court need not follow the procedures outlined in this rule where there is clear evidence that a settlement conference will not resolve the matter.

B. If a matter is set for a contested hearing, the court may order the parties and their counsel to appear at a settlement conference, and may schedule dates for both the settlement conference and the hearing. (The hearing will proceed as scheduled only if the matter does not settle.) HHSA social workers or their supervisors may be on telephone stand-by for the settlement conference. Unless expressly excused by the court, if any other party fails to appear at the settlement conference, the court may issue a bench warrant for that party.

C. Before the settlement conference, each attorney must conduct a comprehensive interview with his or her client, and make any further investigations that he or she deems necessary to ascertain the facts.

D. At the settlement conference, the attorney for each party must be prepared to discuss the legal and factual issues and must negotiate the case in good faith. Each attorney must be prepared to submit, if appropriate:

1. a list of issues to be litigated;
2. a list of proposed documentary evidence;
3. a list of intended witnesses;
4. a written request for judicial notice (Evid. Code, § 450 et seq.);
5. a list of stipulated evidence which will be presented at the time of trial.

E. If a matter is not resolved at the settlement conference, the court will address pretrial issues. Counsel should be prepared to submit pretrial worksheets addressing the issues described in rule 6.1.8B.
(Adopted 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 6.1.10

Mediation

At the discretion of the court, a case may be referred to mediation. If referred, the court will identify the mediator and set the fee for the mediator's services. The parties and all attorneys will be ordered to appear at the mediation.
(Adopted 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

Rule 6.1.11

Use of Social Worker's Report at the Jurisdiction Hearing

At a jurisdiction hearing, the court will receive into evidence any social worker's report or screening summary. If the jurisdiction hearing is a contested hearing, the receipt of the report into evidence will be subject to the following requirements:

A. The report must be filed with the court and made available to the parties or their counsel at least ten calendar days before the jurisdiction hearing.

B. The social worker or supervisor who prepared or supervised the preparation of the report must be available to testify at the jurisdiction hearing if counsel for the petitioner intends to offer the report into evidence.

C. For purposes of the jurisdiction hearing only, the court will strike any portion of the report containing anonymous information.

D. Upon request of the parent, guardian, child, or their counsel made at least five court days before the jurisdiction hearing, the social worker must either (1) provide the address and/or telephone number, if known, of any person whose statement is included in the social worker's report, or (2) make such person available, if requested, for cross-examination at the jurisdiction hearing. If, upon request, the social worker has not disclosed the address or telephone number, if known, of any witness, and a request is made to interview such witness before the hearing, the social worker must make such witness available for interview if practicable and if the witness is willing.

E. If the social worker, pursuant to subdivision D. of this rule, has provided the address of a witness to the parent, guardian, child, or their counsel, and if such parent, guardian, child, or counsel presents evidence of unsuccessful attempts and due diligence to subpoena such witness for the jurisdiction hearing, and if the court finds there has been due diligence, the court will strike, for purposes of the jurisdiction hearing only, the statements of such witness from the social worker's report. In the alternative, the court may grant a continuance for a period up to ten court days for the parties, including the social worker, to attempt to subpoena or make such witness available for testimony at the jurisdiction hearing. The court will not grant more than one such continuance in any dependency matter.

F. If the social worker, pursuant to subdivision D. of this rule, has indicated that he or she will make such witness available at the jurisdiction hearing but fails to make such witness available, the court shall strike, for purposes of the jurisdiction hearing only, the statements of such witness from the social worker's report. In the alternative, the court may grant a continuance for a period of up to ten court days for the parties, including the social worker, to attempt to subpoena or make such witness available for testimony at the jurisdiction hearing. The court will not grant more than one such continuance in any dependency matter.

G. For purposes of this rule, an attachment to a social worker's report is considered part of the social worker's report and will be received into evidence if: (1) such attachment is relevant to the jurisdictional issues, (2) the social worker has referred to the significant portions of such attachment in the body of the report, (3) the social worker used the attachment as part of the basis of any conclusion or recommendation made in the report, and (4) the requirements of subdivisions A. through F. of this rule have been met.
(Adopted 1/1/1990; Rev. & Renum. 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 6.1.12

Findings at Jurisdiction Hearing

A. Procedure. At a jurisdiction hearing, the court may make a finding on the allegations in the petition by way of one of the following procedures:

1. Admission of Allegations. The court may accept an admission from a party that all or part of the allegations in the petition are true.

Before accepting an admission, the court must satisfy itself that the party understands the nature of the allegations in the petition and understands and waives the trial rights enumerated in California Rules of Court, rule 5.682. The court must also find that there is a factual basis for the admission. The child may object to the finding of a factual basis and may request a contested hearing on that issue.

2. No Contest. The court may accept a plea of "no contest" to the allegations in the petition from a party.

Before accepting a "no contest" plea, the court must satisfy itself that the party understands the nature of the allegations in the petition and understands and waives the trial rights enumerated in California Rules of Court, rule 5.682. The court must also find that there is a factual basis for the "no contest" plea. The child may object to the finding of a factual basis and may request a contested hearing on that issue.

3. Submission on Reports. The court may allow a dependency matter to be submitted on available written reports upon a stipulation by all parties. The reports received by the court for purposes of a determination of jurisdiction may include the screening summary, police reports, and any other reports submitted by the social worker along with any attachments thereto. The court may make a finding that the allegations in the petition are true or not true, in whole or in part, based upon the information contained in the submitted reports.

Before allowing a party to submit the matter for decision based upon these reports, the court must satisfy itself that the party understands the nature of the allegations in the petition and understands and waives the trial rights enumerated in California Rules of Court, rule 5.682.

The party may make a closing argument before the court renders a decision.

4. Contested Hearing. The court may hear the matter as a contested hearing and receive testimonial or documentary evidence properly submitted by the parties. The court will make findings on the allegations in the petition based upon such evidence.

B. Jurisdictional Findings. Inasmuch as a jurisdictional finding is as to the child, and not as to the parent or guardian, the court may make a finding that the child is a person described by Welfare and Institutions Code section 300 only after following the procedures of this rule or after making a finding that reasonable efforts have been made and failed to locate the parent or guardian, as to each and every parent and guardian.
(Adopted 1/1/1990; Rev. & Renum. 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.1.13

Court-Appointed Special Advocates (CASAs)

In any action pursuant to Welfare and Institutions Code sections 300-399, the court may, in an appropriate case and in addition to any counsel appointed for a child, appoint a court-appointed special advocate (CASA) to represent the best interests of the child who is the subject of the proceedings. If the court determines that a child would not benefit from the appointment of counsel pursuant to Welfare and Institutions Code section 317(c) and California Rules of Court, rule 5.660(b), the court may appoint a CASA for the child to serve as guardian ad litem, as required by Welfare and Institutions Code section 326.5. The CASA has the same duties and responsibilities as a guardian ad litem and must meet the requirements set forth in California Rules of Court, rule 5.660. CASA volunteers must be trained by and function under the auspices of Voices for Children, the court-appointed special advocate program formed and operated under the guidelines established by the National Court Appointed Special Advocate Association, Welfare and Institutions Code sections 100-109, and California Rules of Court, rule 5.655.
(Adopted 1/1/1990; Rev. 1/1/1997; Rev. 1/1/2002; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 6.1.14

Ex Parte Applications and Orders

A. Any party making an ex parte request for an order from the court in a dependency matter must give 24 hours' notice to all other parties or their counsel. A declaration that such notice has been given to all other parties or their counsel must be set forth in the moving papers.

The court may waive such notice only upon a showing of good cause that is set forth by clear facts in a supporting declaration or declarations.

B. Except in emergency matters requiring immediate action, all ex parte applications and proposed orders must be delivered during regular business hours to the clerk of the judicial officer assigned to the case, for presentation to that judicial officer.

(Adopted 1/1/1990; Renum. 1/1/1997; Rev. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006)

Rule 6.1.15

Presence of Child at Court Hearing

A. This rule governs the attendance of children at court hearings unless the child is present by subpoena, the desire to be present, or by other order of the court.

B. Children under four years of age are excused from attending all court hearings.

C. Children four years of age and over must attend if:

- **1.** Directed to attend by the court.
- **2.** Requested to attend by a party or their counsel, and the court finds that:
  - **a.** Attending would not be detrimental to the child.
  - **b.** The child is not otherwise unable to attend due to disability, physical illness, or medical condition.

D. If a child who is ten years of age or older was not properly notified of his or her right to attend a hearing or was not given an opportunity to attend, the court must continue the hearing unless the court finds that it is in the best interest of the child not to continue the hearing. (Welf. & Inst. Code § 349, subd. (d).)

E. No child is to be brought to court solely for the child to confer with the child's attorney or to visit relatives.

F. If the child is present, the judicial officer in the assigned court may view and speak with the child with a court reporter present to create an official transcript of the conversation.

(Adopted 1/1/1990; Rev. 7/1/1991; Rev. & Renum. 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2012)

Rule 6.1.16

Procedure for Establishing Parentage; Blood Tests

A. The juvenile court is a proper forum to determine the parentage of a child when such a finding becomes necessary during a dependency proceeding.

B. Any action to determine the biological parentage of a child who is the subject of a dependency proceeding must conform to the provisions of Family Code sections 7610 and 7630 et seq., except that either the petitioner or counsel for the child may also bring the action. Only approved Judicial Council forms (see JV-505, "Statement Regarding Parentage (Juvenile)") may be used in all such actions.

C. Except on stipulation by the parties and agreement of the court, any motion for blood, HLA, DNA, or similar tests must be properly noticed, in writing, accompanied by a memorandum of points and authorities in support of the motion and a declaration by counsel which specifies the type of test to be conducted, the entity that will perform the test, and the cost of the procedure.

The court must enter appropriate orders for payment of the cost of the test, including but not limited to, apportionment among or between the parties.

D. Any action to determine parentage may be assigned to a referee of the juvenile court upon the filing of a fully executed stipulation that the referee will act in the capacity of a superior court judge. If the parties do not so stipulate, the matter will be transferred to a superior court judge for the sole purpose of hearing the parentage issue.

E. At the conclusion of any such action, the court will enter judgment(s) accordingly.

F. Nothing in this rule will extend any statutory time limits for hearings, including disposition or review. Nor will any provision of this rule preclude the court from issuing any proper interim orders or findings to promote the best interest of the child.

(Adopted 1/1/1990; Rev. & Renum. 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2015)

Rule 6.1.17

Confidentiality of Foster Homes (Welf. & Inst. Code, § 308)

A. For purposes of this rule, "foster family home" means the home of any person certified or licensed as a foster parent for the detention or placement of children pending or during juvenile dependency proceedings.

B. For purposes of this rule, placement of a child includes the placement or detention of a child by the HHSA or the court pending or during juvenile dependency proceedings.

C. The address of any foster family home in which a child has been placed must be kept confidential at all times except as provided by this rule and any other provisions of law directly applicable to the confidentiality of foster family homes. Nothing in this rule prohibits, where appropriate, the release of the first name of the foster parent and a telephone number at which the foster parent can be reached so as to facilitate contact with the child. Nothing in this rule shall be construed to restrict any information about the foster family home from the attorney for the child. Further, nothing in this rule may be construed to restrict the right or ability of the parent or guardian to visitation and contact with the child at a location other than the foster family home where such visitation and contact is in the child's best interest.

D. The safety and protection of the foster family and the safety, protection, physical and emotional well-being of all children placed in the foster family home will be the primary considerations in any decision or ruling made pursuant to this rule.

E. A foster parent may at any time authorize the release of his or her address, thereby waiving the confidentiality of that foster family home.

1. Any such authorization must be in writing, be personally signed and dated by the foster parent, identify the specific individual(s) the foster parent is authorizing release of the foster family home address to, and include a statement that the foster parent is aware of the confidentiality provisions of the law and is voluntarily waiving them.

2. Any such authorization must be provided to the social worker who must maintain the authorization in the HHSA file. The social worker must advise the attorney for the child, if any, and any CASA of the authorization within three court days. The authorization will not go into effect for a period of seven days unless both the social worker and the attorney for the child, if any, concur that waiver of the confidentiality of the foster family home will not endanger the child's safety, protection, physical or emotional well-being. At any time before the expiration of the seven days, the social worker or the attorney for the child, if any, may apply to the juvenile court, with notice to all parties, for an order directing that the address of the foster family home be kept confidential and the reasons therefor.

3. Any such authorization may be withdrawn by the foster family at any time before the actual release of the address of the foster family home. Such withdrawal will not be effective unless communicated to and received by the social worker handling the case before the actual release by the social worker of the address of the foster family home.

F. At the detention hearing the court will make an order that the address of the foster family home must be kept confidential as required by law. At the detention hearing and any subsequent change in the child's placement, HHSA must provide to counsel for the child the full name, address, and telephone number of the foster family home, group home, temporary shelter, or emergency detention home or facility in which the child is detained or placed. (See Welf. & Inst. Code, § 16010.6, subd. (a).)

G. Except as provided in subdivision E. of this rule, the confidentiality of the address of a foster family home must be maintained at all times before the disposition hearing or the expiration of sixty days from the date the child was ordered removed or detained, whichever comes first.

H. At the disposition hearing and at any regularly scheduled review hearing, any party to the proceeding may request the court to issue an order releasing the address of the foster family home. No Welfare and Institutions Code section 388 petition will be required at such hearings, but the procedures and standards set forth in subdivision I. of this rule for the consideration and issuance of such an order must be followed. Notice to the foster family home may be made orally, however.

I. Following the disposition hearing or the expiration of sixty days from the date the child was ordered removed or detained, whichever comes first, any interested person may petition the court pursuant to Welfare and Institutions Code section 388 for an order releasing the address of the foster family home.

1. The court will follow the procedures for the determination of a Welfare and Institutions Code section 388 petition, including the summary denial of the petition, but will not grant the petition without a noticed hearing.

2. The foster parent and all parties or their counsel must be noticed for the hearing. The foster parent must be noticed through the HHSA. The foster parent has the right to be present, to be represented by retained counsel, and to participate in the proceedings.

3. The court will not grant the petition unless the person seeking release of the address has met his or her burden to show that new evidence or a change of circumstance establishes good cause for the release of the address and that the release is in the best interest of the child. For purposes of this determination, the best interest of the

child includes, but is not limited to, the safety, protection, physical and emotional well-being of the child, as well as the safety and protection of the foster family with which the child is placed.

4. Any order of the court releasing the address of the foster family home will be stayed for a period of ten days, and may be stayed for a period in excess of ten days, to allow any party, including the foster parent, to seek review of the decision through rehearing or petition for extraordinary writ relief.

(Adopted 7/1/1998; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2014)

Rule 6.1.18

CASA Reports

In any case in which the court has ordered the appointment of a CASA (court-appointed special advocate), the CASA must submit reports to the court at least two days before each of the following hearings: six-month review; 12-month review (permanency hearing); 18-month review (permanency review hearing); 24-month review (subsequent permanency review hearing); selection and implementation hearing (366.26 hearing); post-permanency planning reviews; and status reviews for nonminor dependents. The CASA may submit reports for any special hearings noticed to Voices for Children. If the CASA was appointed before the establishment of jurisdiction, the CASA may submit a report to the court at least two days before the jurisdiction/disposition hearing. The content of the report must be limited to the current condition of the child and needed services; jurisdictional issues must not be addressed (see Cal. Rules of Court, rule 5.655(g)(2)).

Only parties and their counsel are entitled to receive copies of CASA reports. Relatives, de facto parents, foster parents, service providers, and parents of nonminor dependents are not entitled to receive copies of CASA reports.

CASA reports will be copied and distributed by Voices for Children staff.

(Adopted 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2012; Rev. 1/1/2014)

Rule 6.1.19

Court Orders to Address Parental Substance Abuse

At the detention or initial hearing, if the HHSA report or the petition informs the court that a parent has alcohol and/or drug issues, the court will refer that parent to an on-site screening and referral to treatment. If the court subsequently assumes jurisdiction, the court will order that parent to abstain from possessing and using drugs and/or alcohol, to submit to random urine testing, to participate in counseling, treatment programs, and/or 12-step programs as specified, and to provide proof of such participation to the social worker or the court. The court may also order the parent to participate in Dependency Drug Court if screening by the Regional Case Manager indicates that the parent is a good candidate for Drug Court.

The court may make these orders at any subsequent hearing upon receipt of a report from the social worker or Regional Case Manager that a parent has alcohol and/or drug issues.

The social worker reports for post-disposition hearings must state whether the parent is actively participating in counseling, treatment, 12-step programs, and/or Dependency Drug Court as ordered; the number of sessions or meetings missed, if any; whether those absences were excused; and the results of each urinalysis. The court may consider noncompliance with the orders described in this rule to be a failure to participate regularly in a court-ordered treatment program, which eventually may result in a termination of efforts to reunify the family.

(Adopted 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011)

Rule 6.1.20

Fax Filing

Any petition to be filed under Welfare and Institutions Code section 300, 342, 387, 388, or 827 may be filed by fax by a named party to the proceeding, an attorney of record in the proceeding, the HHSA, the Probation Department, the D.A.'s Office, County Counsel, or a CASA volunteer appointed in the case. The faxed document must comport in form to the original, must be legible, and must bear a legible signature verifying the truth of the information in the petition or report. The first page transmitted must be the Fax Filing Cover Sheet--Juvenile (Judicial Council form JV-520), followed immediately by the document to be filed. Neither the Cover Sheet nor any special handling instructions shall be filed or retained by the court.

Further details about fax filing requirements, including the fax number and the hours during which fax filings will be accepted, may be obtained by contacting the Juvenile Court Business Office. Fax filings must comply with the requirements of California Rules of Court, rule 5.522.

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

CHAPTER 2
ADOPTION RULES

Rule 6.2.1

Adoption Calendar in Juvenile Court

All San Diego Superior Court adoption proceedings must be calendared in either the Juvenile Division at 2851 Meadow Lark Drive, San Diego, or the North County Division at 325 S. Melrose, Vista.

