



**Uniform Local Rules
of the
Marin County Superior Court**

January 1, 2012

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN



ORDER II-11

REVISING AND ADOPTING
2012 UNIFORM LOCAL RULES
OF THE MARIN COUNTY SUPERIOR COURT

WHEREAS, Proposition 220 (Senate Constitutional Amendment 4) having been enacted into law by a majority of the California voters, and the Judges of Marin County, in accordance with the provisions of Government Code § 70201(b), having unanimously endorsed and established a unified Superior Court for the County of Marin on June 11, 1998; and

WHEREAS, the Judges of the Marin County Superior Court having reviewed and revised heretofore existing local rules governing the practice of civil, criminal, traffic, juvenile, probate, family and miscellaneous in accordance with the provisions of Rule 10.613(h) of the California Rules of Court; and

WHEREAS, proposed amendments to local rules 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.9, 2.10, 2.11, 2.15, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 6.6, 6.7, 6.15, 6.20, 6.21, 6.28, 6.31, 6.34, 7.18 and Appendices G, H, I, J and K have been reviewed and approved by the Judicial Council of California; and

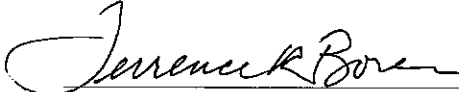
IT IS HEREBY ORDERED that the above referenced amendment to the *Uniform Local Rules of the Marin County Superior Court* is adopted for use and supersedes those relevant local rules previously governing; and

IT IS FURTHER ORDERED that the effective date of the above referenced amendment to the *Uniform Local Rules of the Marin County Superior Court* shall be January 1, 2012, with all other existing provisions of the *Uniform Local Rules of the Marin County Superior Court* remaining unchanged and in effect; and

IT IS FURTHER ORDERED that, in accordance with the provisions of Rule 10.613(d) of the California Rules of Court, the Executive Officer shall file an electronic copy of the *Uniform Local Rules of the Marin County Superior Court* with the Judicial Council of California, and further make them available for inspection and copying at locations required by Rule 10.613(b); and

IT IS FURTHER ORDERED that, as authorized by the provisions of Rule 10.613(e)(2), the Judges of the Marin County Superior Court hereby delegate to the Marin County Law Library the responsibility for maintaining a current set of local rules of every California county for public examination.

November 15, 2011



Honorable Terrence R. Boren,
Presiding Judge

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1. CIVIL RULES

GENERAL PROVISIONS

1.1 CITATION

These civil rules should be cited as "Marin County Rule, Civil" or "MCR Civ" followed by the rule number (e.g., Marin County Rule, Civil 1.1 or MCR Civ 1.1).

[Rule 1.1 adopted effective 5/1/98]

1.2 APPLICATION OF RULES

Marin County Superior Court is a unified trial court. All civil cases filed in Marin County, with the exception of small claims, will be assigned a single judge for all purposes at the time of filing of the action. Unless otherwise noted, these civil rules apply to all civil cases, regardless of classification or jurisdictional amount. These rules do not apply to family law cases, except as provided by the family law rules (see Marin County Rule, Family 6.2). Although the Court is unified, statutory and state-wide rules regarding the differences between the jurisdictional classification of cases remain in effect (e.g., jurisdictional limits, discovery rules).

[Rule 1.2 adopted effective 5/1/98; amended 1/1/04]

LAW AND MOTION MATTERS

1.3 FORM AND FORMAT OF PAPERS PRESENTED FOR FILING

All documents presented for filing in any civil law and motion proceeding must comply with the Civil Law and Motion Rules of the California Rules of Court (CRC), commencing with CRC 3.1110 et seq., as well as CRC 2.100 et seq.

[Rule 1.3 adopted effective 5/1/98; amended 7/1/07]

1.4 MISCELLANEOUS GENERAL PROVISIONS

A. Copies for Filing. An original and one identical copy of each motion, petition for writ of mandate, attachment or possession, preliminary injunction, and all other papers filed in support of or in opposition thereto are required for filing. The copy should be identified as such on the upper right-hand corner of the document, and should contain the same items as the original with regard to tabs, etc., including any highlighting.

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B. Conformed Copies. If a conformed copy is desired, an additional copy must be submitted. The Court will conform a maximum of two copies of any pleading at the time of filing. Parties requesting that the Clerk's Office mail them conformed copies of their filings must provide a self-addressed stamped envelope of proper size and with sufficient postage. If no envelope is provided, the conformed copy will be placed in the Will Call cabinet in the Clerk's Office in Room 113 for a maximum of sixty (60) days. If the envelope provided or the postage is insufficient to mail the entire conformed copy, only the face of the pleading will be mailed and the conformed copy will be placed in the Will Call cabinet for a maximum of sixty (60) days.

C. Reincorporation of Earlier Documents. Parties shall not reincorporate earlier documents into a pending motion.

D. Filing Documents on Shortened Time. All motions or other pleadings filed on an order shortening time shall be accompanied by a copy of that order. Alternatively, it may be stated on the caption page that the matter was brought on an order shortening time, with specific identification of the date of the order and the name of the signing judge.