All legal steps must be completed, and all paperwork must be submitted and in order before a final hearing date will be set. Any request for a continuance should be directed to the adoption clerk before presentation to the judge.
(Renum. 1/1/1990; Rev. 1/1/1991; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

CHAPTER 3
ATTORNEY SCREENING AND STANDARDS OF REPRESENTATION

Rule 6.3.1

General Competency Requirement

Absent a knowing and intelligent waiver by the party represented, all attorneys appearing in juvenile dependency proceedings must be members in good standing of the State Bar of California and must meet the minimum standards of competence set forth in these rules. These rules apply to attorneys representing public agencies, attorneys employed by public agencies, attorneys employed by private firms, attorneys appointed by the court to represent any party in a dependency proceeding, and attorneys who are privately retained to represent a party in a dependency proceeding.
(Adopted 1/1/1997; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 6.3.2

Screening for Competency

A. Absent a knowing and intelligent waiver by the party represented, all attorneys who represent parties in juvenile dependency proceedings must meet the minimum standards of training and/or experience set forth in these rules.

No attorney will be appointed by the court to represent a party in a dependency proceeding who has not submitted to the court and had approved a Certification of Competency as set forth on the Superior Court website (http://www.sdcourt.ca.gov/pls/portal/docs/page/sdcourt/generalinformation/forms/juvenileforms/juv116_fillable.pdf). Further, no retained counsel will be allowed to appear on behalf of a party in a dependency proceeding without having submitted to the court and had approved a Certification of Competency or a knowing and intelligent waiver by the party of such certification.

B. Attorneys who meet the minimum standards of training and/or experience set forth in rule 6.3.3, as demonstrated by the information contained in the Certification of Competency submitted to the court, are deemed competent to practice before the juvenile court in dependency cases, except as provided in subdivision C. of this rule.

C. Upon submission of a Certification of Competency which demonstrates that the attorney has met the minimum standards for training and/or experience, the court may determine, based on conduct or performance of counsel before the court in a dependency case, that a particular attorney does not meet minimum competency standards. Further, the court retains the authority to review the general conduct and performance of an attorney and to decertify such attorney for good cause at any time. The court may order denial of certification and decertification only after the attorney has been given notice of the intended action and an opportunity to be heard.

D. Any attorney appearing before the court in a dependency case who does not meet the minimum standards of training and/or experience must notify the court to that effect at his/her initial appearance. The clerk of the court must notify the represented party by first-class mail to the party's last known address and the attorney at least ten days before the hearing date of the following: (1) a hearing date, time, and location; (2) that at that hearing the court will consider the issue of whether to relieve counsel for failing to complete the requisite training and to provide a Certification of Competency; and (3) that failure to appear for the hearing will be deemed a waiver of any objection and acquiescence to the relief of appointed counsel. At that hearing, absent a knowing and intelligent waiver by the party represented, the court must relieve such appointed counsel and must appoint certified counsel for the party whose attorney failed to complete the required training. If the attorney relieved is a member of a public agency, the

agency has the right to transfer the case to a certified attorney within that agency. In the case of retained counsel, the court must notify the party that his or her counsel has failed to meet the minimum standards required by these rules. The determination whether to waive certification or obtain substitute private counsel is solely within the discretion of the party so notified.

E. If a retained attorney maintains his or her principal office outside of this county, proof of certification by the juvenile dependency court of the California county in which the attorney maintains an office will be sufficient evidence of competence to appear in a juvenile dependency proceeding in this county.

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2010)

Rule 6.3.3

Minimum Standards of Education and Training

A. No attorney appearing in a dependency matter before the juvenile court may be certified by the court as competent until the attorney has completed the following minimum training and educational requirements.

1. Before certification, the attorney must have either:

a. At least six months of experience in dependency proceedings in which the attorney has demonstrated competence in representing his or her clients. To qualify for certification under this paragraph, the attorney must have made a substantial number of appearances and handled a variety of dependency hearings, including contested hearings. In determining whether the attorney has demonstrated competence, the court will consider, among other things, whether the attorney has demonstrated knowledge and understanding of the topics listed in paragraph b. of this subdivision.

b. Obtained at least 12 hours of training or education in juvenile dependency law, which included applicable case law and statutes, rules of evidence, state and local rules of court, Judicial Council forms, motions, trial techniques and skills, writs and appeals, child development, child abuse and neglect, substance abuse, domestic violence, family reunification and preservation, reasonable efforts, the educational rights of children, the Uniform Child Custody Jurisdiction and Enforcement Act, the Interstate Compact on the Placement of Children, and the Indian Child Welfare Act.

2. If an attorney has obtained the required training or education but has not represented parties in a substantial number of dependency cases as determined by the juvenile court, the court must grant a provisional certification pending satisfactory completion of a mentor program within three months. While under the mentor's supervision, the attorney must try at least three contested hearings and handle at least one detention hearing, one jurisdiction hearing, one disposition hearing, one pre-permanency planning review, one supplemental petition, and one petition to modify a prior order. The attorney and the mentor must consult at least weekly regarding the handling of the attorney's cases. The mentor must be present and observe the attorney handle at least one contested hearing and such other hearings as are necessary and appropriate.

While serving under a provisional certification, an attorney may be appointed to represent parties in dependency cases and to receive compensation for such representation. For purposes of this program, a "mentor" is an attorney who has been approved to serve as a mentor by the supervising judge of the dependency court, has at least three years' experience handling dependency cases, has a current competency certification, and has agreed to serve without compensation as a mentor under this program. If the provisionally certified attorney is employed by a public agency or a private firm, the mentor must be a supervising attorney of that agency or firm or his/her designee.

B. Each attorney who has been certified by the court will submit a new Certification of Competency to the court on or before January 31st of the same year in which the attorney must certify his or her MCLE credits to the State Bar of California. The new Certification must be accompanied by evidence of 18 hours of continuing dependency education or training which were completed in the three years after the previous Certification was issued.

If the training or education was not presented by a California MCLE provider, the documentation of attendance is subject to the approval of the juvenile court. Evidence of training or education may include: a copy of a certificate of attendance issued by a California MCLE provider; a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is a MCLE provider; a copy of the training or educational program schedule together with evidence of attendance at such program; proof of attendance at a court-sponsored or court-approved program; or such other documentation that demonstrates the relevance of the program and the attorney's attendance at such program.

C. At least one-half of the attorney's continuing training or education hours must be in the areas set forth in subdivision A.1.b. of this rule. The remaining hours may be in other areas related to juvenile dependency practice, including, but not limited to, special education, mental health, health care, immigration, adoption, guardianship,

parentage, the Parental Kidnapping Prevention Act, state and federal public assistance programs, client interviewing and counseling techniques, case investigation, and settlement negotiations and mediation.

D. When a previously certified attorney fails to submit evidence that he or she has completed the minimum required training and education for recertification to the court by the due date, the court will notify the attorney in writing by first-class mail that he or she will be decertified unless the attorney submits, within twenty days of the date of the mailing of the notice, evidence of completion of the required training or education. If the attorney fails to submit evidence of the required training or education, the court shall proceed as set forth in rule 6.3.2D.
(Adopted 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

Rule 6.3.4

Standards of Representation

A. Basic Attorney-Client Obligations. All attorneys appearing in dependency proceedings must advise their clients of the legal and factual aspects of the client's case and must represent their clients' interests vigorously within applicable legal and ethical boundaries.

In performing these duties, each attorney is expected to:

1. Thoroughly and completely investigate the accuracy of the allegations, explore any possible defenses, and consider alternatives to court action;

2. Meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally;

3. Advise the client of the risks and benefits of the possible courses of action, including the taking of writs and appeals;

4. Determine the client's desires and interests;

5. Advocate the client's desires and interests to the court and other parties;

6. Contact social workers and other professionals associated with the client's case;

7. Work with other counsel and the court to resolve disputed aspects of a case without contested hearings;

8. Adhere to mandated timelines;

9. Inform the client of the procedure for lodging a complaint against the attorney;

10. Be familiar with relevant constitutional, statutory, and case law; and

11. Possess fundamental legal skills and a rudimentary understanding of relevant interdisciplinary topics.

In addition to the duties listed above, counsel for the child or counsel's agents are expected to:

12. Have sufficient direct, personal contact with the child to establish and maintain an adequate and professional attorney-client relationship;

13. Explain fully, consistent with the child's ability to understand, the nature and consequences of the court proceedings;

14. Have sufficient contact with the child's caregiver, including a parent with whom the child has been detained or placed, CASA, if any, and/or therapist, if any, to accurately assess the child's well-being and needs;

15. Monitor the child's development throughout the course of the proceedings and advocate for services that will provide a safe, healthy, and nurturing environment for the child;

16. Maintain a caseload that allows the attorney to perform the duties required by Welfare and Institutions Code section 317, subdivision (e), and California Rules of Court, rule 5.660, and to otherwise adequately counsel and represent the child;

17. Immediately inform the court of any interest or right of the child which may need to be protected or pursued in other judicial or administrative forums and seek instructions from the court as to appropriate procedures to follow; and

18. Provide the attorney's contact information to the child's caregiver and the child if ten years of age or older no later than ten days after receipt of the name, address, and telephone number of the caregiver.

B. Relevant Laws and Programs. All attorneys practicing in dependency proceedings must have a working knowledge of the following statutes and rules, as well as the cases interpreting and applying them:

1. Welfare and Institutions Code sections 200-399, 825-830, 900-911, 914, 10618.6, 10850-10851, 11360-11393 (Kin-GAP), 11400 et seq. (AFDC-FC), 13750-13757, and 16000-16519 (State Child Welfare Services);

2. California Rules of Court, rules 5.440-5.740, 5.900-5.906, and 8.400-8.474;

3. Code of Civil Procedure sections 128, 170, 170.6, 917.7, and 1209;

4. Education Code sections 48850-48859, 48906, 48911, 48915.5, and 48918.1, 49069.5, and 56000 et seq. and Government Code sections 7579.1 and 7579.5 (educational rights of children);

5. Evidence Code;

6. Family Code sections 3400 et seq. (Uniform Child Custody Jurisdiction and Enforcement Act), 7500 et seq. (Parental Rights; Paternity Presumptions, Blood Testing, and Voluntary Declarations), 7600 et seq. (Uniform Parentage Act), 7800 et seq. (Freedom from Parental Custody and Control), 7900 et seq. (Interstate Compact on Placement of Children), and 7950 et seq. (Foster Care Placement Considerations);

7. Penal Code section 11165 et seq. (Child Abuse and Neglect Reporting Act);

8. Title 25 United States Code, sections 1901-1963 (Indian Child Welfare Act) and Indian Child Custody Guidelines published at 44 Federal Register 67,584 (1979);

9. San Diego Superior Court Rules, Division VI─Juvenile and Chapter 10 of Division VIII─Mental Health.

The following areas of the law and local programs are critical in many dependency cases, and counsel must develop a working knowledge of them as they become applicable to individual cases.

10. Dependency Drug Court;

11. Special immigrant juvenile status under Title 8 United States Code section 1101;

12. Title 28 United States Code section 1738A (Parental Kidnapping Prevention Act);

13. Criminal law, juvenile delinquency law, and the San Diego Juvenile Court protocol regarding dual jurisdiction cases;

14. Mental health law in Welfare and Institutions Code sections 4500 et seq. (Lanterman Developmental Disabilities Services Act), 5000 et seq. (Lanterman-Petris-Short Act), 5850 et seq. (Children's Mental Health Services Act), and 6000 et seq. (Admissions and Judicial Commitments);

15. Family Code section 6200 et seq. (Domestic Violence Prevention Act);

16. San Diego County Child Victim-Witness Protocol;

17. Welfare and Institutions Code sections 10609.3-10609.45 (Independent Living Program), 16522 et seq. (Transitional Housing), 16525.10 et seq. (Options for Recovery); 16600 et seq. (Family Preservation), 17730-17738 (Children with Special Health Care Needs), 18250 et seq. (Wraparound Services), and 18950 et seq. (Child Abuse Prevention);

18. Other relevant portions of federal and California law relating to the abuse or neglect of children and to children's mental and physical welfare.

C. Legal Skills. In addition to basic legal knowledge, counsel must have and continue to develop the following basic legal skills:

1. Basic trial skills (e.g., proper and succinct direct and cross-examination, proper objections);

2. Basic advocacy skills (e.g., client interviewing and counseling, case investigation, settlement negotiation, witness preparation, use of experts);

3. Relevant motion practice (e.g., motions pursuant to Welfare and Institutions Code sections 350, 388, and 390);

4. Sufficient understanding of writ and appellate practice to advise a client whether and how to seek such remedies and to arrange for a specialist to pursue them when necessary.

D. Relevant Interdisciplinary Skills. The dependency system is complex in that it frequently involves issues arising from a variety of disparate and highly specialized areas. A collaborative problem-solving approach usually improves outcomes for children and families. Attorneys appearing in dependency court cannot effectively represent their clients without a fundamental understanding of the interdisciplinary issues listed below and the ability to obtain more detailed insight as the demands of individual cases require. Attorneys should have a general familiarity with and receive ongoing training in the following areas:

1. Dynamics of child abuse and neglect

2. Child development

- **a.** Interviewing children
- **b.** Children as witnesses
- **c.** Developmental milestones as they relate to the identification and consequences of child abuse and neglect

3. Risk assessment

4. Substance abuse - the addiction and recovery process

5. Mental health issues

- **a.** Purposes and uses of psychological and psychiatric evaluations
- **b.** Purposes and expectations of various modalities of therapy
- **c.** Psychotropic medications

6. Medical issues

- **a.** Traumatic injuries

b. Nutritional deficits
c. Drug toxicity in children

7. Government payment issues
a. AFDC-Foster Care
b. CalWORKS and TANF
c. Medi-Cal
d. County Treasury funds
e. Supplemental Security Income (SSI)
f. Social Security Administration (SSA)
g. Adoption Assistance Program (AAP)
h. Kin-GAP funds

8. Cultural issues
9. Poverty issues
10. Education issues
11. Domestic violence
12. Family reunification and preservation
13. Reasonable efforts
14. Immigration issues

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014)

CHAPTER 4
PROCEDURES FOR REVIEWING AND RESOLVING COMPLAINTS

Rule 6.4.1

Reviewing and Resolving Complaints

A. Written notice of the procedure for resolving complaints will be provided in each courtroom at the adult client's first appearance. The child's attorney must provide written notice of the procedure to a child ten years of age or older or to the caregiver of a child under ten years of age. Information regarding the procedure will be available in the clerk's office.

B. Any participant who has a complaint about the performance of a juvenile court attorney may lodge a written complaint with the court hearing the matter (hereinafter, the court).

C. Upon receipt of a written complaint, the court will notify the attorney in question and his or her supervisor, if any, provide the attorney with a copy of the complaint and give the attorney twenty days from the date of the notice to respond to the complaint in writing. The attorney should attempt to obtain an informal resolution of the matter before responding to the complaint.

D. After the attorney has responded to the complaint or the time for submission of a response has passed, the court will review the complaint and the response, if any, to determine whether the attorney acted contrary to local rules or policies of the court or has acted incompetently. The court may ask the complainant or the attorney for additional information before making a determination on the complaint.

E. If, after reviewing the complaint, the response, and any additional information, the court finds that the attorney acted contrary to the rules or policies of the court, the court may reprove the attorney, either privately or publicly, and may, in cases of willful or egregious violations of local rules or policies, issue such reasonable monetary sanctions against the attorney as the court may deem appropriate.

F. If, after reviewing the complaint, the response, and any additional information, the court finds that the attorney acted incompetently, the court may order that the attorney practice under the supervision of a mentor attorney for a period of at least six months, that the attorney complete a specified number of hours of training or education in the area in which the attorney was found to have acted incompetently, or both. In cases in which the attorney's conduct caused actual harm to his or her client, the court may order additional hearings to determine whether that attorney should be relieved. The court may refer the matter to the State Bar of California for further action.

G. The court will notify the attorney at the attorney's address of record and the complaining party in writing of its determination of the complaint. If the court makes a finding of improper conduct, incompetence, or harm to the client under subdivision E. or F., the attorney may request a hearing in writing concerning the court's proposed

action. If the attorney does not request a hearing within ten days from the date the notice was sent, the court's determination will become final.

H. If the attorney requests a hearing, the hearing will be held as soon as practicable after the attorney's request therefor, but in no case will it be held more than thirty days after it has been requested except by stipulation of the parties. The complainant and the attorney will each be given at least ten days' notice of the hearing. The hearing may be held in chambers. The hearing will not be open to the public. The court may designate a commissioner, referee, judge pro tempore, or other member of the Bar to act as hearing officer.

I. At the hearing, each party will have the right to present arguments to the hearing officer with respect to the court's determination. Such arguments must be based on the evidence before the court at the time the determination was made. No new evidence may be presented unless the party offering such evidence can show that it was not reasonably available to the party at the time that the court made its initial determination with respect to the complaint. Within ten days after the hearing, the court or hearing officer will issue a written determination upholding, reversing, or amending the court's original determination. The hearing decision will be the final determination of the court with respect to the matter. A copy of the hearing decision will be provided to both the complainant and the attorney.

J. Nothing in these rules precludes any person or public agency from pursuing rights afforded them by any other statute or rule of law.

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2010)

CHAPTER 5
PROCEDURES FOR INFORMING THE COURT OF OTHER INTERESTS OF A DEPENDENT CHILD

(Welf. & Inst. Code, §§ 317, 317.6; Cal. Rules of Court, rule 5.660)

Rule 6.5.1
Informing the Court of Other Interests of a Dependent Child

A. At any time while a dependency proceeding is pending, any interested person may notify the court that the child who is the subject of the proceeding may have an interest or right which needs to be protected or pursued in another judicial or administrative forum.

1. Notice to the court may be given by filing Judicial Council form JV-180 (Request to Change Court Order), by filing a declaration, or, in the case of an individual who is not a party to the action, by sending a signed letter addressed to the court.

2. The person giving notice must set forth the nature of the interest or right which needs to be protected or pursued, the name and address, if known, of the administrative agency or judicial forum in which the right or interest may be affected, the nature of the proceedings being contemplated or conducted there, and any case number or other identifying information regarding the proceeding.

3. If known to the person giving notice, the notice must also set forth what action on the child's behalf the person believes is necessary, whether counsel on a pro bono or contingency basis may be necessary or appropriate to take action on behalf of the child in the other forum, whether the nomination of a guardian ad litem to initiate or pursue a proposed action may be appropriate, whether joinder of an administrative agency to the juvenile court proceedings pursuant to Welfare and Institutions Code section 362 may be appropriate or necessary to protect or pursue the child's interest, and whether further investigation may be necessary.

B. A copy of the notice must be served on the child's social worker and on the child's attorney and/or CASA before the notice is filed with the court. Such service may be effected by personal service, first-class mail, or the equivalent, and must be indicated on a proof of service filed with the notice. If the child is not represented by separate counsel, the notice must so state. In the case of an individual who is not a party to the action who files a letter with the court, the clerk of the court will serve a copy of the letter on the child's social worker and on the child's attorney and/or CASA.

C. The court may set a hearing on the notice if the court deems it necessary in order to determine the nature of the child's right or interest and whether steps need to be taken to protect or pursue that right or interest in another forum.

D. If the court determines that further action on behalf of the child is required, the court may do one or more of the following:

1. If the child is unrepresented, appoint an attorney for the child in the dependency proceedings and direct that such attorney investigate the matter and report back to the court pursuant to Welfare and Institutions Code section 317, subdivision (e).

2. Authorize an attorney to pursue the matter on the child's behalf in the other forum on a pro bono or contingency basis.

3. Appoint a guardian ad litem for the child to make decisions on the child's behalf related to the potential civil proceedings. Upon the filing of an action in another forum, that court may reappoint the guardian ad litem appointed by the juvenile court or appoint a different person as guardian ad litem for the child pursuant to Code of Civil Procedure section 372.

4. Notice a joinder hearing pursuant to Welfare and Institutions Code section 362, subdivision (b), compelling a responsible agency to report to the court as to whether it has fulfilled its legal obligation to provide services to the child.

5. Take such other action the court may deem necessary or appropriate to protect the welfare, interests, and rights of the child.

E. County treasurer funds may not be used to fund legal or other services in another forum outside the juvenile dependency proceedings.

(Adopted 1/1/1997; Renum. 7/1/2001; Rev. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2014)

CHAPTER 6
ACCESS TO CONFIDENTIAL INFORMATION

Rule 6.6.1

Disclosure of Information Relating to Children and their Families–Preliminary Provisions

A. For purposes of this chapter, "juvenile court records" include:

1. Those records described in Welfare and Institutions Code sections 362.5 and 827, subdivision (e), and California Rules of Court, rule 5.552, subdivision (a);

2. Records kept in Health & Human Services Agency ("HHSA") files pursuant to Welfare and Institutions Code section 10850 and Penal Code section 11165 et seq., regardless of whether a Welfare and Institutions Code section 300 petition was filed in the case;

3. Records kept in Probation Department files, regardless of whether a Welfare and Institutions Code section 601 or 602 petition was filed in the case; and

4. Testimony from HHSA or Probation personnel regarding any information contained in juvenile court records (cf. *City of San Diego v. Superior Court* (1981) 136 Cal.App.3d 236, 239).

B. For purposes of this chapter, "juvenile court records" do **not** include:

1. Records sealed pursuant to Welfare and Institutions Code section 389 or 781;

2. Records maintained by the Department of Motor Vehicles;

3. Records maintained by law enforcement agencies (see Welf. & Inst. Code, § 828; San Diego Superior Court rule 6.6.7);

4. Records regarding offenses that were tried in the criminal division of the court because the minor was found unfit to be tried in the juvenile division; and

5. Adoption records.

C. For purposes of this chapter, "disclosure" or "access" provides for inspection, but not photocopying, at the court's business office or the HHSA or Probation office where the records are maintained, unless otherwise ordered by the court.

If the court authorizes photocopying, it must be done by court or HHSA or Probation personnel as appropriate, unless otherwise ordered by the court or agreed to by the parties. The person or agency obtaining photocopies must pay for the copying (in accordance with the current San Diego Superior Court Schedule of Fees).

D. Juvenile court records may not be obtained by civil or criminal subpoena. (Cal. Rules of Court, rule 5.552(b).) A waiver of confidentiality by any person identified or described in the requested records does not automatically confer a right of access to those records.

E. Information in a juvenile case file which is privileged or confidential pursuant to any other state law or federal law or regulation may be released only (1) to those entitled to access under the other state law or federal law or regulation or (2) by order of the juvenile court upon the filing of a Request for Disclosure of Juvenile Case File on Judicial Council form JV-570.

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2014)

Rule 6.6.2

Disclosure of Juvenile Court Records to Persons and Agencies Not Designated in Welfare and Institutions Code Section 362.5, 827, or 827.10 – Request for Disclosure (JV-570) Required

(For procedures relating to prehearing discovery of dependency records by the parties to a dependency proceeding and their counsel, see rule 6.1.7.)

Except as otherwise provided in Chapter Six of these rules, if a person or agency not designated in Welfare and Institutions Code section 362.5, 827, or 827.10 seeks access to juvenile court records, including documents and information maintained by the court, the Probation Department, or the HHSA, that person or agency must file a Request for Disclosure of Juvenile Case File (hereinafter, petition) on Judicial Council form JV-570. The petition must be filed with the clerk in the Juvenile Court Business Office or other clerk designated to receive such petitions. The petition must comply with California Rules of Court, rule 5.552 and with these rules. If disclosure is requested regarding a person who has both a dependency and a delinquency record, two separate requests must be filed and served.

At least ten calendar days before the petition is submitted to the court, the petitioner must give notice as described in California Rules of Court, rule 5.552(d). Notice must be served either personally or by first-class mail of a copy of the completed Request for Disclosure of Juvenile Case File (Judicial Council form JV-570), a Notice of Request for Disclosure of Juvenile Case File (Judicial Council form JV-571), and a blank copy of Objection to Release of Juvenile Case File (Judicial Council form JV-572).

For delinquency cases, service must be to the person who is the subject of the record; the attorney of record for the person who is the subject of the record if that person is still a ward of the court; the parent(s) or guardian(s) of the person who is the subject of the record if that person is under 18 years of age; the Indian tribe, if any; the District Attorney, Juvenile Division; and the Juvenile Probation Department, Attn: Probation Support Manager.

For dependency cases, service must be to the person who is the subject of the record; the attorneys of record for the person who is the subject of the record and for his or her parents if that person is still a dependent of the court; the parent(s) or guardian(s) of the person who is the subject of the record; the CASA volunteer, if any; the Indian tribe, if any; County Counsel, Juvenile Dependency Division; and the Health and Human Services Agency/CWS, Attn: 827 Clerk.

For nonminor dependent cases, service must be to the nonminor dependent; the attorney for the nonminor dependent; the CASA volunteer, if any; the Indian tribe, if any; County Counsel, Juvenile Dependency Division; the Health and Human Services Agency/CWS, Attn: 827 Clerk; the District Attorney, Juvenile Division, if the nonminor dependent is also a delinquent ward; and, if the parents are still receiving reunification services, the parents of the nonminor dependent and their attorneys. (See Welf. & Inst. Code, § 362.5; Cal. Rules of Court, rule 5.552(d)).

Notice to the person who is the subject of the record is not required if a written waiver of such notice is obtained from the person (if now an adult) or a person authorized to act on the person's behalf if the person is a child. For good cause shown, the court may waive such notice.

A completed Proof of Service–Request for Disclosure (Judicial Council form JV-569) must be filed with the court. If the petitioner does not know the identity or address of any of the parties, the person should check the appropriate boxes in item 2 on the Proof of Service – Request for Disclosure (Judicial Council form JV-569), and the clerk will complete the service.

If the records are sought for use in a legal action which is not a juvenile court proceeding, the petitioner must also give notice by personal service or first-class mail to all parties in that action.

The petition may be supported by a declaration of counsel and/or a memorandum of points and authorities.

If the petition is granted, the court will issue a protective order specifying the records to be disclosed and the procedure for providing access and/or photocopying. (Cal. Rules of Court, rule 5.552(e).) Persons or agencies obtaining records under such authorization must abide by the terms of the protective order. Any unauthorized disclosure or failure to comply with the terms of the order may result in vacation of the order and/or may be punishable as contempt of court. (See Welf. & Inst. Code, § 213.)

This rule is not intended to replace, nullify, or conflict with existing laws (including Pen. Code, § 11167, subd. (d)) or the policies of the HHSA, the Probation Department, or any other public or private agency. This rule does not prohibit the release of general information on Juvenile Court policies and procedures.

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. 1/1/2002; Rev. 1/1/2005; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014)

Rule 6.6.3

Health Care for Children in HHSA Custody; Disclosure of Health Care Information

A. When a child is in the custody of the HHSA prior to the detention hearing, the HHSA may obtain a comprehensive health assessment of the child as recommended by the American Academy of Pediatrics, including a mental status evaluation, to ensure the health, safety, and well-being of the child. The assessment may include one or more of the following, as is necessary and appropriate to meet the child's needs:

1. A medical history which is as complete as possible;

2. A physical examination by a licensed medical practitioner;

3. A developmental evaluation;

4. A mental health status evaluation by a licensed mental health clinician;

5. Emergency dental care by a licensed dentist; and/or

6. Clinical laboratory tests or x-rays as deemed necessary by the examining physician or dentist for evaluation of the child's health status.

B. Before dependency proceedings have been initiated and during the course of those proceedings, HHSA may obtain ongoing routine health care, including immunizations and routine dental care, as recommended by the American Academy of Pediatrics, and mental health evaluations, counseling, and treatment for a child in the custody of the HHSA, as is necessary to protect and promote the child's physical and emotional well-being.

C. Information concerning any health care provided pursuant to this rule may be released to the HHSA, the child's attorney or CASA, if any, other health care providers, Regional Centers, or schools, if needed for treatment, treatment planning, counseling, and/or educational purposes consistent with promoting the child's physical and emotional well-being, before or after the detention hearing, and throughout the course of the dependency proceedings.

D. This rule does not apply to confidential privileged information for dependent children, but it does authorize the release of court-ordered psychological evaluations, initial treatment plans (ITPs) and treatment plan updates (TPUs) requested by the HHSA.

(Adopted 1/1/2015)

Rule 6.6.4

Disclosure of Dependency Records to Persons and Agencies Not Designated in Welfare and Institutions Code Section 362.5, 827, or 827.10 - Petition to View Records (SDSC JUV-004) and Stipulation (SDSC JUV-237) Required

A. In addition to the persons and agencies designated in Welfare and Institutions Code sections 362.5, 827, and 827.10, the following may have access to dependency records and/or obtain photocopies of dependency records without a prior court order, subject to the conditions specified, on the basis that 1) disclosure will be in the best interest of the child whose records are sought and 2) the information contained in those records is necessary and relevant to a juvenile dependency or delinquency proceeding; a civil or criminal investigation or proceeding; a proceeding involving child custody or visitation; a proceeding involving adoption, guardianship, or emancipation of a minor; an action to establish parentage; an administrative proceeding regarding foster home licensure; a proceeding involving probate or conservatorship; or a proceeding involving domestic violence:

1. Judicial officers of the San Diego Superior Court, Family Division, when the child who is the subject of the records, or his or her sibling, is also the subject of custody or visitation proceedings under Family Code section 3000 et seq. (see Fam. Code, §§ 3011, subd. (b), 3020; Welf. & Inst. Code, § 827.10).

2. County Counsel, for the purpose of representing HHSA in a civil action.

3. San Diego County Probation Officers, when the child who is the subject of the records is also the subject of juvenile court proceedings under Welfare and Institutions Code section 601 or 602. In such cases, which are subject to the court's Protocol for Coordination in Dual Jurisdiction/Status Matters, the following persons may have access to the child's delinquency records, including minute orders, and/or may obtain photocopies of the delinquency records without a prior court order: [1] HHSA social workers, [2] all dependency attorneys actively participating in juvenile proceedings involving the child, and [3] the child's CASA, if any. Copies of any joint assessment report, prepared pursuant to Welfare and Institutions Code section 241.1 and filed with the court, must be provided to the D.A., the child's defense attorney and dependency attorney, County Counsel, the HHSA social worker, the probation officer, any CASA, and any other juvenile court having jurisdiction over the child.

4. CASAs (Voices for Children, Inc.), as provided under Welfare and Institutions Code sections 105, 107. A CASA may have access to the records of a nonminor dependent only with the explicit written and informed consent of the nonminor dependent.

5. An Indian child's tribe and the Bureau of Indian Affairs, as provided under Title 25 United States Code chapter 21 [Indian Child Welfare Act].

6. Family Law Facilitators and employees or agents of San Diego Superior Court Family Court Services.

7. Employees or agents of San Diego County Mental Health Services (Health & Human Services Agency).

8. Any licensed psychiatrist, psychologist, or other mental health professional ordered by the San Diego County Superior Court, Family Division, to examine or treat the child or the child's family.

9. Any hospital providing inpatient psychiatric treatment to the child, for purposes of treatment or discharge planning.

10. Any government agency engaged in child protection.

11. The San Diego County Victim Assistance Program and the State Victim Compensation Program, for the purpose of providing services to a victim of or a witness to a crime.

12. The Juvenile Parole Board of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice.

13. The California Board of Parole Hearings, as provided under Penal Code section 11167.5, subdivision (b)(9).

14. Members of the San Diego County Juvenile Justice Commission.

15. The San Diego County Board of Supervisors or their agent(s), for the purpose of investigating a complaint from a party to a dependency proceeding.

16. Public and private schools, for the sole purpose of obtaining the appropriate school placement for a child with special education needs pursuant to Education Code section 56000 et seq.

17. Investigators and investigative specialists employed by the San Diego County District Attorney and assigned to the Child Abduction Unit, when seeking the records of a child who has been reported as detained or concealed in violation of Penal Code sections 278 and 278.5, for the sole purpose of investigating and prosecuting persons suspected of violating Penal Code sections 278, 278.5, and related crimes.

18. Investigators employed by attorneys who represent parties in dependency proceedings, when seeking records that may be released to the attorney without a court order under Welfare and Institutions Code section 827.

19. The Mexican Consulate, when seeking the records of a child who is in protective custody and/or is before the court for a dependency action, and either: [a] is a Mexican national, or [b] has relatives (as defined in Welf. & Inst. Code, § 319) who are Mexican nationals.

20. The U.S. Social Security Administration, for the purpose of determining a child's eligibility for benefits.

21. The Department of Homeland Security, for the purpose of granting immigration relief.

22. The San Diego County Regional Center for the Developmentally Disabled.

23. The San Diego County Probation Department, when performing its duty under Penal Code section 1203.097 to certify treatment programs for domestic violence offenders, for purposes of documenting a treatment program's failure to adhere to certification standards and identifying serious practice problems in such treatment programs, provided that in any proceeding for the suspension or revocation of a treatment provider's certification or in any document related thereto, the Probation Department must not disclose any child's name.

24. Federal Bureau of Investigation agents.

Persons seeking access to and/or photocopies of dependency records under this rule must fill out, sign, and submit to the clerk in the Juvenile Court Business Office (or other clerk designated to receive such petitions) a Petition to View Records and/or Request for Copies (SDSC form JUV-004) and Stipulation Regarding Inspection, Copying and Non-dissemination of Juvenile Records Without Court Order (SDSC form JUV-237). The completed forms will be kept in the file that is the subject of the Petition and/or Request.

B. In addition to the persons and agencies designated in Welfare and Institutions Code section 827, the following may inspect or receive verbal information regarding dependency records without a prior court order (but must file a Request for Disclosure of Juvenile Case File (JV-570) to obtain photocopies), subject to the conditions specified, on the basis that [1] disclosure will be in the best interest of the child whose records are sought and [2] the information contained in those records is necessary and relevant to the proceeding or purpose for which the records are sought:

1. U.S. Department of Justice prosecutors or their agents.

2. U.S. military prosecutors or their agents.

3. California Attorney General's Office prosecutors.

4. Any other agency or office authorized to investigate or prosecute criminal or juvenile cases under state or federal law.

Persons seeking access to and/or photocopies of dependency records under this subdivision must present a photo I.D. and proof that they are entitled to access and/or photocopies (e.g., law enforcement badge or Bar card).

Persons seeking access (but not photocopies) to dependency records under this subdivision must fill out, sign, and submit to the clerk in the Juvenile Court Business Office (or other clerk designated to receive such petitions) a

Petition to View Records and/or Request for Copies (SDSC form JUV-004) and Stipulation Regarding Inspection, Copying and Non-dissemination of Juvenile Records Without Court Order (SDSC form JUV-237). The completed forms will be kept in the file that is the subject of the Petition and/or Request.

Persons seeking photocopies of dependency records under this subdivision must file a Request for Disclosure of Juvenile Case File (JV-570) (see rule 6.6.2).

C. Persons or agencies obtaining records under this rule must not disclose such records to another person or agency unless authorized to do so by the Juvenile Court. Any unauthorized disclosure may be punishable as provided by applicable laws.

D. This rule is not intended to replace, nullify or conflict with any existing policies of the HHSA, the Probation Department, or any other public or private agency. This rule does not prohibit the release of general information on Juvenile Court policies and procedures.

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 6.6.5

Disclosure of Dependency Records to Counsel for the Child in a Delinquency Proceeding

A. Counsel appointed by the court or privately retained to represent a child in a delinquency proceeding (Welf. & Inst. Code, § 601 et seq., including Welf. & Inst. Code, § 707) may have access to the child's dependency records, as defined in rule 6.6.1, without a prior court order, subject to the following:

1. Counsel must give notice to the HHSA social worker assigned to the child's case (or the HHSA Legal Procedures Liaison, if there is no assigned social worker) at least five days before counsel will inspect records maintained by the HHSA.

2. Counsel will not have access to any information which would tend to identify a reporter of child abuse or neglect, as prohibited under Penal Code sections 11167 and 11167.5.

3. Counsel will not have access to any information regarding HIV testing or HIV infection, as prohibited under Health and Safety Code section 120975 (formerly § 199.20) et seq.

4. Counsel will not have access to any confidential or privileged information regarding persons other than his or her child client.

5. Persons seeking access to dependency records under this rule must fill out, sign, and submit to the clerk in the Juvenile Court Business Office (or other clerk designated to receive such petitions) a Petition to View Records and/or Request for Copies (SDSC form JUV-004) and Stipulation Regarding Inspection, Copying and Non-dissemination of Juvenile Records Without Court Order (SDSC form JUV-237). The completed forms will be kept in the file that is the subject of the Petition and/or Request.

For purposes of this rule, "access" provides for inspection and photocopying of dependency records at the court's business office or the HHSA office where the records are maintained, unless otherwise ordered by the court. Photocopying must be done by court or HHSA personnel as appropriate, unless otherwise ordered by the court or agreed to by the parties. The person or agency obtaining photocopies must pay for the copying (in accordance with the current San Diego Superior Court Schedule of Fees).