E. Court's Research Staff. Neither the parties nor their counsel shall initiate communications with the Court's research attorney staff, but shall promptly respond to inquiries directed to them by staff members.

[Rule 1.4 adopted effective 5/1/98; amended 1/1/10]

1.5 HEARINGS

A. Obtaining Hearing Date. The moving party may obtain a hearing date from the Law & Motion Clerk by telephone or at the clerk's counter. The date will be held provided that the moving papers are filed with the Clerk within three court days thereafter. If full and complete moving papers are not filed within three court days after obtaining the date, the date shall be vacated and counsel must obtain a new hearing date before filing or serving moving papers. A *pro forma* motion designed to protect the reserved hearing date will not be considered even if later supplemented by satisfactory material.

B. Continuances. Requests to continue law and motion matters may be made by phone to the Law & Motion Clerk (415) 444-7040 until the close of business the third court day before the hearing date. Such continuances will only be granted at the request of the moving party and where there is an agreement between the parties. After the close of business the third court day before the hearing date, no matter will be continued (whether by stipulation or otherwise) without written order of the Court, and for good cause shown.

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C. Removing Matters From Calendar. In order to avoid unnecessary or untimely attention to motions which go off calendar, the parties should discharge their duty under CRC 3.1304 (b) at the earliest possible time. A matter will not be taken off calendar after noon on the date the tentative ruling will be released.

[Rule 1.5 adopted effective 5/1/98; amended 7/1/07]

1.6 TENTATIVE RULINGS

A. Obtaining Rulings. Tentative rulings may be obtained online (http://www.marincourt.org/tentative_landing.htm) or by calling (415) 444-7170 from 2:00 p.m. to 4:00 p.m. the court day preceding the scheduled hearing.

B. Oral Argument. If a party wants to present oral argument or request modification of the tentative ruling, he/she *must contact the court at (415) 444-7046 and all opposing counsel or parties by 4:00 p.m. of the court day preceding the scheduled hearing and briefly identify the issues to be argued.* Contact with opposing counsel's office shall be deemed adequate notice that argument is being requested (i.e., it is not necessary to speak with counsel directly). Unless both the Court and opposing counsel have been notified of a request to present oral argument, no oral argument will be permitted unless the Court otherwise directs.

C. Sanction Requests. All requests for sanctions not ruled upon are deemed denied.

[Rule 1.6 adopted effective 5/1/98; amended 7/1/10]

1.7 ORDERS

Except in unlawful detainer cases, or when the Court otherwise directs, the prevailing party shall prepare an order consistent with the announced ruling in accordance with CRC 3.1312. Counsel shall meet and confer in good faith to resolve all differences concerning the wording of the order. If after argument, the Court adopts the tentative ruling as the final ruling in a case, counsel may deliver that order to the judge at the end of the hearing without obtaining approval of other counsel. Once an order is signed by the judge and filed, the party preparing the order shall mail filed-stamped copies to all counsel.

[Rule 1.7 adopted effective 5/1/98; amended 7/1/07]

1.8 APPLICATIONS FOR EX PARTE ORDERS, PROVISIONAL REMEDIES AND ORDERS SHORTENING TIME

All applications must comply with applicable CRC rules (e.g., CRC 3.1200 et seq., 3.1300.). Except as otherwise specifically provided by these rules, applications for

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ex parte orders or provisional remedies shall be presented as follows: Civil applications involving injunctive relief, extraordinary provisional remedies (writs of attachment), emergency relief and appointment of receivers and any matters subject to the civil delay reduction program shall be presented to the civil judge assigned to the action at the time of filing. However, if the judge to whom an application should be presented under this rule is unavailable (i.e., not physically present) or is disqualified, or in cases of emergency, then the application should be presented to the Supervising Civil Judge or his/her designee. The time for presenting applications in each department may be obtained online (http://www.marincourt.org/judicial_dept_assign.htm).

[Rule 1.8 adopted effective 5/1/98; amended 7/1/11]

DEFAULTS, NAME CHANGES AND UNCONTESTED MATTERS; PROCEEDINGS INVOLVING MINORS

1.9 HEARING ASSIGNMENT

Defaults, name changes and other uncontested matters shall be assigned for hearing by the Court Clerk on the calendar of the Civil Judge. No defaults or uncontested matters will be set for hearing by the Default Clerk unless the proposed judgment, and all pleadings and documents necessary for hearing of the matter, are on file in the Clerk's Office.

[Rule 1.9 adopted effective 5/1/98]

1.10 ATTORNEY'S FEES IN DEFAULT CASES

Attorney's fees in default cases will be fixed pursuant to the Attorney's Fee Schedule (civil cases) adopted by the Court, which is available upon request from the Clerk's Office.

[Rule 1.10 adopted effective 5/1/98; amended 7/1/99]

1.11 PROCEEDINGS INVOLVING MINORS

A. Approval of Compromise of Minor's Claim. All applications for Court approval of a compromise of minor's claim pursuant to Probate Code, Division 4, Part 8, and CRC 7.950, shall include as attachments current medical reports giving a diagnosis and prognosis of the minor's condition. Medical costs covered by medical insurance available to the minor or parents shall not be included as items of reimbursement.