B. Counsel appointed by the court or privately retained to represent a child in a delinquency proceeding (Welf. & Inst. Code, § 601 et seq., including Welf. & Inst. Code, § 707) must file a Request for Disclosure of Juvenile Case File on Judicial Council form JV-570 (see rule 6.6.2), with a request for a protective order (see Cal. Rules of Court, rules 5.552(c) & (e)(8)), in order to disseminate information obtained from inspection of the child's dependency records to any persons or agencies not authorized to obtain such information under Welfare and Institutions Code section 827.

Notice of the filing of the Request for Disclosure must be given as required by California Rules of Court, rule 5.552(d).

Juvenile case files may not be obtained or inspected by civil or criminal subpoena. (Cal. Rules of Court, rule 5.552(b).) A waiver of confidentiality by any person identified or described in the requested dependency records does not automatically confer a right of access to those records.

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2013; Rev. 1/1/2014)

Rule 6.6.6

Reserved for Future Use

(Del. 1/1/2013)

Rule 6.6.7

Disclosure of Law Enforcement Reports Regarding Juveniles to Persons and Agencies Not Designated in Welfare & Institutions Code Section 828

If a person or agency not designated in Welfare & Institutions Code section 828 seeks access to unsealed records held by a law enforcement agency regarding a child who was contacted by law enforcement as a result of an offense committed by the child or as a result of abuse or neglect of the child by a parent or guardian, including reports regarding children who are the subject of juvenile court proceedings, that person or agency must file a Petition to Obtain Report of Law Enforcement Agency [Judicial Council form JV-575] with the clerk in the Juvenile Court Business Office or other clerk designated to receive such petitions. The petition must set forth with specificity the reasons for the request, the information sought, and its relevancy to the proceeding or purpose for which petitioner seeks the information.

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2011; Rev. 1/1/2015)

Rule 6.6.8

Disclosure of Medical Information to Foster Parents and Other Care Providers

Upon discharge of a child, who is a dependent of the court or who is on a "hospital hold" pursuant to Welfare & Institutions Code section 309, subdivision (b), or section 16525.14 [Options for Recovery], and the release of such child to a foster parent designated by the HHSA pursuant to Welfare & Institutions Code section 16525.30 (or other care provider as permitted by law), the health care provider discharging the child may provide to the foster parent or other care provider a written summary of the child's medical history, diagnosis, and treatment, if necessary for the proper treatment of the child after discharge.

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006)

Rule 6.6.9

Disclosure of IEPs, Immunization Records, and Other Health Records

In any case where a child is under the dependency jurisdiction of the court (Welf. & Inst. Code, § 300 et seq.) or under informal supervision pursuant to Welfare & Institutions Code section 360, the HHSA social worker assigned to the child's case, the attorney representing the child in dependency proceedings (see Welf. & Inst. Code, § 317, subd. (f)), and the Court-Appointed Special Advocate from Voices for Children assigned to the child (see Welf. & Inst. Code, § 107) may receive, upon request, copies of any written individualized education programs (IEPs), immunization records, and any other school or health records maintained by 1) a public school district or private school in which the child is or was enrolled, 2) a hospital to which the child is or was admitted, or 3) a health care provider who is or was providing medical, dental, psychiatric, or psychological treatment for the child.

(Adopted 1/1/1999; Renum. 7/1/2001; Rev. & Renum. 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2015)

Rule 6.6.10

Disclosure of Information Regarding HHSA Clients Receiving Voluntary Services

The HHSA may share certain information from its files regarding children and families who are receiving voluntary case services from the HHSA, including but not limited to information concerning health care, mental health services, educational services, social services, or wraparound services provided to the child and/or family. This information may be shared only with individuals or organizations providing ongoing health care, mental health services, educational services, or social services to the child and/or family in order to protect and promote the child's physical and emotional well being. The information described in this rule may be exchanged only when such disclosure is necessary to better serve the needs of the child and/or family and must be kept in a confidential manner by the provider unless otherwise authorized by law or ordered by the Court.

(Adopted 1/1/2008)

Rule 6.6.11

Disclosure of Delinquency Records to Victims of Crime

Unless otherwise ordered by the court, the D.A. may release the following information to the victim(s) of a crime committed by a juvenile offender:

1. information regarding the status of the case;
2. name(s) of the minor(s) ordered to pay restitution to the victim;
3. name(s) of the parent(s) or guardian(s) of any minor(s) ordered to pay restitution to the victim; and

4. the address of the minor and/or the parent or guardian, if the victim states that the address is necessary to collect restitution or to file a civil action.

The information is to be used by the victim only to collect restitution ordered by the juvenile court. Before receiving any information, the victim, or his or her representative, must sign the form entitled "Warning to Victims of Crimes by Juvenile Offenders."
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2013)

Rule 6.6.12

Disclosure of Psychological Evaluations and Psychiatric Evaluations

No attorney may disclose a psychological evaluation or psychiatric evaluation contained in a juvenile court record to any parent, child, legal guardian, or de facto parent, including the person who is the subject of the evaluation, except upon order of the court based on a showing of good cause.
(Adopted 1/1/2013)

Rule 6.6.13

Public and Media Access

Unless requested by a parent or guardian and consented to or requested by the child, the public must not be admitted to a juvenile dependency hearing. However, any person whom the court deems to have a direct and legitimate interest in a particular case or in the work of the court may be admitted.

A request for media coverage must be submitted to the judicial officer presiding over the matter on Media Request and Agreement to Be Admitted to Juvenile Court Hearing (SDSC form JUV-029). A request for permission to photograph, record, or broadcast any portion of the hearing must be submitted to the judicial officer presiding over the matter on Media Request to Photograph, Record, or Broadcast (Judicial Council form MC-500) and Order on Media Request to Permit Coverage (Judicial Council form MC-510) at least five court days before the hearing unless good cause for noncompliance is shown.

To request access for dependency matters outside of court proceedings, the media representative must initiate contact with the HHSA Child Welfare Services Media Coordinator. To request access at the Juvenile Court in areas outside of courtrooms, the media representative may also contact the Juvenile Court Operations Manager. "Access" means the ability to observe, interview, film, photograph, videotape, or record the voices of children who are under the jurisdiction or supervision of the Juvenile Court, their caretakers, or members of their families, regardless of the location. Alternatively, "access" may refer to permission to enter certain facilities which are not open to the public and/or permission to observe, interview, film, photograph, videotape, or record the voices of children in such facilities.

Forms and copies of the Juvenile Court Media Policy are available from Juvenile Court Administration, which is in room 254 at the Meadow Lark courthouse.
(Adopted 1/1/2013)

CHAPTER 7
PROCEDURES FOR APPOINTING COUNSEL

Rule 6.7.1

Attorneys for Children

At the earliest possible stage of proceedings, the court must appoint counsel for the child as provided in Welfare and Institutions Code section 317 and California Rules of Court, rule 5.660. Appointed counsel and/or the court-appointed special advocate (CASA) must continue to represent the child at all subsequent proceedings unless properly relieved by the court.

For the purposes of the Child Abuse Prevention and Treatment Act grants to states (Pub.L. No. 93-247), in all cases in which a dependency petition has been filed and counsel has been appointed for the child, the attorney for the child will be the guardian ad litem for the child in the dependency proceedings unless the court appoints another adult to serve as the child's guardian ad litem. If no counsel is appointed for the child, or if at any time the court determines a conflict exists between the role and responsibilities of the child's attorney and that of a guardian ad litem, or if the court determines it is best for the child to appoint a separate guardian ad litem, the court will appoint another adult as the guardian ad litem for the child. The guardian ad litem for the child may be any attorney or a CASA.

Notwithstanding Welfare and Institutions Code section 317, subdivision (g), the San Diego County juvenile dependency court appoints counsel from the Dependency Legal Group of San Diego (DLGSD) Minor's Counsel Office (MCO) and Conflict's Counsel Office (CCO) to represent children pursuant to the contract entered into between DLGSD and the Administrative Office of the Courts. The public defender is no longer available for juvenile dependency court appointments.
(Adopted 1/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2013; Rev. 1/1/2014)

Rule 6.7.2

Attorneys for Parents or Guardian(s)

At the detention or initial hearing, the court must appoint counsel for the mother, and counsel for the presumed father, guardian, or Indian custodian as provided in Welfare & Institutions Code section 317, subdivisions (a) and (b). Appointed counsel will continue to represent the client at all subsequent proceedings unless properly relieved by the court.

Notwithstanding Welfare and Institutions Code section 317, subdivision (h), the San Diego County juvenile dependency court appoints counsel from the Dependency Legal Group of San Diego (DLGSD) Primary Parent Office and Conflict Parent Office to represent parents pursuant to the contract entered into between the DLGSD and the Administrative Office of the Courts. The alternate public defender is no longer available for juvenile dependency court appointments. If there is a conflict of interest, the court will appoint an attorney from the DLGSD Conflict Counsel Office.
(Adopted 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010; Rev. 1/1/2012)

CHAPTER 8
PROCEDURES FOR DETERMINING APPROPRIATE CASELOADS FOR CHILDREN'S COUNSEL

Rule 6.8.1

Determining Appropriate Caseloads for Children's Counsel

The attorney for the child must have a caseload that allows the attorney to perform the full range of duties required by Welfare & Institutions Code section 317, subdivision (e), and California Rules of Court, rule 5.660, and to otherwise adequately counsel and represent each child.

The Dependency Legal Group of San Diego (DLGSD) is a nonprofit public benefit corporation formed for the sole purpose of providing legal representation to indigent families who come before the juvenile dependency court in San Diego County. There are four divisions of DLGSD – the Primary Parent Office, which represents the primary or offending parent, the Conflict Parent Office, which represents the second or noncustodial parent, the Minor's Counsel Office, which represents the child, and the Conflict Counsel Office, which represents additional parents and children, and accepts all conflict-of-interest appointments.

In each division of DLGSD, a supervising attorney and an assistant supervising attorney are responsible for managing their division and assisting their staff attorneys, investigators, and clerical employees. Each division has assigned, trained, and skilled investigators on staff. DLGSD investigators have education and/or experience in social work, child welfare, law enforcement, or paralegal skills.

DLGSD is a law firm dedicated to juvenile dependency law; staff attorneys at DLGSD are prohibited from accepting any outside legal work. All efforts are made to support the staff attorneys and keep caseloads manageable. Supervisors monitor caseloads to ensure that adjustments are made when needed to provide competent, responsive representation to all clients. Except in extraordinary circumstances, caseloads for DLGSD attorneys will not exceed 60% of the caseload standards suggested by the California Blue Ribbon Commission on Children in Foster Care. In the event extraordinary circumstances require higher caseloads, immediate steps will be taken to reduce the caseload numbers within ninety days.
(Adopted 1/1/2002; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2012)

CHAPTER 9
JUVENILE DELINQUENCY PROCEEDINGS

Rule 6.9.1

Preliminary Provisions

Rule 6.1.1 applies equally to juvenile delinquency proceedings.

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

Rule 6.9.2

Definitions, Construction of Terms

A. As used in these rules, unless the context or subject matter otherwise requires:

1. "Clerk" means the clerk of the juvenile court;

2. "Court" means the juvenile court, and includes any judge, commissioner, referee, or referee pro tem of the juvenile court, unless otherwise specified;

3. "D.A." means District Attorney;

4. "JPD" means the Juvenile Probation Department of the County of San Diego;

5. "Law Enforcement Agency" includes the San Diego County Sheriff's Department, all city police departments in San Diego County, and all school district police or security departments in San Diego County;

6. "Minor" or "child" means a person under the age of 18 years;

7. "P.O." means Probation Officer;

B. Construction of terms:

1. "Shall" or "must" is mandatory; "may" is permissive;

2. The past, present, and future tenses include the others;

3. The singular and plural numbers include the other.

(Adopted 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2010)

Rule 6.9.3

Assignment of Cases and Peremptory Challenges

The court assigns delinquency cases on an independent calendar system. Under that system, a delinquency case assigned to a particular judge, commissioner, or referee will remain with that judicial officer until the termination of jurisdiction, unless otherwise ordered. Under the independent calendar system, a peremptory challenge to any judge, commissioner, or referee must be made pursuant to Code of Civil Procedure section 170.6. Such a challenge must be made prior to any determination of contested issues of fact relating to the merits and within fifteen days after notice of the assignment of the case to a specific judge, commissioner, or referee, or it will be deemed untimely. Notice of the assignment is complete upon service of such notice or initial appearance in court. The prosecution and the defense will each be allowed only one peremptory challenge per case. (This rule is adopted pursuant to *Daniel V. v. Superior Court* (2006) 139 Cal.App.4th 28.)

(Adopted 1/1/2005; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2012)

Rule 6.9.4

Continuances

Continuances of hearings will be granted only upon a showing of good cause and in accordance with the procedural requirements of Welfare & Institutions Code section 682 and California Rules of Court, rules 5.550 and 5.776. A continuance may be granted following a time waiver by the minor.

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

Rule 6.9.5

Ex Parte Applications and Orders

A. No party may submit an ex parte application to the court for an order unless it appears by affidavit or declaration that one of the following is true:

1. Within a reasonable time before the application, the party informed all other parties or their attorney(s) when and where the application would be made and provided a copy of the application and proposed order to the attorney(s).

2. The party in good faith attempted to inform all other parties or their attorney(s) of the application but was unable to do so, describing with particularity the efforts made to inform each party.

3. The party should not be required to inform all other parties or their attorney(s) for the reasons specified. The court in its discretion may choose to inform the other parties of the reasons specified in the ex parte application.

B. If the JPD files an ex parte application for an order terminating jurisdiction, the JPD must also serve notice thereof on the D.A. and minor's counsel. Any objection(s) must be submitted in writing to the court within ten court days of the filing of the application. Failure to timely submit a written objection constitutes a waiver of the objection. If a written objection is timely filed, the court will set a hearing on the application and serve notice of the hearing on all parties.

C. An ex parte report may be used to request modifications of previous orders that have been so stipulated, to correct or clarify orders, to get permission from the court to proceed in a certain manner with a case, to update information to the court, or to give the court additional information. Examples of matters that are appropriate for ex parte handling: funding orders that were not included in the original court order but that are essential to carry out the order; vacate orders that are no longer needed; fifteen-day reviews; permission for travel outside the county; termination of jurisdiction when it was previously stipulated that jurisdiction would terminate once the minor complied with specific orders.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2014)

Rule 6.9.6

Requirements for Noticed Motions

A. All motion papers, opposition papers, and reply papers must be in writing and must display on the first page the motion hearing date, time, department, and a time estimate for the motion hearing.

B. Time for Service When the Minor Is Detained. Unless a different briefing schedule is set by the court,

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

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

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

C. Time for Service When the Minor Is Not Detained. Unless a different briefing schedule is set by the court,

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

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

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

D. Time for Service of Motion to Suppress Evidence. Unless a different briefing schedule is set by the court,

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

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

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

E. Points and Authorities.

1. All moving and opposing papers must be accompanied by supporting points and authorities.

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

3. The memorandum of points and authorities must clearly specify the factual and legal issues raised and the specific legal authority relied upon for the motion.

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

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

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

7. In case of a failure of either party to serve and file points and authorities within the time permitted, the court may find good cause to continue the hearing.

F. Abandonment of Motions. Any party intending to abandon a motion already filed must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard, and must also notify the clerk immediately if the case is disposed of by plea prior to the hearing or if the motion should be taken off calendar because the minor is found not to be competent.

G. Concession That Motion Is Meritorious. If the responding party elects not to oppose the motion, the respondent must immediately notify opposing counsel and the clerk of the department in which the motion is to be heard.

H. Length of Points and Authorities. No opening or responding memorandum of points and authorities exceeding 15 pages may be filed, absent an order from the judge of the court in which the motion is calendared. Such an order will be granted only upon a written application including a declaration setting forth good cause for the order.
(Adopted 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2014)

Rule 6.9.7

Fax Filing

Some documents in a delinquency case may be filed by fax. Further details about fax filing requirements, including the fax number and the hours during which fax filings will be accepted, may be obtained by contacting the Juvenile Court Business Office. Fax filings must comply with the requirements of California Rules of Court, rule 5.522.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2013)

Rule 6.9.8

Warrants

All warrants of arrest and juvenile detention orders, including those stored in electronic form, are deemed authenticated at the time a Juvenile Court judge issues an order authorizing the issuance of the arrest warrant or juvenile detention order.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 6.9.9

Reciprocal Discovery

The discovery provisions of Penal Code section 1054 et seq. apply to juvenile delinquency cases.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 6.9.10

Public and Media Access

In most cases, juvenile delinquency proceedings are presumed to be confidential and closed to the public. However, any person whom the court deems to have a direct and legitimate interest in a particular case or in the work of the court may be admitted. Furthermore, hearings concerning petitions that include any of the offenses listed in Welfare and Institutions Code section 676, subdivision (a), are presumptively open to the public. A request for media coverage must be submitted to the judicial officer presiding over the matter on Media Request and Agreement to Be Admitted to Juvenile Court Hearing (SDSC form JUV-029). A request for permission to photograph, record, or broadcast any portion of the hearing must be submitted to the judicial officer presiding over the matter on Media Request to Photograph, Record, or Broadcast (Judicial Council form MC-500) and Order on Media Request to Permit Coverage (Judicial Council form MC-510) at least five court days before the hearing unless good cause for noncompliance is shown.

To request access for delinquency matters outside of court proceedings, the media representative must initiate contact with the San Diego County Public Safety Group Communications Officer. To request access at the Juvenile Court in areas outside of courtrooms, the media representative may also contact the Juvenile Court Operations Manager. "Access" means the ability to observe, interview, film, photograph, videotape, or record the voices of children who are under the jurisdiction or supervision of the Juvenile Court, their caretakers, or members of their families, regardless of the location. Alternatively, "access" may refer to permission to enter certain facilities which are not open to the public and/or permission to observe, interview, film, photograph, videotape, or record the voices of children in such facilities.