B. Attorney's Fees. Attorney's fees in these proceedings shall not exceed an amount equal to 25% of the net proceedings of the settlement (the gross less reimbursable medical-legal costs), without substantial justification for a higher fee.

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C. Forms to Deposit Money. All applications filed hereunder requesting orders to deposit money belonging to minors shall be accompanied by completed Judicial Council forms MC-350, MC-351, and MC-355.

[Rule 1.11 adopted effective 5/1/98; amended 7/1/08]

UNLAWFUL DETAINER

1.12 DEFAULT JUDGMENTS

Clerk's Default Judgments for Restitution Only (CCP §1169) shall be processed within four hours of receipt. The plaintiff may apply to the assigned Civil Judge for an Amended Unlawful Detainer Judgment for forfeiture of the lease, money damages, attorney's fees and costs. If restitution of possession is not at issue, the plaintiff may apply for judgment or amended judgment by declaration under CCP §585(d).

[Rule 1.12 adopted effective 5/1/98]

1.13 TRIAL SETTING

An at-issue memorandum must be filed to set an unlawful detainer case for trial. The Court shall set the case for trial within 20 days, pursuant to CCP §1170.5. The Clerk shall send a Notice of Trial by mail to all parties.

[Rule 1.13 adopted effective 5/1/98]

1.14 ORDERS

The prevailing party shall prepare an order after the Court has granted any motion. Because time is of the essence, the prevailing party need not send the order to the opposing party for approval as to form.

[Rule 1.14 adopted effective 5/1/98]

ADMINISTRATION OF CIVIL LITIGATION

1.15 EFFECTIVE DATE

The rules relating to the administration of civil litigation are adopted to implement the Trial Court Delay Reduction Act set forth in Government Code (Gov. Code) §68600 et seq., and applies to all civil cases filed after July 1, 1992 and such other cases assigned to the program by the Presiding Judge. Juvenile, probate and domestic relations cases,

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extraordinary writs, unlawful detainer cases and asset forfeiture cases under Health & Safety Code (H&S) §11470 et seq. are not included.

[Rule 1.15 adopted effective 5/1/98]

1.16 POLICY

A. Case Management. It is the policy of the Marin County Superior Court to manage all cases from the time the complaint is filed in accordance with Gov. Code §68607. It is also the policy of the Court that those cases subject to these rules will be assigned to one judge for all purposes.

B. Firm Dates. It is the policy of the Court that once any date has been set, it cannot be changed without a showing of good cause. The Court may, however, allow the parties one stipulated continuance of the case management conference.

C. Modification. Nothing in these rules shall be interpreted to prevent the Court in an individual case from issuing an order modifying the application of the above policies to such case based on a specific finding that the interests of justice require such modification.

D. Application of Local Rules. All Marin County Superior Court local rules shall apply to the cases assigned to this program unless expressly contravened by the provision of these civil administration rules, or waived by the Civil Judge to which the case is assigned.

[Rule 1.16 adopted effective 5/1/98; amended 1/1/10]

1.17 DEFINITIONS

The term "counsel" includes parties representing themselves.

The term "plaintiff" also includes cross-complainant.

The term "defendant" also includes cross-defendant.

The term "day" means *calendar* day unless otherwise specified.

[Rule 1.17 adopted effective 5/1/98]

1.18 FORMS TO BE ISSUED BY CLERK UPON FILING OF COMPLAINT

Upon the filing of a Complaint, the plaintiff shall receive the following from the Clerk for service upon the parties:

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1. Notice of Case Management Conference indicating the name of the assigned judge and date of the first Case Management Conference. The Case Management Conference will be set within 180 days of the filing date of the original complaint. The Court may continue this date if necessary to comply with Gov. Code §68616.
2. A blank Case Management Statement.
3. A blank Stipulation to Use of Alternative Dispute Resolution Process.
4. A blank Ex-Parte Application for Extension of Time to Serve Pleading and Orders.
5. A blank Notice of Stay of Proceedings.
6. A blank Notice of Termination or Modification of Stay.
7. A blank Notice of Settlement of Entire Case.
8. A blank ADR Information Form.
9. A blank Statement of Agreement or Non-Agreement.

If a case is transferred from another jurisdiction after a responsive pleading has been filed, the First Status Conference will be set within 45 days from the filing of the action in this Court. If no responsive pleading has been filed, the First Status Conference will be set within 90 days from the Order of Transfer. In all other particulars, the plaintiff in a transferred case will receive from the Clerk the same information and items as described above.

[Rule 1.18 adopted effective 5/1/98; amended 1/1/10]

1.19 SERVICE OF SUMMONS AND COMPLAINT

A. Forms With Summons and Complaint and Return of Proof of Service.

The plaintiff shall serve the Summons and Complaint which must be served together with a Notice of Case Management Conference, a blank Case Management Statement, a blank ADR Information Form, and a blank Statement of Agreement of Non-Agreement promptly after such pleading is filed.