Forms and copies of the Juvenile Court Media Policy are available from Juvenile Court Administration, which is in room 254 at the Meadow Lark courthouse. This rule is not meant to affect the rights of any victim or other person entitled by statute to be present. (See Welf. & Inst. Code, §§ 676.5, 679.)
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2013)

Rule 6.9.11

Competence and Mental Health Evaluations

Whenever a minor's competence or mental health is in doubt, an evaluation must be done as soon as possible after the delinquency case is initiated to determine whether the minor is incompetent or in need of emergency inpatient mental health services. When indicated, services must be provided in a timely manner. Requests for such

evaluations must comply with the Juvenile Court's protocols for competence evaluations and court-ordered inpatient mental health evaluations.
(Adopted 1/1/2005; Rev. & Renum. 1/1/2006)

Rule 6.9.12

Administration of Psychotropic Medications

After a child is declared a ward of the court under Welfare & Institutions Code section 601 or 602 and removed, either temporarily or permanently, from the physical custody of his/her parent or guardian, only a Juvenile Court judicial officer is authorized to make orders regarding the administration of psychotropic medication to the child. The procedures and forms described in California Rules of Court, rule 5.640 apply in delinquency cases. Requests for orders for psychotropic medications for 601 and 602 wards must comply with the requirements of California Rules of Court, rule 5.640.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 6.9.13

Initial Health Screening

Prior medical authorization will not be required for the initial health screening of minors at Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. Initial health screenings must be performed within 96 hours of detention and will include a physical examination, laboratory tests, immunizations, and X-rays. The Probation Department will attempt to obtain parental consent for medical care. If such consent cannot be obtained, the Probation Department will seek a court order authorizing medical care. In an emergency situation, medical care may be delivered to minors in detention without parental consent or a court order. (See Welf. & Inst. Code, § 739.)
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007)

Rule 6.9.14

Immunizations

All minors detained in the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility, where medical records are unavailable and/or due diligence efforts are unsuccessful in locating a parent, guardian, or other responsible adult relative, will receive all necessary immunizations against poliomyelitis, diphtheria, pertussis, tetanus, measles, rubella, and mumps. Such immunizations are reasonable and necessary under section 120335 of the Health and Safety Code to enable attendance in school programs operated by the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. All immunizations must be performed by a licensed health care provider.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2014)

Rule 6.9.15

Sex Education

The Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility, in conjunction with the County Office of Education, the Department of Public Health, and approved community-based organizations, may conduct sex education classes as part of the education curricula for all minors detained in the Kearny Mesa Juvenile Detention Facility and/or East Mesa Juvenile Detention Facility. These classes may include information on AIDS and its transmission.
(Adopted 1/1/2005; Renum. 1/1/2006)

Rule 6.9.16

Off-Site Counseling

Any minor detained in the Kearny Mesa Juvenile Detention Facility, the East Mesa Juvenile Detention Facility, Camp Barrett, the Juvenile Ranch Facility, or the Girls Rehabilitation Facility may be transported off site for counseling or other rehabilitative treatment, provided the assigned probation officer consents to the off-site treatment.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2014)

Rule 6.9.17

Travel out of San Diego County

The JPD is authorized to grant permission to wards to travel out of the County of San Diego but within the State of California for trips of up to 72 hours. An ex parte order from the Juvenile Court is required for trips over 72 hours and/or outside the State of California.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2012; Rev. 1/1/2014)

Rule 6.9.18

Disclosure of Medical Information

All records related to the medical or psychological treatment of a minor who is the subject of a juvenile delinquency petition shall be made available upon request to the court and the JPD by all individuals, agencies, and entities that are either paying for or providing medical or psychological treatment or assessment services to the minor. These individuals, agencies, and entities include: hospitals, laboratories, health insurers, health plans, health maintenance organizations, clinics, physicians, psychologists, psychotherapists, counselors, and any other individual or entity providing medical or psychological treatment or assessment services to the minor.

The minor's treatment records include, but are not limited to: medical history and physical examination, discharge summaries, progress notes, medication records, drug and alcohol test results, x-rays and their interpretation, laboratory results, dental records, psychiatric records including consultations, physician orders, pharmacy records, nursing notes, mental health records, and alcohol and substance abuse treatment records. Treatment records do not include any document if the release of that document would violate the attorney-client or attorney work product privileges.
(Adopted 1/1/2011; Rev. 1/1/2014)

Rule 6.9.19

Sharing of Information

Court personnel, the Probation Department, the ward's defense attorney, the ward's dependency attorney if the ward is also a dependent, the prosecuting attorney, Vista Hill Juvenile Court Clinic staff, Juvenile Forensic Services staff, and treatment and service providers actively involved in the ward's case management, placement, or treatment may communicate with one another regarding the ward's case, including the ward's medical and mental health needs. This communication may include the exchange of relevant documents, including but not limited to court orders, probation reports, medical records, and mental health records. The information described in this rule must be kept in a confidential manner by the person who receives it, unless otherwise authorized by law or ordered by the court. This rule is intended to facilitate the work of multidisciplinary teams and does not waive any legal privilege.
(Adopted 1/1/2012; Rev. 1/1/2014)

DIVISION VII
APPELLATE

CHAPTER 1
GENERAL POLICIES AND PROCEDURES

Rule 7.1.1

Policy

The business of the Appellate Division of the San Diego Superior Court will be conducted in conformity with the applicable provisions of article VI, sections 4, 10 and 11 of the California Constitution, titles 8 and 10 of the California Rules of Court, applicable statutes and case law.
(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 7.1.2

Filing of Appellate Briefs

A. Briefs filed in the Appellate Division must not be bound on the left margin.

B. In addition to fully complying with the contents, form, filing and service requirements for briefs as stated in the California Rules of Court, rules 8.882, 8.883, 8.927, and 8.928, all original briefs submitted for filing in misdemeanor, non-traffic infraction, and limited civil appeals must be accompanied by four copies, and all original briefs submitted for filing in traffic infraction appeals must be accompanied by only one copy.

C. Failure of an appellant to file a timely opening brief or to otherwise fully comply with the applicable California Rules of Court may result in dismissal of the appeal.
(Adopted 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2014; Rev. 1/1/2015)

Rule 7.1.3

Record Election Options

A. Record of Written Documents from Trial Court Proceedings

This court does not permit the use of the original trial court file as the record of the written documents from the trial court proceedings. A clerk's transcript is required. Parties also have the option of proceeding by agreed statement in limited civil appeals. (Cal. Rules of Court, rules 8.830(a)(1), 8.860(a)(1), 8.910(a)(1).)

B. Record of Oral Trial Court Proceedings

This court does not permit the use of electronic recordings as the record of oral trial court proceedings. Transcripts of such recordings are required. (Cal. Rules of Court, rules 8.830(a)(2), 8.860(a)(2), 8.910(a)(2).)

C. Court's Use of Electronic Recordings

The Appellate Division may review the electronic recording of trial court proceedings when the Presiding Judge of the Appellate Division determines that this procedure would save court time and resources or in the event a transcript of all or a portion of the trial court proceedings is unavailable during appellate review of the appeal. The court may order those proceedings or a portion of those proceedings transcribed or may order the use of the electronic recording as the record of such oral proceedings in lieu of a transcript and provide the parties with a copy of the transcript or an electronic copy of the recording.
(Adopted 1/1/2010; Rev. 1/1/2014)

Rule 7.1.4

Reserved for future use.
(Adopted 1/1/2010; Del. 1/1/2015)

Rule 7.1.5

Trial Court May Order Transcript

The trial court judge may order that a transcript be prepared as the record of the oral proceedings in lieu of reviewing a proposed statement on appeal. (Cal. Rules of Court, rules 8.837(d)(6)(B), 8.869(d)(6)(B), 8.916(d)(6)(B).)
(Adopted 1/1/2015)

Rule 7.1.6

Sufficient Completeness of the Record / Time for Preparation of Transcript

A. On a case-by-case basis, the Appellate Division on its own motion may determine what portions of the normal contents of the reporter's transcript are required for proper determination of the appeal and/or whether a form of the record other than a reporter's transcript constitutes a record of sufficient completeness for proper determination of the appeal. (Cal. Rules of Court, rules 8.865(b), 8.918(b).)

B. On a case-by-case basis, the Appellate Division may on its own motion revise the timeline for the preparation of a reporter's transcript or a transcript of an electronic recording. (Cal. Rules of Court, rules 8.866(a)(1), 8.868(e)(1), 8.919(a)(1).)
(Adopted 1/1/2015)

Rule 7.1.7

Binding of Clerk's Transcript

Clerk's transcripts must not be bound on the left margin. (Cal. Rules of Court, rule 8.838(c)(1).)
(Adopted 1/1/2015)

CHAPTER 2
WRIT PROCEDURES, POLICIES, AND PROTOCOL IN MISDEMEANOR, INFRACTION, OR LIMITED CIVIL CASES

Rule 7.2.1

Application of the California Rules of Court

For all petitions for extraordinary relief in limited civil, misdemeanor, and infraction cases which name San Diego Superior Court as respondent, wherever the San Diego Superior Court Rules do not provide specific guidance

regarding the proper writ petition procedures, the provisions of the California Rules of Court, Title 8, Division 2, Chapter 6, Writ Proceedings, will apply.
(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 7.2.2

Filing Requirements

A. All such petitions must be filed in the Central Division in Room 3005 on the third floor of the Courthouse at 220 West Broadway, San Diego, California. No such petitions will be accepted for filing anywhere else. Unless otherwise ordered, any subsequent pleadings and papers in the same matter must be filed in the same office.

B. All such petitions will be assigned civil case numbers.

C. No filing fee will be required when a petition arises from a criminal case.

D. The petitioner or counsel for the petitioner is required to submit one original and four copies of the petition. Each copy of the petition must include all supporting documents specified in California Rules of Court, rule 8.931(b). This court has not adopted a local rule permitting the use of electronic recordings of oral proceedings. Transcripts of such recordings are required if they are available.

E. A person who is not represented by an attorney should file the writ petition on Judicial Council form APP-151, Petition for Writ (Misdemeanor, Infraction or Limited Civil Case). (Cal. Rules of Court, rule 8.931(a); see also Judicial Council Form APP-150 INFO, Information on Writ Proceedings in Misdemeanor, Infraction and Limited Civil Cases available on the California Courts website at http;//www.courts.ca.gov.) (Adopted 1/1/2000; Rev. 1/1/2001; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2010; Rev. 1/1/2015)

Rule 7.2.3

Request for Stay

If a stay of the trial court proceeding is requested in the writ petition, the petition must so state prominently on the title page. The petition must set forth all time constraints which are relevant to the request for stay.
(Adopted 1/1/2000; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2009)

Rule 7.2.4

Unlawful Detainer Writ Relief

In addition to complying with all applicable California Rules of Court, statutes and case law, a petition for an extraordinary writ under California Code of Civil Procedure section 1176, subdivision (a) should indicate the date(s) the request(s) to stay the judgment pending the appeal was presented to the trial court and include a copy of the trial court's order or a record of the trial court's ruling.
(Adopted 1/1/2015)

DIVISION VIII
MENTAL HEALTH COURT

CHAPTER 1
COURT, LOCATIONS, VENUE, PROCEDURES

Rule 8.1.1

Mental Health Court

The Mental Health Court is located in one of the departments in the Central Division of the San Diego Superior Court and constitutes the Mental Health Division of the Superior Court. The Mental Health Court hears the categories of matters addressed in these rules and such other categories of matters as may be assigned by the Presiding Judge. Generally, a matter set for trial will not be assigned to the Mental Health Court.
(Adopted 7/1/2006)

Rule 8.1.2

Mental Health Court Judge

A. All references in these rules to the Mental Health Court judge means the judge designated to preside over the Mental Health Division of the San Diego Superior Court.

B. Upon a showing of good cause, the Mental Health Court judge may issue orders at variance with these rules.
(Adopted 7/1/2006)

Rule 8.1.3

Addresses and Telephone Numbers of the Mental Health Court

San Diego Superior Court:
Mental Health Court (as designated by the Presiding Judge)
220 West Broadway
San Diego, California 92101

Mental Health Desk:
Clerk, San Diego Superior Court, Room 2005
220 West Broadway
San Diego, California 92101
(619) 450-5700

Public Conservator:
7947 Mission Center Court
San Diego, California 92108
(619) 767-5019

Attorney for Public Conservator
Office of the County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101, USA
(619) 531-4860

Public Defender's Office
233 A Street, Suite 500
San Diego, CA 92101
(619) 338- 4617

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2015)

Rule 8.1.4

Venue

A. Addressed in Moving Papers. To be accepted for filing with the court, a petition or motion subject to the rules of this division must present facts that show that San Diego Superior Court is the proper venue for hearing the petition or motion.

B. Change of Venue. A motion for a change of venue must be filed with the Mental Health Desk clerk. The request must include a declaration of counsel presenting the reasons why a change of venue is required.
(Adopted 7/1/2006)

Rule 8.1.5

Pleadings

A. Caption. The caption of a petition and all other papers must be all-inclusive regarding the relief sought in the petition or papers so that the matter may be properly calendared. The court clerk at the Mental Health Desk is not required to read the body of the petition or other papers to determine the scope of the filed petition or other papers.

B. Use of Printed Forms. The court prefers that counsel use the latest version of the printed forms approved by the Judicial Council. If a form cannot be used, counsel must prepare their own documents using a preferred form as a guide. Forms are available through the court clerk at the Mental Health Desk.

C. Verification. All papers which require verification must be verified in substantially the following manner:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this (name of document) is executed on (date).

(signature)
(name typed)

D. A petition, motion, and all other papers concerning the matters for the Mental Health Court must be filed with the court clerk at the Mental Health Desk.
(Adopted 7/1/2006)

Rule 8.1.6

Notice, Written

A. Required. Unless specifically excepted by these rules, all matters presented to the Mental Health Court must be preceded by written notice served on the party affected and the attorney of record of the party affected.

B. Form of Notice. All written notices must substantially comply with the requirements of Probate Code section 1200 et seq. The notice must contain the time, date and place of hearing.

C. Timing of Written Notices. All written notices, except as otherwise required by this division, must be served in accordance with the time limits prescribed by Probate Code section 1460.

D. Service of Notice – General. A declaration of service for any written notice required by statute must be completed and filed with this court. The declaration must comply with Code of Civil Procedure section 1013, subdivision (a), but need not be accompanied by a copy of the notice so long as the original notice is on file and is clearly identified in the declaration of service.
(Adopted 7/1/2006)

Rule 8.1.7

Notices Other than Written

A. Except as to written notices required by statute or these rules, verbal notice must be provided to affected parties or their attorney and expert witnesses (if appearance is required) for any of the following actions:

1. Waiver of the presence of the expert;
2. Forensic examination by County-employed psychiatrists;
3. Inability or unwillingness of any conservatee to attend;
4. Termination of a temporary conservatorship;
5. Any ex parte matter other than the establishment of a temporary conservatorship.

B. The notice required by this rule may be given by any means, including telephone. This notice must be given not less than one working day before the matter will be submitted to the court or the forensic examination is to occur. Where a decision to file for an appointment or termination of a temporary conservator is made less than one day before filing, notice must be given immediately after the decision to file. When a conservatee is unable or unwilling to attend a hearing and such inability or unwillingness is not made apparent in adequate time to allow for one working day notice, then notice must be given immediately after the conservatee is found to be unable or willing to attend.
(Adopted 7/1/2006)

Rule 8.1.8

Hearing Once Notified Cannot be Advanced

When a hearing on a Mental Health matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, either by means of a new petition, an amended petition, or by a new notice, unless so ordered by the court.
(Adopted 7/1/2006)

Rule 8.1.9

Preparation of Order or Judgment

A copy of any proposed order or judgment must be submitted to opposing counsel before presentation to the judge rendering the order or judgment. A conformed copy of such order must be sent to opposing counsel.
(Adopted 7/1/2006)

CHAPTER 2
LPS CONSERVATORSHIP

Rule 8.2.1

"Conservator"

A. As used in this Division, "conservator" is a reference to the person appointed by the Mental Health Court to serve as conservator, and includes a person appointed as a temporary conservator, an interim conservator, or a successor conservator.

B. The conservator is responsible for ensuring that the conservatee appears in court for any scheduled hearings requiring the conservatee's presence. This responsibility includes obtaining the necessary transportation.
(Adopted 7/1/2006)

Rule 8.2.2

"Conservatee"

As used in this Division, "conservatee" is a reference to the person subject to LPS proceedings and includes a proposed conservatee and a conservatee under a temporary conservatorship.
(Adopted 7/1/2006)

Rule 8.2.3

Calendar Call

A. Subject to court discretion, conservatorship cases on the regular calendar will be heard in the following order:

1. Stipulation matters read into the record;
2. Uncontested matters;
3. Contested conservatorships;
4. Writs of habeas corpus; and
5. Petitions to authorize medical treatment, medication (Riese) hearings or appeals, and electroconvulsive treatment.

B. A matter is considered to be contested if an issue is in question.
(Adopted 7/1/2006)

Rule 8.2.4

Service-Proof of Service

Service of any notice on a conservatee must be done in accordance with Welfare and Institutions Code sections 5000 et seq., or Probate Code section 1200 et seq. where no method appears in the Welfare and Institutions Code. Service on any attorney may be made in accordance with Code of Civil Procedure section 1011 or 1012.
(Adopted 7/1/2006)

Rule 8.2.5

Subpoenas

Subpoenas and subpoenas duces tecum regarding LPS conservatorships and related matters must be issued in accordance with Code of Civil Procedure section 1985 et seq., provided the provisions for maintaining confidentiality, as contained in Welfare and Institutions Code section 5328, are not violated.
(Adopted 7/1/2006)

Rule 8.2.6

Establishment of Conservatorship – A Referral Initiates The Establishment Procedure

A. To initiate the procedure for establishing a conservatorship, a psychiatrist and/or a licensed clinical psychologist must prepare a report (referral) which presents a factually supported conclusion that the proposed conservatee is a proper subject of a Lanterman-Petris-Short Act conservatorship.

B. The preparer of the referral must submit the referral to the Public Conservator.
(Adopted 7/1/2006)

Rule 8.2.7

Establishment of Conservatorship – Preparation and Filing of Petition

If, after reviewing the referral, the Public Conservator determines to initiate the procedures for establishing a conservatorship, the Public Conservator must:

A. Prepare and file with the court clerk at the Mental Health Desk a petition for establishment of an LPS conservatorship and obtain a hearing date; and

B. Serve a copy of the petition on the counsel for the proposed conservatee no less than fifteen court days prior to the hearing on the petition.
(Adopted 7/1/2006)

Rule 8.2.8

Establishment of Conservatorship - Temporary Conservatorship

A. At the time of filing a petition for establishment of an LPS conservatorship, the Public Conservator may, in accordance with Welfare and Institutions Code section 5352.1, request an order of the Mental Health Court establishing a temporary conservatorship which includes the appointment of a temporary conservator.