B. Sanctions. Failure to serve the Complaint and file a proof of service within 60 days of the filing of the Complaint will result in an Order to Show Cause being issued as to why counsel shall not be sanctioned for failure to comply with this rule. Responsive papers to the Order to Show Cause must be filed and served five court days in advance of the hearing.

C. New Parties in Cross-Complaint. If a cross-complaint names new parties, the cross-complainant shall serve copies of the Notice of Case Management Conference, the blank Case Management Statement, the blank ADR Information Form, and the Statement of Agreement or Non-Agreement on the new parties at the same time that the cross-complaint is served.

[Rule 1.19 adopted effective 5/1/98; amended 1/1/04]

1.20 RESPONSIVE PLEADING

A. Service. Each party served shall file and serve all necessary responsive pleadings within the time required by law (30 days). The parties may stipulate to an extension of not more than 15 additional days.

B. Transferred Cases. When a civil case which is subject to this rule is transferred from another jurisdiction to this Court prior to the filing of a responsive pleading, a responsive pleading must be filed within 30 days after service of notice of the filing of the action in this Court, if the Complaint has been served.

C. Entry of Default.

1. Absent the filing of responsive pleadings, the plaintiff is required within 10 days after the statutory time for filing the responsive pleading, to request the entry of a default. Upon the plaintiff's failure to request entry of default, as provided herein, an Order to Show Cause will issue as to why sanctions should not be imposed.

2. After a request for entry of default is filed, the Court will set and notice the case for default hearing. In lieu of appearance in an appropriate case, a declaration under CCP §585 may be submitted.

3. Parties may seek to set aside a default by a stipulation submitted with a proposed order. If the Court approves the order, an Answer or other responsive pleading must be filed within ten days of the filing of the Order.

[Rule 1.20 adopted effective 5/1/98; amended 7/1/99]

1.21 CASE MANAGEMENT CONFERENCE PROCEDURE

The Court will conduct a Case Management Conference pursuant to CRC 3.722. Trial counsel for each appearing party shall attend the First Case Management Conference, shall be familiar with the case, and shall be prepared to discuss all matters enumerated in CRC 3.724 and 3.727. Pursuant to CRC 3.811(a)(2), (3) and (5), the Court may, despite the lack of a stipulation, order that appropriate cases be submitted to judicial arbitration. Counsel who fail to attend or participate shall be subject to sanctions.

[Rule 1.21 adopted effective 5/1/98; amended 1/1/10]

1.22 SETTLEMENT CONFERENCE

A. Mandatory Settlement Conference. A mandatory settlement conference shall be held in all cases where a jury trial has been demanded. The date for the settlement conference shall be assigned at a case management conference.

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B. Settlement Conference Statement. Counsel shall lodge an original and two copies of a settlement conference statement in the Calendar Department (Room 113) 10 court days before the settlement conference so that the statements can be distributed to the settlement panelists. The court will impose sanctions of \$49 per day for statements lodged less than five court days before the settlement conference. The date and time of the settlement conference and trial shall be typed on the face sheet of the statement. The settlement conference statement shall include the following, where applicable:

1. A brief statement of the case. For example: "This is a personal injury action arising out of a rear-end collision on January 1, 2003 at 4th and B Street in San Rafael."
2. A statement of facts including:
 - a. Factual and legal contentions in dispute;
 - b. Citations of authorities which support legal propositions;
3. List of all special damages claimed, including corroborating evidence;
4. Pertinent excerpts of medical reports, depositions, photographs, and records with *material portions highlighted* on all copies submitted;
5. The highest previous offer and lowest previous demand, and a current offer or demand;
6. The date when the last face-to-face settlement discussion was held;
7. Presentation of any special barriers to settlement.

C. Required Attendance. Attendance at settlement conferences by counsel completely familiar with the case is required. Counsel must be accompanied by his/her client and, where third party payors are involved, someone with the final authority to settle the case. *Exceptions to this rule require advance written approval by the Court.*

D. Sanctions. Failure of an attorney and/or party to prepare for, appear at, or participate in a settlement conference, unless good cause is shown for any such failure, is an unlawful interference with the proceedings of the Court, and the Court may impose sanctions, including but not limited to, any and/or all of the following: monetary sanctions to be paid to the Clerk of the Court; monetary sanction to be paid to other parties which may include, among other things, costs, actual expenses and counsel fees; and the Court may order an appropriate change in the calendar status of the action.

[Rule 1.22 adopted effective 5/1/98; amended 7/1/11]

1.23 ISSUE CONFERENCE

A. Attendance. In all cases, an Issue Conference, which is set on the day of trial unless ordered to the contrary, will be held before the trial judge. Trial counsel for each party must attend such conference. The trial judge may also require all principals or clients and claims representatives to attend. No additional witnesses nor exhibits will be used at trial if not listed in the Issue Conference Order except for good cause.