B. Good cause for establishing a temporary conservatorship can be based on declarations of professional persons recommending the conservatorship.
(Adopted 7/1/2006)

Rule 8.2.9

Establishment of Conservatorship - Notice of Temporary Conservatorship

Within five working days of the establishment of the temporary conservatorship, the Public Conservator must mail to the temporary conservatee a copy of the order appointing a temporary conservator.
(Adopted 7/1/2006)

Rule 8.2.10

Establishment of Conservatorship – Term of Temporary Conservatorship

A. All temporary conservatorships expire automatically at the conclusion of thirty days.

B. When a hearing to establish a permanent conservatorship is continued, the temporary conservatorship will automatically continue to be in effect until the date of continuance, subject to one of the parties presenting an objection to the court and the court ruling otherwise.
(Adopted 7/1/2006)

Rule 8.2.11

Establishment of Conservatorship – Preparation of Conservatorship Investigation Report

A. If the Public Conservator determines to initiate the procedures for establishing a conservatorship, the Public Conservator:

1. Shall, as the Welfare and Institutions Code section 5352 "officer providing conservatorship investigation," prepare the conservatorship investigation report; and

2. Shall serve the conservatorship investigation report on the counsel for the proposed conservatee no less than five court days prior to the hearing on the petition.

B. If the conservatorship investigation report refers to any written evaluation or report prepared by a physician, psychologist, social worker, nurse or other professional person, the conservatorship investigation report must identify such evaluation or report with sufficient specificity to allow the attorney of record for the proposed conservatee the opportunity to view or subpoena such document. Identification may be accomplished by specifying such things as: the date of the report; the name and title of the person preparing the report; or the facility/organization with which the preparer is affiliated.
(Adopted 7/1/2006)

Rule 8.2.12

Establishment of Conservatorship – Hearing - Waiver of Presence of Physician

The presence of a physician at the hearing on the petition to establish a conservatorship may be excused in advance of the date of the hearing by stipulation between the Public Conservator and the attorney for the proposed conservatee. Thereafter, if it is determined that the presence of the physician is required, the Mental Health Court will continue the hearing.
(Adopted 7/1/2006)

Rule 8.2.13

Establishment of Conservatorship - Hearing - Conservatee Unable or Unwilling to Attend Hearing

At any conservatorship hearing conducted under Division 8, Chapter 2, the Mental Health Court may, in its discretion, proceed in the absence of the conservatee if counsel for the conservatee: (1) requests the court to waive the conservatee's presence, (2) represents to the court that there has been contact with the conservatee, and (3) states

that, in the attorney's opinion, it is not in the best interests of the conservatee-client to be present in court or for the court to convene where the conservatee is then housed.
(Adopted 7/1/2006)

Rule 8.2.14

Establishment of Conservatorship - Hearing – Evidence (Conservatorship Referral Document)

Upon stipulation of the parties, the written conservatorship referral prepared by a psychiatrist and/or a licensed clinical psychologist who is on the staff of a Lanterman-Petris-Short Act approved facility may be received into evidence.
(Adopted 7/1/2006)

Rule 8.2.15

Establishment of Conservatorship – Hearing – Evidence (Conservatorship Investigation Report)

Under the Welfare and Institutions Code, the conservatorship investigation report is admissible into evidence at the hearing.
(Adopted 7/1/2006)

Rule 8.2.16

Establishment of Conservatorship - Hearing - Appointment of Conservator

A. The order imposing a conservatorship must include the appointment of a conservator.

B. The Mental Health Court will appoint co-conservators only under unusual circumstances where it has been demonstrated to the court that the appointment of a co-conservator is necessary and is in the best interests of the conservatee.

C. Within ten working days of the appointment, the conservator must send notice to the conservatee of the establishment of the conservatorship. The notice must include the name, address and telephone number of the conservator. Where the conservator is a public official, the notice must include the name and telephone number of the social worker assigned to the case.
(Adopted 7/1/2006)

Rule 8.2.17

Establishment of Conservatorship - Preparation of Orders

The petitioner must prepare all necessary orders required in the establishment of the conservatorship and appointment of a conservator.
(Adopted 7/1/2006)

Rule 8.2.18

Conservator – Request To Be Relieved

When, for any reason, a conservator seeks to be relieved, the court may appoint a successor conservator pursuant to Probate Code section 2680 et seq. The successor conservator must notify the conservatee of the appointment.
(Adopted 7/1/2006)

Rule 8.2.19

Conservator – Successor By Operation of Law

Where the Public Conservator is appointed to serve as conservator, a successor to the office will, by operation of law, be deemed the successor conservator.
(Adopted 7/1/2006)

Rule 8.2.20

Conservator, Private – Relief For Non-Performance - Appointment of Interim Conservator

A. Where there is evidence that a private conservator is not able to perform the duties or responsibilities of conservator, the Public Conservator may petition the court: (1) to relieve temporarily the current conservator; and (2) to make an interim appointment of the Public Conservator to serve as conservator pending further investigation of the conservatorship.

B. If good cause is shown and the court temporarily relieves the private conservator, the court will (1) direct the Public Conservator to conduct an investigation; and (2) set a hearing date to consider the Public Conservator's report and take necessary action concerning the conservatorship.
(Adopted 7/1/2006)

Rule 8.2.21

Rehearing - Time for Filing

A. An initial petition requesting a rehearing may be filed by the conservatee or the conservatee's attorney at any time.

B. Pursuant to Welfare and Institutions Code section 5364, after the filing of the first petition for rehearing, no further petition for rehearing may be submitted for a period of six months.
(Adopted 7/1/2006)

Rule 8.2.22

Rehearing – Issues Raised – Burden Of Proof

A. Grave Disability: A rehearing on the issue of whether the conservatee remains "gravely disabled" is governed by Welfare and Institutions Code section 5364. The burden of proof is upon the conservatee to establish, by a preponderance of the evidence, that the conservatee is no longer gravely disabled as defined in Welfare and Institutions Code section 5008, subdivision (h).

B. Rights of Conservatee: Rehearings on the issue of the powers conferred on the conservator or the rights denied the conservatee under Welfare and Institutions Code sections 5357 and 5358 are governed by Welfare and Institutions Code section 5358.3. The burden of proof is on the conservatee to show by a preponderance of the evidence why a right should be restored.

C. Conservator's Authority Over Routine Medical Treatment: Under the terms of the conservatorship, where the conservatee has retained the right to make medical decisions unrelated to remedying or preventing the recurrence of the conservatee being gravely disabled, the conservator may petition the court for a rehearing on this issue where the treating physician and the conservator have reason to question the ability of the conservatee to give informed consent to medical treatment.
(Adopted 7/1/2006)

Rule 8.2.23

Rehearing - Procedure

A. Form and Content of Petition. The petition for rehearing must: (1) specifically state whether it is brought pursuant to Welfare and Institutions Code section 5364 or section 5358.3, or both; and (2) specifically state the basis for the proposed change; and (3) the present the filing and hearing dates of all previous rehearing petitions filed on behalf of the conservatee during the current one year term of the conservatorship.

B. Setting Date For Hearing. The court clerk at the Mental Health Desk will set the date for hearing the petition for rehearing within thirty days of the filing of the petition, as required by Welfare and Institutions Code section 5365.

C. Notice. The petitioner for rehearing must: (1) obtain from the court clerk at the Mental Health Desk the date set for hearing the petition for rehearing; and (2) at least fifteen days prior to the hearing, serve the petition and notice of the hearing date on the conservator and all relatives of the conservatee within the second degree.

D. No Right To Jury. There is no right to a jury trial for a rehearing.
(Adopted 7/1/2006)

Rule 8.2.24

Rehearing – Order – Preparation

A. The order will be prepared by the Public Conservator. If the matter involves a private conservator, the order will be prepared by the petitioner for rehearing.

B. If the order restores the right to vote (Elec. Code, § 2210, subd. (c)), the order will expressly identify the restoration of the right to vote and a copy of the order must be served on the Registrar of Voters.
(Adopted 7/1/2006)

Rule 8.2.25 – 8.2.30 [reserved]

Rule 8.2.31

Re-Establishment of Conservatorship – Notice Of Expiration

No less than sixty days prior to the expiration of the one-year period of the conservatorship, the court clerk at the Mental Health Desk will send notice of the pending expiration to: (1) the conservator, (2) if a private conservator, then also the Public Conservator, (3) the conservatee, (4) the conservatee's attorney, and (5) the facility wherein the conservatee resides.
(Adopted 7/1/2006)

Rule 8.2.32

Re-Establishment of Conservatorship - Petition

A. Filing. To re-establish a conservatorship, the conservator must, no less than thirty days prior to the date of scheduled termination, (1) prepare and file with the court clerk at the Mental Health Desk a petition to re-establish the conservatorship, and (2) obtain a hearing date.

B. Calendaring of Hearing. Upon receipt of the original and two copies of the request for hearing, the court clerk at the Mental Health Desk will immediately calendar a hearing on the matter to be heard no less than twenty-one days nor more than thirty days from the date of filing of the written request.

C. Service of Petition. No less than fifteen days prior to the date of the hearing to re-establish the conservatorship, the conservator must serve, personally or by first class mail, postage prepaid, a copy of the petition and notice of the hearing date on: (1) if a private conservator, then on the Public Conservator, (2) the conservatee, (3) the conservatee's attorney, and (4) the facility wherein the conservatee resides.
(Adopted 1/2006)

Rule 8.2.33

Re-Establishment of Conservatorship – Consent to Re-Establishment

The conservatee, or the attorney for the conservatee, may stipulate to the re-establishment of the conservatorship.
(Adopted 7/1/2006)

Rule 8.2.34

Re-Establishment of Conservatorship – Hearing Procedures

The hearing on the petition to re-establish the conservatorship will be conducted in accordance with the rules applicable to a hearing on a petition to establish a conservatorship.
(Adopted 7/1/2006)

Rule 8.2.35

Re-Establishment of Conservatorship – Termination of Conservatorship

A. By Expiration or Denial Of Petition. The conservatorship is terminated: (1) if no petition to re-establish the conservatorship is timely filed; or (2) the court denies the petition to re-establish the conservatorship.

B. Order. If the conservatorship is terminated, the Public Conservator must prepare the order terminating the conservatorship and file it with the court. If the matter involves a private conservator, the private conservator must prepare the order terminating the conservatorship and file it with the court.

C. Notice of Order. The court clerk at the Mental Health Desk will, by first class mail, send a copy of the order of termination to the conservator, the conservatee, and the conservatee's attorney.
(Adopted 7/1/2006)

Rule 8.2.36 – 8.2.40 [reserved]

Rule 8.2.41

Early Termination of Conservatorship – By Conservator's Request

The conservator may file a request for early termination of conservatorship prior to expiration of the one-year expiration date when:

A. The conservatee has reached treatment goals; and /or

B. The conservatee is no longer considered gravely disabled; and/or

C. The conservatee's whereabouts are unknown.

(Adopted 7/1/2006)

Rule 8.2.42

Early Termination of Conservatorship – By Conservatee's Request

The conservatee may move the court for an order terminating conservatorship prior to expiration of the one-year expiration date by scheduling a hearing and noticing the conservator of same in accordance with the provisions in the Rehearing section of these rules.
(Adopted 7/1/2006)

Rule 8.2.43

Early Termination of Conservatorship – Procedure

A. By Ex Parte Order. Termination may be effected by ex parte order upon proper notice as herein provided and Probate Code section 1862.

B. Hearing upon Notice. Early termination for reasons other than those stated above require a noticed hearing in accordance with the procedures outlined in the sections of these Rules related to "Notices" and "Reappointment of Conservator".

C. Service of Notice. The attorney must be given verbal notice of any early termination of conservatorship, and if objection to the termination is raised, the matter will be calendared for hearing, and notice will be given in accordance with the procedures outlined in "Notices" and "Reappointment of Conservator" in these rules.

D. Termination Without Objection. If no objection to termination is made, then the conservatorship may be terminated by the court.
(Adopted 7/1/2006)

Rule 8.2.44 - 8.2.50 [reserved]

Rule 8.2.51

Jury Trial - Request

A. Verbal Request for Jury Trial. When requesting a jury trial, the conservatee's attorney must give verbal notification to the conservator and conservator's attorney. Such notice must be either in open court when the request is made at the hearing or telephonically on the date the request is filed. If notice is to County Counsel it may be made to the deputy assigned to the Mental Health Court, Office of County Counsel, (619) 531-4860, and to the Calendar Division of the San Diego Superior Court.

B. Written Notice of Trial Date. On the date that a jury trial is requested, the conservatee's attorney must serve, by mail, a copy of a written notice of jury trial date form on the conservator's attorney. The notice of jury trial date form must include the conservatee's name, the case number, the attorney's name, address, telephone number, the date of the request and the scheduled date of the jury trial.

C. Setting Trial Date. The date of the jury trial will not be set beyond the ten plus fifteen day limit set forth in Welfare and Institutions Code section 5350, subdivision (d). However, if the written demand for jury trial contains written approval of the requested trial date by the person for whom the conservatorship is sought, petitioner for the conservatorship, or his or her attorney, then the trial may be set beyond the ten plus fifteen day limit set forth in Welfare and Institutions Code section 5350, subdivision (d).
(Adopted 7/1/2006)

Rule 8.2.52

Jury Trial – Request Withdrawn

A. By Conservatee. When a jury trial request is to be withdrawn by the conservatee, the conservatee's attorney must make the request either (1) in open court or (2) by a written declaration filed with the court and served on the conservator's attorney. Telephone notification that the request is to be withdrawn must be given to the conservator's attorney as soon as possible and to the Calendar Division of the San Diego Superior Court.

B. By Conservator. When a petition is to be withdrawn by the conservator, the regular procedures for terminating conservatorships will be followed. Conservator's attorney must give telephonic notification to the conservatee's attorney as soon as possible.
(Adopted 7/1/2006)

Rule 8.2.53

Post-Verdict Matters

A. For Conservatee. If the verdict favors the conservatee, the conservatorship, if any, will be terminated forthwith.

B. For Conservator Imposing Disabilities and Setting Placement.

1. If a prior hearing was held, a conservator appointed, disabilities imposed and placement set and not vacated, then that order will remain in effect after the jury trial.

2. If there is no prior valid order appointing a conservator, fixing disabilities and placement, then the trial judge will appoint the conservator and fix the disabilities and placement in accordance with the recommendations of the Public Conservator, in the absence of evidence to the contrary.

If the conservatee requests the presence of the treating psychiatrist, forensic psychiatrist or conservator for the hearing on appointment of a conservator, the conservatee may at any time within five court days after the hearing, file a written hearing request in accordance with these rules. The hearing will be held in the Mental Health Division of the San Diego Superior Court; and the order of the trial court will remain in effect unless modified or vacated at that hearing.

C. Judgment. The prevailing party will prepare and submit a proposed judgment to the trial court.
(Adopted 7/1/2006)

CHAPTER 3
AUTHORIZATION FOR CONSERVATOR TO CONSENT TO MEDICAL/SURGICAL TREATMENT FOR CONSERVATEE

Rule 8.3.1

Authority For Conservator

A. General Authority – Routine Treatment. Pursuant to Welfare and Institutions Code section 5358, subdivision (b), the court may authorize the conservator to consent to any treatment for the conservatee which the treating physician recommends as being "routine medical treatment." With this general authority, the conservator has the right to consent to, and thus require the conservatee to receive, the recommended, routine treatment.

B. Specific Authority - Routine Treatment. If the conservator does not have general authority pursuant to Welfare and Institutions Code section 5358, subdivision (b), and the treating physician has recommended a routine treatment to which the conservatee has not consented, then, to obtain authority to consent to conservatee receiving the recommended, routine treatment, the conservator must file a petition.

C. Specific Authority - Non-Routine Treatment. In all cases, when the treating physician is recommending treatment that is more invasive or intrusive than "routine medical treatment," such as surgery or amputation or a procedure that poses a substantial risk to the life of the conservatee, and the conservatee has not consented to the treatment, then, to obtain authority to consent to conservatee receiving the recommended, non-routine treatment, the conservator must file a petition.

D. Specific Authority – Questioned Treatment. In discharging the duty to protect the welfare of the conservatee, the conservator may file a petition to obtain authorization to consent to a recommended medical treatment when:

1. The conservatee, relatives, or other persons the conservator has previously identified expressed opposition to the proposed procedure; or

2. The conservator has substantial questions as to whether the procedure should be performed.
(Adopted 7/1/2006)

Rule 8.3.2

Obtaining Authority For Medical Treatment

A. Petition. Authorization for the conservator to consent to specific medical/surgical treatment must be sought by the conservator filing a petition. The Petition must be accompanied by

1. A written statement signed under penalty of perjury by the treating physician which identifies the recommended treatment and the basis for the recommendation; or

2. A form which includes the information as referenced in Probate Code section 2357.

B. Submission of Petition Ex Parte. Where the conservator already possesses general authority to consent to routine, medical treatment, the petition may be submitted ex parte to the court under the following circumstances:

1. The conservator, in good faith, based on medical advice, determines that the proposed procedure is required;

2. The conservatee personally or through counsel, has expressly (a) waived a hearing and (b) declared non-opposition to the proposed procedure; and

3. Relatives, friends or other persons the conservator has previously identified have expressly supported the proposed procedure.

C. Submission of Petition. Except as provided herein, the petition must be filed with that clerk at the Mental Health Desk who will calendar the motion. The conservator must provide notice to the conservatee.
(Adopted 7/1/2006)

Rule 8.3.3

Hearing on Petition

The court may convene the hearing at the facility providing treatment and care of the conservatee when the conservator or conservatee provide evidence to the court that:

A. Transporting the conservatee to court would (1) be physically injurious for the conservatee; or (2) create a substantial threat of harm to the conservatee or others; or

B. It would be in the best interests of the conservatee to have the hearing conducted at the facility providing the treatment and not at the courthouse.
(Adopted 7/1/2006)

Rule 8.3.4

Notice

As referenced in Welfare and Institutions Code section 5358.2, notice to the conservatee means verbal notice.
(Adopted 7/1/2006)

Rule 8.3.5

Transportation

The conservator is be responsible for all necessary notice and arrangements for court hearings, and must coordinate transportation of the conservatee to said hearings.
(Adopted 7/1/2006)

Rule 8.3.6

Emergency Treatment

Nothing in these rules in any way impedes or affects other provisions of the law relating to emergency medical treatment, or emergency cases in which the conservatee faces loss of life or serious bodily injury. Under such cases, treatment may be provided as stipulated elsewhere in the law.
(Adopted 7/1/2006)

CHAPTER 4
ELECTROCONVULSIVE TREATMENT

Rule 8.4.1

Conditions for Administering

Electroconvulsive treatment may be administered to an involuntary patient pursuant to Welfare and Institutions Code section 5326.7 and to a voluntary patient pursuant to Welfare and Institutions Code section 5326.75 consistent with these rules.
(Adopted 7/1/2006)

Rule 8.4.2

Attorney's Consent to Patient's Capacity

The patient's attorney is authorized to agree to the patient's capacity or incapacity to give written informed consent pursuant to Welfare and Institutions Code section 5326.7. If the patient's attorney and physician agree that the patient has the capacity to give written informed consent, such agreement must be documented in the patient's records. The attorney's consent must be obtained for additional treatments in number or time, not to exceed thirty days.
(Adopted 7/1/2006)

Rule 8.4.3

Filing Petition

If either the attending physician or the attorney believes that the patient does not have the capacity to give informed consent, either the attorney or the attending physician must file a petition in the Mental Health Court to determine the patient's capacity to give consent.
(Adopted 7/1/2006)

Rule 8.4.4

Patient's Attorney – Declaration Concerning Conflict of Interest

The attorney representing the patient may file a declaration with the court, prior to or at the time of the hearing, stating the reasons why the court should find that there is no conflict of interest in the attorney's representation of the patient. A copy of said declaration must be made available to county counsel by the attorney filing the declaration.
(Adopted 7/1/2006)

Rule 8.4.5

Treating Physician - Declaration Concerning Treatment

The physician recommending the treatment must submit to the court a declaration that states the conditions for administering electroconvulsive treatment as referenced by section 5326.7 of the Welfare and Institutions Code have been satisfied.
(Adopted 7/1/2006)

Rule 8.4.6

Change of Patient's Condition

If the court determines that the patient does have the capacity to give written informed consent, a subsequent petition may not be filed unless it can be shown by facts stated in the petition that the patient's condition has changed since the court made the finding and that as a result of the changed condition, the patient does not have capacity to give a written informed consent.
(Adopted 7/1/2006)

Rule 8.4.7

Appointment of Temporary Conservator

If the court determines that the patient does not have the capacity to give written informed consent and there is no responsible relative or conservator of the patient available, the court may appoint the Public Counselor as temporary conservator. Such appointment may be made on the basis of testimony of the professional person representing the LPS approved facility, that the patient has a mental disorder and is gravely disabled and that said professional person intends to file a conservatorship referral recommending conservatorship. In cases where the patient is found to be a danger to self and/or others but not gravely disabled, the court may appoint the Public Counselor as guardian ad litem for purpose of giving consent to convulsive treatment.
(Adopted 7/1/2006)

CHAPTER 5
DETERMINATION OF CAPACITY OF MENTAL HEALTH PATIENTS TO GIVE OR WITHHOLD INFORMED CONSENT TO ADMINISTRATION OF ANTIPSYCHOTIC MEDICATION (RIESE HEARING)

Rule 8.5.1

Scope and Purpose

The following procedures are intended to implement the requirements of *Riese v. St. Mary's Hospital* (1988) 209 Cal.App.3d 1303, and Welfare and Institutions Code section 5332 et seq. They apply to patients, both adults and minors, who are being treated in public or private hospitals, and are being detained pursuant to Welfare and Institutions Code sections 5150 (72-hour hold), 5250 (fourteen-day hold, or 5350 et seq. (temporary conservatorship).

Generally, the hearing is conducted at the facility where the patient is being treated; and any appeal of the hearing officer's decision is heard by the Mental Health Court.

(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.2

Petition

When the treating physician has determined that treatment of the patient's condition requires the administration of antipsychotic medication and the patient has refused to consent to the medication, the treating physician may petition the court for a legal determination as to whether the patient is capable of giving or withholding informed consent.

(Adopted 7/1/2006)

Rule 8.5.3

Required Documents

To obtain determination of the patient's capacity to give or withhold informed consent to treatment by antipsychotic medication, the treating physician must complete, sign and date the "Petition of Treating Physician Regarding Capacity to Consent To Or Refuse Antipsychotic Medication" (SDSC Form #MHC-056). If the physician will not be present for the hearing, the petition must have attached to it a "Treating Physician's Declaration Regarding Capacity Of Patient to Consent To Or Refuse Antipsychotic Medication" form (SDSC Form #MHC-055). These forms must be delivered to or faxed to the Office of Counselor in Mental Health in order to calendar a hearing.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2015)

Rule 8.5.4

Calendaring Hearings

It is assumed that time is of the essence in each Riese hearing. The physician or treating facility must deliver or fax the required documents in order to calendar a hearing. The Office of the Counselor in Mental Health will calendar all hearings upon receipt and filing of the requisite forms. Whenever possible, the hearing will be set within two court days. The physician or treating facility must notify the Office of the Counselor in Mental Health of the need for an interpreter when one is needed at the hearing.

(Adopted 7/1/2006)

Rule 8.5.5

Attorney Duties

The patient's attorney must meet with the patient as far in advance of the hearing as possible to determine the patient's position with respect to the proposed antipsychotic medication. If the patient consents to the administration of antipsychotic medication prior to the hearing, it is the responsibility of the patient's attorney to notify the Office of the Counselor in Mental Health promptly so the hearing may be canceled and unnecessary travel and expense may be avoided.

(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.6

Appointment of Hearing Officers

The San Diego Superior Court Executive Officer will appoint attorneys as Hearing Officers to conduct the evidentiary hearings.

(Adopted 7/1/2006)

Rule 8.5.7

Treating Physician/Facility Representative

Physicians and treating facilities may, but need not be formally represented by counsel. The physician must present the petition, or a facility representative must present the petition and declaration, as well as any verbal or documented evidence at the time of the hearing. The facility representative must be a psychiatrist, psychologist, registered nurse, or a social worker with at least a master’s degree. Although it is not required that the treating physician testify, it should be recognized that the absence of the treating physician may leave insufficient evidence of incapacity in the event the petition and declaration are deficient.

(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.8

Surroundings of Hearing

Hearings must be held in surroundings which allow for quietness and a reasonable degree of confidentiality and safety. Whenever possible, the hearings will be held at the facility where the patient is located. In any event the hearing will be held as close to the facility as is practicable under the circumstances. Hearings will be electronically recorded.
(Adopted 7/1/2006)

Rule 8.5.9

Burden of Proof

The burden is on the physician or treating facility to establish by clear and convincing evidence that the patient does not have the capacity to give or withhold informed consent to the administration of antipsychotic medication.
(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.10

Determination of Capacity

In determining the patient's capacity to give or withhold informed consent, the judge or hearing officer will consider (1) whether the patient is aware of their mental condition, (2) whether the patient has been informed of and is able to understand the benefits and the risks of, as well as the alternatives to, the proposed medication and (3) whether the patient is able to understand and to knowingly and intelligently evaluate the information required to be given patients whose informed consent is sought and otherwise participate in the treatment decision by means of rational thought processes.
(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.11

Patient Presence

The patient has the right to be present at the hearing and at any appeal hearing and to present evidence and to cross-examine witnesses at the hearing and appeal hearing. However, the patient may choose not to attend the hearing or the appeal hearing.
(Adopted 7/1/2006)

Rule 8.5.12

Access to Records

The hearing officer and the Mental Health Court judge may have access to and may consider the relevant medical records of the patient as well as the petition and declaration of the physician in reaching the legal determination of the patient's capacity to give or withhold informed consent.
(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.13

Continuance of Hearings

Upon a showing of good cause and at the discretion of the judge or hearing officer, a hearing may be continued for a reasonable amount of time.
(Adopted 7/1/2006)

Rule 8.5.14

Determination

At the conclusion of the hearing, the hearing officer or judge will make a legal determination whether the patient has the capacity to give or withhold informed consent to the administration of antipsychotic medication.
(Adopted 7/1/2006; Rev. 1/1/2011)

Rule 8.5.15

Confidentiality

The proceedings under these rules and all records of these proceedings are confidential as provided in Welfare and Institutions Code section 5328.
(Adopted 7/1/2006)

CHAPTER 6

ONE HUNDRED AND EIGHTY (180) DAYS POST CERTIFICATION PROCEDURES FOR IMMINENT DANGEROUS PERSONS

Rule 8.6.1

Preparation of Petition

A petition must be prepared by County Counsel (pursuant to Welf. & Inst. Code, § 5114) and supported by affidavits describing in detail the behavior of the patient which presents information as provided in Welfare and Institutions Code section 5300.
(Adopted 7/1/2006)

Rule 8.6.2

Filing and Service of Petition

Copies of the petition for post certification treatment and the affidavits in support thereof must be served upon the person named in the petition on the same day as they are filed with the Mental Health Desk.
(Adopted 7/1/2006)

Rule 8.6.3

Affidavits

The court may receive the affidavits in evidence and may allow the affidavits to be read to the jury unless counsel for the person named in the petition subpoenas the treating professional person.
(Adopted 7/1/2006)

Rule 8.6.4

Right to Attorney and Jury Trial

The person named in the petition has the right to be represented by an attorney and a right to demand a jury trial. If the person named in the petition cannot afford an attorney, an attorney will be appointed.
(Adopted 7/1/2006)

CHAPTER 7
CERTIFICATION
REVIEW HEARINGS

Rule 8.7.1

Compliance with Welfare and Institutions Code

Certification Review hearings will be held in compliance with Welfare and Institutions Code section 5256 et seq.
(Adopted 7/1/2006)

Rule 8.7.2

Procedures

The Office of Counselor in Mental Health is appointed to administer/or conduct certification review hearings in compliance with Welfare and Institutions Code section 5256 et seq. All persons involuntarily detained in psychiatric hospitals in San Diego County will have a certification review hearing when a fourteen-day certification has been filed. Hearings will be held for all persons regardless of the basis for certification. Hearings will be held within four days of the date on which the person was certified for intensive treatment, unless postponed by request of the person or his or her attorney or advocate. Hearings may be postponed 48 hours, or until the next regularly scheduled court date.

The following will apply to certification review hearings held in San Diego County:

A. Certification review hearings will be conducted at the facility where the person is receiving treatment;

B. Certification review hearings must be held in surroundings which allow for safety, quietness, and a reasonable degree of confidentiality. A copy of the Notice of Certification will be at the certification review hearing;

C. "Representative of the treating facility" means a registered nurse, psychiatrist, social worker or psychologist. A representative of the treating facility must be present at the hearing to give testimony and answer questions regarding the basis for continued detention and treatment;

D. Certification review hearings will be scheduled by the Office of Counselor in Mental Health and the hearing is to be conducted by a Mental Health hearing officer.

E. The patient's rights advocate or an attorney for the patient may be present and testify at the certification review hearing. Other persons including friends and relatives will be admitted to the hearing at the discretion of the court commissioner or hearing officer;

F. Certification review hearings are not bound by rules of procedures of evidence applicable to judicial proceedings. All evidence which is relevant to establishing that the person is, or is not, as a result of a mental disorder, a danger to themselves or others, or gravely disabled may be admitted at the hearing and considered by the court commissioner or hearing officer;

G. The patient's rights advocate or a retained attorney will meet with the patient prior to the certification review hearing to discuss the commitment process and to assist the patient to prepare for the certification review hearing and to answer questions or otherwise assist the patient as is appropriate;

H. The patient has the right to make reasonable requests for the attendance of facility employees who have knowledge of, or participated in, the certification decision;

I. Certification review hearings will be held for the person who has already requested a writ of habeas corpus hearing if the certification review hearing can be held on a date preceding the writ hearing. A certification review hearing will not be held where a writ of habeas corpus hearing has been held;
(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2013)

CHAPTER 8
WRIT OF HABEAS CORPUS

Rule 8.8.1

Filing Petitions, Orders, Writs

Petitions for a writ of habeas corpus must be filed with the court clerk at the Mental Health Desk. The petition must be filed with an order granting writ of habeas corpus and a writ of habeas corpus. Sufficient petitions will be accepted for filing and file stamped immediately upon their presentation to the clerk.
(Adopted 7/1/2006)

Rule 8.8.2

Applications for Writ Seeking Release or Modification of Custody

A petition for a writ of habeas corpus, or for any other writ, seeking the release from or modification of the conditions of custody of one who is confined under the process of any court of this state or local penal institution, hospital, narcotics treatment facility, or other institution must be on a form approved by the Judicial Council, or on a printed form furnished or approved by the clerk of the court.
(Adopted 7/1/2006)

Rule 8.8.3

Hearing

Hearings on a writ will be heard in the Mental Health court, unless otherwise approved by the supervising judge.
(Adopted 7/1/2006)

Rule 8.8.4

Time of Hearing

A hearing on a writ will be scheduled at the time the writ is filed. Counsel for petitioner must notify the facility of the scheduled time for the hearing. Such notification will not replace the actual service of the writ requiring the patient to be present at the time set for the hearing. The hearing will be held within two court days of filing.
(Adopted 7/1/2006)

CHAPTER 9
WRIT OF HABEAS CORPUS
PROCEDURES FOR MINORS
ADMITTED TO PRIVATE
PSYCHIATRIC FACILITY
BY A PARENT

Rule 8.9.1

Writ of Habeas Corpus

A. Applicability

Minors admitted to private psychiatric facilities by a parent are entitled to habeas corpus relief in a manner consistent with the provisions of the LPS Act.

This procedure applies to any minor who is voluntarily admitted to a private psychiatric facility by a parent who has legal and physical custody of the minor. As used in this section "minor" means any person 10 through 17 years of age whose liberty is being restrained in a private (non-public) psychiatric treatment facility and the minor protests the restraint. For purpose of this section, writs of habeas corpus will be subject to the general provisions of Penal Code section 1473 et seq.

B. Right to Writ

1. Every minor 10 through 17 years of age, whose liberty is being restrained in a private psychiatric treatment facility may request a writ of habeas corpus to inquire into the cause of such restraint.

2. A writ of habeas corpus may be adjudicated to inquire into the basis for the restraint. The criteria are as follows:

a. The minor is not being detained for evaluation and treatment of any disorder.

b. Other causes which may be unlawful, as specifically stated in the petition.

Nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies.

(Adopted 7/1/2006; Rev. 1/1/2014)

Rule 8.9.2

Procedures

A. Filing. When a minor requests release from any private psychiatric facility to any member of the facility treatment staff or the Patient Rights Advocate, that minor must promptly be provided with a "Petition for a Writ of Habeas Corpus by a Minor". Such form must be filed with the court clerk at the Mental Health Desk at 220 West Broadway within the next work day following completion of the petition.

B. Granting Writ. Upon a finding of probable cause, the following will occur:

1. The judge will endorse upon the petition the hour and date of the granting or denial of the writ, and a hearing will be held within two court days. When a writ is granted, it will be directed to the director of the facility restraining the minor, commanding the director to have the minor before the court at a time and place therein specified.

2. The court will appoint an attorney to represent the minor at the hearing.

C. Sick and Infirm Petitioner. The writ will be adjudicated in accordance with Penal Code section 1482.

D. Delivery of Writ. The writ will be delivered to the sheriff and will be served upon the facility director without delay.

E. Discharge or Remand. If the writ is discharged the minor must be released to the custody of their parents or other authority within a reasonable time, which shall be allowed to make adequate arrangements for the care of the minor. If the writ is remanded, the minor may continue to be restrained in accordance with any other pertinent laws and regulation.

(Adopted 7/1/2006)

CHAPTER 10
ADMINISTRATIVE PROCEDURE FOR ADMISSION OF MINORS FOR ACUTE CARE PSYCHIATRIC HOSPITAL TREATMENT WHO ARE WARDS OR DEPENDENTS OF THE JUVENILE COURT

Rule 8.10.1

Applicability and Definitions

A. This policy is applicable upon the presentation of a dependent minor or ward to a psychiatric facility for the purpose of inpatient evaluation and treatment.

B. This policy is not applicable to non-dependent minors or non-declared wards.

C. Admissions of minors who are not subject to the jurisdiction of the Juvenile Court are governed by the provisions of the LPS Act, or other applicable law.

D. The reference to the term minor or minors as used in this policy refers to a minor child who has been adjudged a dependent or ward pursuant to the applicable provisions of the Welfare and Institutions Code.

E. Any reference in this policy requiring that notice be given requires notice to the following individuals: the minor's attorney, each parent's attorney, the parent, County Counsel, any court-appointed special advocate, and the office of the Patient Advocate.

F. The term "Department" means the Health and Human Services Agency if the minor is a dependent child, or the Probation Department if the minor is a ward.
(Adopted 7/1/2006)

Rule 8.10.2

Involuntary Hospitalization for the Initial 72-hour Period

A. Involuntary hospitalization of minors occurs only under the provisions of Welfare and Institutions Code section 5585 et seq. or 5350.

B. Pursuant to section 5585, and other applicable laws, the facility and its professional staff will determine whether the minor meets the criteria for admission for the initial 72-hour period.

C. Notice will be given by the Department indicating that the minor was presented to the facility for LPS evaluation and was either admitted to the facility, or was deemed not subject to admittance under provisions of section 5585 et seq. If the minor is admitted without the knowledge of the Department, the Department must, upon being informed to the minor's admission, undertake reasonable steps to provide notice required by this policy.

D. If the minor is admitted into the facility, the Department must, in addition to the notice referred to in paragraph C. above, contact the minor's attorney, in person or by phone, within six hours of admission. If the minor's attorney cannot be so contacted, or is otherwise unavailable, such notice shall be given to the office of the Patient Advocate.

E. Upon receiving the notice specified in paragraph D. above, the minor's attorney, or patient advocate when attorney is unavailable, must, within 24 hours, do the following:

1. Interview the minor at the facility;

2. Explain to the minor his/her rights, under the LPS Act, all in a manner to assist the minor to understand;

3. Counsel the minor regarding voluntary treatment, as set forth in Welfare and Institutions Code section 6552; and

4. Assure that all procedural requirements are fully met.

F. The Treatment and Aftercare recommendations required by statute must be provided to the Department who will then incorporate the same in the planning process for proper placement of the minor upon discharge from the facility. The Department must inform the Court of any delays or difficulties in receiving the Treatment and Aftercare recommendations from the facility.