B. Documents to be Filed for Issue Conference. Not later than five court days before an Issue Conference, each party shall file and serve the following:

1. Issue Conference Statement;
2. A proposed statement of the case to be read to the jury;
3. Proposed voir dire questions;
4. Proposed jury instructions;
5. Proposed verdict forms;
6. Motions *in Limine* (if any). All motions *in limine* must be in writing. Courtesy copies of all *in limine* motions must be provided directly to the department. All *in limine* motions must be consecutively numbered. If a party submits more than five *in limine* motions, the courtesy copies must be provided in a binder with an index. Each motion must be separately tabbed with tabs meeting the requirements set forth in CRC 3.1110(f).

At the conclusion of the Issue Conference, the Court may prepare and file an Issue Conference Order which shall govern the proceedings in the case.

C. Contents of Issue Conference Statement. The following shall be included in the Issue Conference Statement and will be considered at the Issue Conference:

1. A statement of the facts, law, and respective contentions of the parties regarding liability, damages, nature and extent of injuries;
2. Any unusual evidentiary or legal issues anticipated at trial;
3. All matters of fact believed by any party to be appropriate for stipulation;
4. A list of all witnesses to be called and a brief statement of anticipated testimony;

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5. A list of all exhibits to be introduced;
6. A trial length estimate.

[Rule 1.23 adopted effective 5/1/98; amended 7/1/07]

1.24 UNINSURED MOTORIST CASES

A. Required Declaration. Promptly upon learning that an action is to proceed as an uninsured motorist case, plaintiff's counsel shall file a declaration captioned "Request for Temporary Exemption - Uninsured Motorist Case" which sets forth the information upon which such a determination has been made. The declaration shall include:

1. A statement that coverage likely exists under an uninsured motorist's insurance policy;
2. The name of the carrier and limits of coverage;
3. A statement of whether counsel believes that the limits of coverage are adequate to compensate for known loss or damage, that plaintiff(s) will promptly pursue such remedy, and that it is counsel's present intention to assign the claim or dismiss the pending action upon conclusion of the uninsured motorist claim.

B. Court Designation. Upon review of the required declaration, the Court may designate the action as an Uninsured Motorist Case. Upon such designation, the time requirements under these administration rules will be suspended for not more than 180 days from the date the Complaint was filed or from such other date the Court, in its discretion shall fix. The Court shall set a review hearing to be held at the end of the suspension period. If a dismissal has not been filed five court days before such hearing, plaintiff's counsel shall file a declaration five court days prior to the review hearing, which declaration shall describe what steps have been taken to arbitrate the case and may include a request for additional time to conclude the case and facts showing that such additional time is warranted.

[Rule 1.24 adopted effective 5/1/98; amended 1/1/04]

1.25 SANCTIONS

If the Court finds that any counsel, a party represented by counsel, or a self-represented party has failed to comply with these local rules, the Court on motion of a party or on its own motion may strike out all or any part of any pleading 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 as otherwise provided by

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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.

[Rule 1.25 adopted effective 5/1/98; amended 1/1/04]

1.26 TELEPHONE APPEARANCES

Pursuant to California Rule of Court 3.670, the Court has contracted with CourtCall LLC, a private telephonic appearance provider. The telephone number for CourtCall LLC is (888) 88-COURT [(888) 882-6878]. The website address is www.courtcall.com.

An attorney or self-represented party making a CourtCall appearance shall: (a) eliminate to the greatest extent possible all ambient noise from his or her location; (b) be required, during the appearance, to speak directly into a telephone handset; and (c) not utilize the “hold” button. An attorney or self-represented party appearing telephonically shall state his or her name for the record each time he or she speaks and shall participate in the appearance with the same degree of courtesy and courtroom etiquette as is required for a personal appearance.

[Rule 1.26 adopted effective 7/1/00; amended 7/1/11]

SMALL CLAIMS CASES

1.27 HEARING SCHEDULE

Regular court sessions for small claims trials shall be scheduled as required by the Presiding Judge and published by the Court Executive Officer.

[Rule 1.27 adopted effective 5/1/98]

1.28 CONTINUANCE POLICY

Continuances of small claims proceedings will be granted by the Court only if the request is submitted in writing, and received by the Court at least 10 calendar days before trial and/or upon a showing of good cause. A fee shall be charged to continue the hearing, in accordance with CCP §116.570(d).

Plaintiffs are allowed one continuance for proof of service. If the plaintiff does not serve the opposing party by the second court date and is requesting another continuance, plaintiff must appear in court to make the request. If there is no appearance or proof of service on the second court date, the case shall be dismissed by the Court.

[Rule 1.28 adopted effective 5/1/98; amended 1/1/10]

APPELLATE DIVISION

1.29 SETTING CASES AND FILING BRIEFS

A. Policy. It is the policy of the Court to strictly adhere to the applicable CRC rules relating to appeals and writ proceedings. (See CRC 8.800 et seq.)

B. Copies. At the time of filing any original brief with the Clerk of the Appellate Division, the party filing the same shall lodge with the Clerk *four* legible copies thereof.

[Rule 1.29 adopted effective 5/1/98; amended 7/1/09]

1.30 RECORD ON APPEAL

The Appellate Division elects to authorize the use of the original court file in lieu of a clerk's transcript as the record on appeal in misdemeanor and limited civil appeals, pursuant to CRC 8.830(a)(1)(B), 8.833, 8.860(a)(1)(B) and 8.863.

[Rule 1.30 adopted effective 1/1/10]

MEDIATOR COMPLAINT PROCEDURE

1.31 PROCEDURES FOR HANDLING COMPLAINTS

A complaint received on the conduct of a mediator on the mediation panel will be directed to the presiding judge. A file will be maintained showing each complaint and its disposition. The presiding judge or a judge or judges designated by the presiding judge will review each complaint promptly. Each complainant will be notified promptly in writing of the disposition of the complaint.

[Rule 1.31 adopted effective 1/1/04]

2. FELONY AND MISDEMEANOR RULES

2.1 CITATION

These felony and misdemeanor rules should be cited as "Marin County Rule, Felony/Misdemeanor" or "MCR Fel/Misd" followed by the rule number (e.g., Marin County Rule, Felony/Misdemeanor 2.1 or MCR Fel/Misd 2.1).

[Rule 2.1 adopted effective 5/1/98; amended 1/1/12]

2.2 ASSIGNMENT OF CRIMINAL MATTERS

A. New Felony Complaints - no other felony matters pending. Each new felony complaint shall be assigned at random upon arraignment for all purposes to one of the Marin County Superior Court, Criminal Division Judges.

B. Petitions to Revoke or Modify Probation or Terminate Diversion. A petition to revoke or modify probation or terminate diversion, or any post-judgment matter in a felony case, shall be assigned upon arraignment or other first appearance for all purposes to the sentencing judge or, if the sentencing judge is not currently sitting in a felony department, the currently-sitting judge succeeding the sentencing judge.

C. New Felony Complaint - other felony matters pending. If a defendant in a new felony complaint has pending or post-judgment felony matters, the new complaint shall be assigned to the same judge to whom the pending and post-judgment felony matters have previously been assigned or are to be assigned pursuant to MCR Crim. 2.2A, 2.2B or 2.2E hereof.

D. New or Pending Misdemeanor Complaints - felony matter pending. If a defendant has a felony matter, whether new, pending or post-judgment, then any new, pending or post-judgment misdemeanor matter shall be assigned to the same judge.

E. New Felony or Misdemeanor Complaints With Multiple Defendants - other felony or misdemeanor matters pending.

1. If any co-defendant in a new felony or misdemeanor complaint has pending or post-judgment felony matters, the new complaint, together with any pending or post-judgment misdemeanor matters as to that or any other co-defendant, shall be assigned to the judge to whom the pending or post-judgment felony matters have previously been assigned or are to be assigned pursuant to MCR Crim. 2.2A or 2.2B hereof.

2. If more than one co-defendant in a new felony or misdemeanor complaint has pending or post-judgment felony matters, the new complaint and all pending and post-judgment matters of all co-defendants shall be assigned to the

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judge to whom the most recent pending or post-judgment felony matter has been assigned or is to be assigned pursuant to MCR Crim. 2.2A or 2.2B hereof.

F. Misdemeanor Trials.

1. The Master Calendar Judge of the Criminal Division shall assign misdemeanor cases for trial. Judges and Commissioners will be available for trial of misdemeanor cases pursuant to a schedule established by the Presiding Judge.

2. Motions for continuance, changes of plea, requests for a pre-trial conference, or pre-trial motions for cases already set for trial must be heard in the department of the Master Calendar Judge of the Criminal Division.

[Rule 2.2 adopted effective 5/1/98; amended 1/1/12]

2.3 FILING OF CRIMINAL COMPLAINTS

A criminal complaint charging an in-custody defendant shall be filed not later than noon of the day the defendant is to appear for arraignment, if a misdemeanor, or the day preceding arraignment, if a felony. A criminal complaint charging an out-of-custody defendant shall be filed by no later than 3:00 p.m. two (2) court days prior to the defendant's appearance.

[Rule 2.3 adopted effective 5/1/98; amended 1/1/12]

2.4 BENCH WARRANTS

In any case in which a bench warrant has been issued, the defendant may place the matter on calendar by personally appearing at the Clerk's Office. No written notice is required. Counsel intending to make a general appearance with a defendant may request to place a case on calendar in writing or by telephone to the calendar division of the Clerk's Office. The matter will be heard within two (2) court days after the request is made.

[Rule 2.4 adopted effective 5/1/98; amended 1/1/12]

2.5 LETTER PLEAS IN MISDEMEANOR CASES

A letter plea on the Court's Arraignment Plea and Counsel Form (CR016) may be filed for first appearance in a misdemeanor case or first appearance on a petition to revoke probation or diversion in a misdemeanor case. The letter plea may set a date for first appearance by the defendant not to exceed forty-five (45) calendar days from the date

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that the plea is entered. Attorneys and parties are prohibited from modifying the Arraignment Plea and Counsel Form without written leave of court.

[Rule 2.5 adopted effective 5/1/98; amended 1/1/12]

2.6 MOTIONS

A. Felonies. At the time the Court sets a felony case for trial, the Court shall also set dates for the filing and service of motions and opposition and reply thereto, and for the hearing on such motions.