G. If, after the expiration of the 72-hour period, the minor is not certified for the fourteen-day period described in Welfare and Institutions Code section 5250 et seq., and if the minor has not completed the voluntary application referred to in these rules, the minor will be discharged from the facility to the custody of the Department for further placement consistent with the procedures of the Welfare and Institutions Code and court policy.
(Adopted 7/1/2006)

Rule 8.10.3

Involuntary Hospitalization After the Initial 72-Hour Period

A. Any further involuntary hospitalization of minors after expiration of the initial 72-hour period will occur only under the provisions of the LPS Act.

B. It is the sole responsibility of the facility and its professional staff to determine whether the minor meets the criteria for further hospitalization under the provisions of the LPS Act.

C. The office of the Patient Advocate or the minor's attorney represents the interests of the minor during any Certification Review Hearing conducted under the LPS Act, in accordance with Welfare and Institutions Code sections 5255-5256.7.

D. At the expiration of the involuntary status under LPS or sooner if the minor is discharged from the facility, the minor must be returned to the custody of the Department for further placement consistent with the procedures of the Welfare and Institutions Code and court policy, unless the minor completes the voluntary application referred to in this policy.
(Adopted 7/1/2006)

Rule 8.10.4

Voluntary Hospitalization (Welf. & Inst. Code, § 6552)

A. The term "voluntary hospitalization" means the request, by application, of the minor to seek inpatient mental health services.

B. The term "by application" means the request of the minor to seek or receive inpatient mental health services.

C. The application must be a form in writing, and must include, at a minimum, the following:

1. An acknowledgment by the minor and his/her attorney that the minor understands the need to receive treatment, its probable duration and treatment regimen, and his/her desire to receive such treatment;

2. An acknowledgment that the minor has been made aware of his/her rights, the consequences of waiver, all in a manner the minor is able to understand.

D. An acknowledgment of the right to revoke the application and be discharged pursuant to rule 8.10.4, paragraph J, unless the minor may be involuntarily detained under sections 5585 or 5350.

E. The application, signed by the minor after advisement by the attorney or patient advocate, constitutes the only basis for the facility to accept the minor as a voluntary patient, pending the court order referred to in rule 8.10.4, paragraph F.

F. The duly executed application will be presented to the Juvenile Court ex parte, whereupon the court will make the findings pursuant to section 6552 that the minor be authorized to make a voluntary application. The finding will be based on the evidence presented, but must include at a minimum the following:

1. The voluntary application signed by the minor, together with the attorney certification signed by minor's counsel.

2. A declaration or affidavit by the attending therapist that the minor suffers from a mental disorder; the facility is qualified to treat the disorder; and there is no less restrictive facility available or appropriate which may better meet the needs of the minor.

3. A medication plan that sets forth the category of medications, if any, to be administered to the minor.

G. Upon making the findings referred to in paragraph F, the Juvenile Court will issue an order authorizing the voluntary admission of the minor for treatment. Such an order must be served on all counsel and parties. Such an order shall be construed solely as an authorization for treatment pursuant to section 6552 and does not constitute a court-ordered commitment. Upon being served, any counsel or party may schedule a special hearing for purposes of objecting to the court order. The special hearing must be heard within three (3) judicial days.

H. A court order authorizing the voluntary admission of a minor for treatment does not deprive the minor of the right to revoke the voluntary application.

I. A revocation of the voluntary application must be communicated immediately to the Department who will calendar a special hearing for the next court day and notify all counsel and parties.

J. The minor must be released to the Department after the court hearing referred to in paragraph I, unless the provisions of the LPS Act are satisfied.

(Adopted 7/1/2006)

CHAPTER 11
ADMINISTRATIVE PROCEDURE FOR ADMISSION OF MINORS WHO ARE NOT DEPENDENTS OR WARDS OF THE JUVENILE COURT FOR ACUTE CARE PUBLIC PSYCHIATRIC HOSPITALS AND PRIVATE FACILITIES UNDER CONTRACT WITH THE COUNTY ("ROGER S" HEARINGS)

Rule 8.11.1

Applicability

This procedure applies to only those admissions in which the responsible person (other than a public official) seeks to admit a minor 14 through 17 years of age for evaluation or treatment of a mental disorder to a public facility and private inpatient facilities under contract with the County (e.g.: County Psychiatric Hospital or Rady Children's Hospital – San Diego, Child and Adolescent Psychiatry Services ("CAPS")). Admissions or detentions not referenced in these procedures will not be affected by these procedures, including, but not limited to the following: Welfare and Institutions Code section 5150 et seq. (Detention of Mentally Disordered Persons for Evaluations and Treatment), 5326.75 et seq. (Court Ordered Evaluation for Mentally Disordered Persons), 5225 et seq. (Court Ordered Evaluation for Persons Impaired by Chronic Alcoholism), 5250 et seq. (Certification for Intensive Treatment), 5260 et seq. (Additional Intensive Treatment of Suicidal Persons), 5300 et seq. (Post Certification Procedures for Dangerous Persons), or 5350 et seq. (Placement by Conservator for Gravely Disabled Persons). This procedure does not affect laws pertaining to what agency or individual has the right to consent to mental health or psychiatric treatment on behalf of a minor.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.2

Definitions

A. "Hearing Officer" means a designee of the Mental Health or Juvenile Division of the court, and includes attorneys appointed to conduct Capacity hearings (see local rule 8.5.6, above) or professional staff from the Office of the Counselor in Mental Health who are appointed as hearing officers as referenced in Welfare and Institutions Code section 5334, subdivision (c).

B. "Facility" means any public or private facility under contract to provide services paid by County Mental Health, or any hospital licensed to provide acute care inpatient psychiatric treatment.

C. "Minor" means: any person who is age 14 through 17 years of age who is not emancipated.

D. "Responsible person" means a parent, guardian, or other person having custody of the minor.

E. "Minor's Counsel" means a licensed attorney who will assure that minors are informed of their right to pre-admission hearings, assures that minors who waive the right to a hearing have done so freely, voluntary and intelligently, and represents the minor at any hearings conducted under this chapter.

F. "Work day(s)" means judicial days (or a day when the court is open).

G. "Public facility" means any facility owned or operated by the State of California or the County of San Diego.

H. "Professional person" means a psychiatrist, psychologist, social worker with a master's degree, licensed marriage, family and child counselor, or registered nurse.

(Adopted 7/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.3

Initiating Hospitalization

A. When it is determined by an appropriate mental health professional that a minor is in need of psychiatric inpatient services, the responsible person, or staff representing the proposed treatment facility, must, prior to any admission to a facility initiate these procedures: (1) obtain a physician's affidavit; and (2) contact Minor's Counsel who will either in person or by telephone, inform the minor of the right to a hearing and determine whether the minor will freely, voluntarily and intelligently waive the right to a hearing, and may inform the minor of other patient rights;

B. The "Physician's Affidavit" must include the following information:

1. Whether the minor suffers from a mental disorder, and if so, its nature;

2. Whether the proposed treatment program requires 24-hour hospital care and is reasonably expected to ameliorate the mental disorder;

3. Whether the proposed facility in which the minor is to be placed is the least restrictive and most appropriate and available facility which can fulfill objectives of treatment; and

4. Whether the treatment facility is in the minor's home community or that the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community.

C. When a minor has been involuntary detained at a facility under other provisions of law, and the responsible person desires to voluntarily admit the minor, the facility staff may assist in initiating voluntary admission. For the purposes of this procedure the voluntary admission will be treated as new admission to the facility regardless of prior involvement of the minor with the facility.

D. The physician's affidavit must be available at the facility when the Minor's Counsel determines whether the minor is protesting the admission, and must be available to the hearing officer at the hearing.

E. The professional person testifying at the hearing may be a person other than the person signing the "Physician's Affidavit" who is familiar with the treatment needs of the minor and available and/or potential resources.

F. When the minor protests the admission at the time of the evaluation for admission, or prior to the time of Minor's Counsel seeing the minor to ascertain whether the minor is protesting the admission, the procedures described in rule 8.11.5 apply.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.4

Procedure for a Non-Protesting Minor who Wishes to Waive the Right to a Hearing

A. Before the minor waives the right to a hearing, Minor's Counsel must contact the minor by telephone or in person to ascertain whether the minor is protesting the admission and to provide notification of the right to a

hearing. Minor's Counsel must certify that the minor freely, voluntarily, and intelligently waived the right to a hearing. Minor's Counsel and the minor must sign the approved "Waiver of Hearing" form (hereinafter referred to as "waiver"), except where the waiver is obtained telephonically, in which case the waiver on page 2 of the waiver will suffice. The signed waiver allows admission to the facility, providing other necessary authorization(s) (e.g., permission of the responsible person or legally authorized designee), which is/are also available. The waiver must remain in the minor's record at the treating facility. A copy of the signed waiver and the physician's affidavit must be given to the facility to which the minor is to be admitted.

B. When the waiver has been signed by a person other than Minor's Counsel due to telephone authorization, on the next work day following admission of the minor, Minor's Counsel must personally interview the minor and review the waiver. If in the opinion of Minor's Counsel, the minor is not freely, voluntarily and intelligently waiving the right to the hearing, or if the minor is now protesting the admission and requesting a hearing, Minor's Counsel must again advise the minor of the right to a hearing. A hearing must be held within five work days from the date the minor requests a hearing unless an agreement has been reached pursuant to rule 8.11.5H.

C. If, in the opinion of Minor's Counsel, the minor is not freely, voluntarily, and intelligently waiving the right to the hearing, or if the minor is protesting the admission and is requesting a hearing, Minor's Counsel must notify facility staff of the need for a hearing, and the facility staff or responsible person must arrange for a hearing through the Office of Counselor in Mental Health. A hearing will be held within five work days from the date Minor's Counsel informs the facility of the need for a hearing (unless an agreement has been reached pursuant to rule 8.11.5H.

D. In situations where a minor was admitted as an inpatient to a facility in accordance with the provisions of this procedure and waived the right to a hearing and subsequently indicates to Minor's Counsel, any member of the treatment staff, or the responsible person a desire to have a hearing and/or be released from the facility, then a hearing will be conducted by a hearing officer within five work days from the time of the request for hearing being filed with the Office of Counselor in Mental Health, unless agreement has been reached pursuant to rule 8.11.5H.
(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.5

Protesting Minor

A. When the minor protests the admission and requests a hearing, the facility staff or Minor's Counsel must promptly telephone the Office of Counselor in Mental Health and request a hearing;

B. No admission will be made for a protesting minor under these procedures until a hearing is held or the minor waives the right to a hearing. It is the intent of these procedures that hearings be held on a pre-admission basis, unless the minor has been previously admitted under other provisions of law;

C. Minor's Counsel will be appointed to represent the minor at all hearings for admission to a hospital for acute psychiatric treatment;

D. Upon receipt of the request for a hearing, the Office of Counselor in Mental Health will:

1. Set a date for a hearing which shall be scheduled no later than five work days after the request for hearing has been received unless agreement has been reached pursuant to rule 8.11.5H; and

2. Give notice of the hearing to the following by telephone:

a. Minor's Counsel;

b. The proposed facility;

E. The proposed facility or responsible person must notify the minor of the hearing;

F. The proposed facility must make reasonable effort to notify the responsible person and/or parent(s) of the hearing;

G. Minor's Counsel and the hearing officer may review all clinical and medical records in accord with the Welfare and Institutions Code sections 5328, subdivision (j), 5328, subdivision (m), and 5540-5546;

H. Nothing herein precludes the hearing from being held more than five work days from the date of the request, for good cause, and upon agreement of the hearing officer and attorney or the Minor's Counsel;

I. At the hearing, Minor's Counsel represents the minor. The minor and Minor's Counsel have the right to:

1. Review the Physician's affidavit;

2. Be present at the hearing;

3. Present evidence and call witnesses;

4. Confront and cross-examine witnesses; and

5. Waive the minor's right to be present at the hearing;

J. The hearing will be held in a place convenient to the parties and in an informal setting. The public will be excluded from the hearing, subject to exceptions made at the discretion of the hearing officer, inclusive of family

members. Hearings will be electronically recorded, and all records will be held as confidential as provided in Welfare and Institutions Code section 5328;

K. Hearings will be conducted in an informal manner and the hearing officer may consider all evidence of probative value irrespective of whether it complies with formal rules of evidence. The decision of the hearing officer will be based on the preponderance of evidence. All of the following will be established at the hearing:

1. The minor suffers from a mental disorder;

2. The proposed treatment program requires 24-hour hospital care and is reasonably expected to ameliorate the mental disorder;

3. The proposed facility in which the minor is to be placed is the least restrictive and most appropriate facility which can fulfill the objectives of treatment; and

4. If the treatment program is not in the minor's home community, the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community;

L. The hearing officer will make findings in writing to support the decision. Following the hearing, the hearing officer will issue an order authorizing admission to the recommended or alternate facility or an order denying admission. Copies of the findings and order will be provided to all the following:

1. The minor;

2. Minor's Counsel;

3. The responsible person upon request; and

4. The proposed facility.

Whenever possible a mental health professional who will participate in treatment in the proposed facility or a professional person who has participated in the minor's treatment should be available to present testimony at the hearing;

M. Nothing in these procedures requires a facility to accept a minor;

N. The minor may be admitted to the authorized facility within fifteen calendar days following the hearing.

(Adopted 7/1/2006; Rev. 1/1/2011; Rev. 1/1/2014)

Rule 8.11.6

Facility Review

Facilities accepting minors under this procedure must provide periodic review of the minor's treatment program to assure that continued treatment is required. Documentation of such reviews must appear in the minor's records at least monthly.

(Adopted 7/1/2006)

Rule 8.11.7

Confidentiality

Confidentiality must be in accord with Welfare and Institutions Code section 5328 et seq. The hearing officer will be considered a "court" as referenced in Welfare and Institutions Code section 5328, subdivision (f).

(Adopted 7/1/2006)

Rule 8.11.8

Records

Records must be maintained as provided for by law.

(Adopted 7/1/2006)

Rule 8.11.9

Writ of Habeas Corpus

If admission is authorized, Minor's Counsel must advise the minor of the right to a writ of habeas corpus hearing. If a request for release is filed, the writ of habeas corpus hearing will be in the Mental Health Division.

(Adopted 7/1/2006; Rev. 1/1/2014)

Rule 8.11.10

Filing a Writ of Habeas Corpus

Nothing herein deprives the minor of the right to seek a writ of habeas corpus.

(Adopted 7/1/2006)

CHAPTER 12

APPOINTED COUNSEL, FEES, COSTS

Rule 8.12.1

Representation of Patients in Mental Health Court

If the patient has not retained private counsel, the Public Defender is appointed to represent patients in the Mental Health Court in accordance with the authorization of the Board of Supervisors. When the Public Defender has a conflict in representing a patient, then the Alternate Public Defender will be appointed. If the Alternate Public Defender cannot represent the patient, then the Private Conflict Counsel will designate counsel to represent the patient. If Private Conflict Counsel is unable to appoint counsel, then the Mental Health judge will appoint counsel. (Adopted 7/1/2006)

Rule 8.12.2

Private Conflict Counsel

A. Services Subject to Compensation. In any case where counsel has been appointed to represent a person in Mental Health Court proceedings, and where payment of attorney fees will be made by the County of San Diego through Private Conflict Counsel, the determination of which attorney services are to be compensated, and the amount of reimbursement, will be made by the Private Conflict Counsel, consistent with the policies and procedures of the Private Conflict Counsel Manual effective at the time such services are rendered.

B. Costs Subject to Reimbursement. In those cases where costs incurred by appointed counsel, including mileage, will be reimbursed by the County of San Diego through Private Conflict Counsel, the determination of which costs are subject to reimbursement, and the amount of reimbursement, will be made by Private Conflict Counsel.

C. Notice of Termination of Contract. Where an attorney appointed to represent a patient in the Mental Health Court pursuant to policies and procedures of Private Conflict Counsel discontinues providing such services, notice must immediately be served by such attorney on the Public Conservator and Private Conflict Counsel. Proof of service and a copy of the notice must be filed at the Mental Health Desk and the Office of the Public Defender. (Adopted 7/1/2006)

Rule 8.12.3

Patient Reimbursement of Appointed Counsel's Fees and Costs

A. Determination. In those cases where counsel has been appointed to represent the patient, and it is believed that the patient has sufficient funds to pay attorneys' fees and costs, the Mental Health Court judge, upon a timely request by counsel and notice to the conservatee, will determine which legal services and costs, and the amounts, are to be reimbursed by the patient.

B. Stipulation. Reimbursement to the County for fees and costs can be ordered based on the stipulation of the parties.

C. Procedural Requirements - Notice to Patient

1. Payment of attorney fees and reimbursement for attorney costs will not be ordered paid by conservatee unless the conservatee, and the conservator for the estate or the conservatee's personal representative, if any, have been notified in writing of the possibility that fees and costs may be ordered to be paid by the conservatee.

2. It is the duty of the office of the Public Conservator, or such agency or individual as may file the initial petition for permanent conservatorship, to include on the face thereof written notice of the possibility that the conservatee's estate may be held liable for the payment of attorney fees and reimbursement of cost incurred for services rendered relative to any mental health law proceedings that takes place after the filing of said petition and during the pendency of the conservatorship.

D. Request for Conservatee to Pay Fees and Costs

1. Counsel appointed for the conservatee may submit a request to the Mental Health Court judge that the conservatee pay legal fees and/or reimburse the counsel for costs. Appointed counsel (a) may make the request in open court at the time of the subject hearing in the presence of the conservatee; or (b) may submit a separate noticed petition for same, and calendar a hearing with proper notification to the conservatee and the conservator in accordance with the established notice procedures as stated in "Notices" of these rules. In the notice, counsel for the conservatee must specify the amount of the attorney fees and costs being requested and sufficient details to show the reasonableness of the requests.

2. Counsel appointed for the conservatee has the burden of proving: (a) that the conservatee has sufficient funds to pay the requested amount of attorney fees and costs, and (b) the reasonableness and accuracy of the amounts requested.

3. In ruling on the request, the Mental Health Court judge will: (a) determine whether the conservatee has sufficient funds, and (b) set the amount of fees to be paid and the amount of costs to be reimbursed. The judge will consider the amount customarily awarded in routine cases.

(Adopted 7/1/2006)