B. Misdemeanors.

1. In misdemeanor cases, a hearing date for motions and a trial date shall be set on the COP/SET (change of plea/trial set) date.

2. Motions to continue the dates set for hearing on motions shall be made in conformance with Penal Code §1050 on the 9:06 a.m. calendar of the Master Calendar Judge of the Criminal Division.

C. Filing and Service of Papers. Counsel shall deliver all moving, opposition and reply papers to opposing counsel on or before the date set for filing of such papers. Such delivery may be effected by personal delivery, courier or other certified mail carrier, or any other means designed to ensure actual receipt by the due date in compliance with this rule. Service by facsimile transmission is permitted if the parties agree and a written confirmation of that agreement is made. Counsel shall file all papers with the Court no later than 3:00 p.m. on the designated date.

[Rule 2.6 adopted effective 5/1/98; amended 1/1/12]

2.7 MOTIONS TO DISMISS PURSUANT TO PENAL CODE §995

In any case where the judge assigned a felony case for trial presided at the preliminary hearing, a motion to dismiss the information pursuant to Penal Code §995 should be noticed in the department of the Supervising Judge of the Criminal Division for purpose of assignment to another department for hearing.

[Rule 2.7 adopted effective 5/1/98]

2.8 MOTIONS FOR CONSOLIDATION

In the event that a motion for consolidation is made in cases assigned to different departments, the motion shall be heard in the department that has the lowest number file sought to be consolidated.

[Rule 2.8 adopted effective 5/1/98]

2.9 PENAL CODE §1538.5 MOTIONS IN FELONY AND MISDEMEANOR CASES

A. Moving Papers. Motions made pursuant to Penal Code §1538.5 must comply with the specific requirements set forth in subdivision (a)(2) of that section, including:

1. listing the specific items of property or evidence sought to be returned or suppressed;
2. setting forth the factual basis of the motion; and
3. setting forth the legal authorities that demonstrate why the motion should be granted.

Absent a showing of good cause, failure to comply with each of these requirements shall be grounds for denying the motion as without merit.

B. Response Papers. The People shall serve any written response in accordance with Penal Code §1538.5, and shall set forth with particularity the material facts in their opposition, including any justification for any warrantless search.

C. Reply Papers. The defendant may reply to the People's opposition papers, setting forth the factual and legal bases if defendant contends the People's opposition is inadequate.

D. Further Briefing. For good cause shown, the court may allow further briefing.

[Rule 2.9 adopted effective 5/1/98; amended 1/1/12]

2.10 JURY INSTRUCTIONS

A. Time for Submission. Pursuant to provisions of Penal Code §1093.5, proposed jury instructions shall be submitted to the Court before commencement of argument.

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B. Form. Proposed instructions from Judicial Council of California Criminal Jury Instructions (CALCRIM) may be offered by citation to the number and title of the instruction. Any deviation from the form of CALCRIM instruction shall be indicated by underscoring or other discernible method. Any special instruction or modification of a standard CALCRIM instruction shall be in writing and in a form suitable for submission to the jury. "Form suitable for submission to the jury" means the title and text of the instruction only, without any additional words, marks or symbols on the page.

[Rule 2.10 adopted effective 5/1/98; amended 1/1/12]

2.11 ADDING CASES TO CALENDAR

A case may be added to the calendar no later than 3:00 p.m. three (3) court days prior to the defendant's appearance. This time limitation may be shortened at the direction of a judge.

[Rule 2.11 adopted effective 1/1/04; amended 1/1/12]

2.12 GUARDIANS AD LITEM

In any case in which a prosecution is initiated under the Penal Code arising from neglect or abuse of a child, the court may appoint a guardian ad litem for a child-victim. The guardian ad litem for the child may be an attorney, a court-appointed special advocate (CASA), or a responsible adult who is not the child's parent or social worker. This rule is promulgated pursuant to the provisions of Welf. & Inst. C. §326.5 and CRC 5.662.

[Rule 2.12 adopted effective 1/1/04; amended 7/1/07]

2.13 PETITIONS FOR EXPUNGEMENT OF CRIMINAL CONVICTION (PENAL CODE §§ 17, 1203.4, 1203.4a)

A Petition and Order for Expungement of a criminal conviction (Judicial Council form CR-180) must be submitted with either a Statement of Assets (Judicial Council form CR-115) or a check payable to the Marin County Superior Court in the sum of \$120.00. The Court will notify the District Attorney's Office of the expungement submission. If the District Attorney objects to the petition, opposition to the petition shall be filed within thirty (30) court days, and the matter shall thereafter be set for hearing within twenty-one (21) court days. It will be set for hearing in the department of the Supervising Judge of the Criminal Division or the Judge who is currently assigned to the department in which the matter was previously heard. If the District Attorney does not object to the petition, it will be submitted to the Supervising Judge or to the Judge who is

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currently assigned to the department in which the matter was previously heard for approval. The fee for expungement of criminal records will not exceed \$120.00.

[Rule 2.13 adopted effective 7/1/07]

2.14 CRIMINAL PROTECTIVE ORDERS INVOLVING CHILD CUSTODY OR VISITATION

A. Inquiry by the Court. When the Court issues a criminal protective order, the Court shall determine whether there are any minor children of the relationship between the defendant/restrained person and the victim/protected person, and whether there are any court orders for custody/visitation for those minor children.

B. Court's Consideration. If there are minor children, the Court shall consider whether peaceful contact with the victim/protected person should be allowed for the purpose of allowing the defendant/restrained person to visit the minor children.

C. Database Review. The Court shall also examine available databases for existing protective or restraining orders before issuing permanent criminal protective orders.

D. Modification. If the Court includes minor children as named protected parties, the order may be made explicitly subject to modification by a family, juvenile, or probate judge. (See MCR Fam 6.31(F)(2) for modification by family, juvenile, or probate judge.)

E. Copy of Order to Family Law Department. The Court shall forward a copy of its order to the Family Law Department.

[Rule 2.14 adopted effective 7/1/08]

2.15 ENHANCED COURT COLLECTIONS PROGRAM

At the time the Court determines that a defendant is delinquent in making payments for fines, fees, penalty assessments and surcharges, the Court will refer the delinquent case to the Enhanced Court Collections Program (ECC). Upon such referral, ECC will contact the defendant to determine how the unpaid court ordered debt will be paid. ECC will utilize all available collection methods to resolve these unpaid debts, including monitored payment plans, skip tracing, referral to the Franchise Tax Board Court Ordered Debt Program for possible wage garnishment and levy of personal property, and referral to other collection agencies.

[Rule 2.15 adopted effective 1/1/10; amended 1/1/12]

3. INFRACTION RULES

3.1 CITATION

These infraction rules should be cited as "Marin County Rule, Infraction" or "MCR Infr" followed by the rule number (e.g., Marin County Rule, Infraction 3.2 or MCR Infr 3.2).

[Rule 3.1 adopted effective 5/1/98; amended 1/1/12]

3.2 FILINGS

The Clerk's Office of the Marin County Superior Court, Traffic Division shall be responsible for processing all adult and juvenile traffic infractions and non-traffic infractions. No misdemeanors shall be filed in the Traffic Division.

[Rule 3.2 adopted effective 5/1/98; amended 1/1/12]

3.3 COURT SESSIONS

Regular court sessions for citations and complaints filed in the Traffic Division for both adult and juvenile matters shall be scheduled as required by the Presiding Judge and published by the Court Executive Officer.

[Rule 3.3 adopted effective 5/1/98; amended 1/1/12]

3.4 ARRAIGNMENTS

Except for offenses mandating a court appearance, a defendant may waive his/her right to be arraigned on the violation and enter a plea of not guilty at the counter. The Clerk will assign a trial date within the statutory time requirements of Penal Code §1382, unless the defendant waives that right on the form provided by the Clerk.

[Rule 3.4 adopted effective 5/1/98; amended 1/1/12]

3.5 CONTINUANCES

Except for continuance of a trial date, on or before the date set or required in any matter, the Clerk shall have the authority to grant the defendant one extension of not more than 30 calendar days.

[Rule 3.5 adopted effective 5/1/98; amended 1/1/12]

3.6 TRIAL CONTINUANCES

When a case has been set for a contested court trial, each side shall be entitled to one continuance of the trial date provided the request is received by the Traffic Division not fewer than 10 calendar days prior to the assigned date of trial.

[Rule 3.6 adopted effective 5/1/98; amended 1/1/12]

3.7 APPEALS

An appeal is taken by filing with the Clerk in the Traffic Division a written notice of appeal signed by appellant or appellant's attorney. The notice shall be filed within 30 days of pronouncement of judgment or mailing by the clerk of notice of judgment. A notice received after the expiration of the time prescribed shall be marked by the Clerk "received (date) but not filed," and the Clerk shall advise the party seeking to file the notice that it was received but not filed because the period for filing had elapsed. (CRC 8.902(d))

The Appellate Division elects to authorize the use of the original court file in lieu of a clerk's transcript as the record on appeal, pursuant to CRC 8.910(a)(1)(B) and 8.914.

[Rule 3.7 adopted effective 5/1/98; amended 7/1/11]

3.8 MOTION TO RE-OPEN TRAFFIC VIOLATOR SCHOOL CASE ADJUDICATED AS A CONVICTION

Any motion to reopen a conviction reported to the Department of Motor Vehicles, reported as a failure to complete traffic violator's school under Vehicle Code §40512.6, shall be filed with the Traffic Division no later than 60 days from the date the conviction was reported to DMV.

[Rule 3.8 adopted effective 5/1/98; amended 1/1/12]

3.9 ENHANCED COURT COLLECTIONS PROGRAM

At the time the Court determines that a defendant is delinquent in making payments for fines, fees, penalty assessments and surcharges, the Court will refer the delinquent case to the Enhanced Court Collections Program (ECC). Upon such referral, ECC will contact the defendant to determine how the unpaid court ordered debt will be paid. ECC will utilize all available collection methods to resolve these unpaid debts, including monitored payment plans, skip tracing, referral to the Franchise Tax Board Court Ordered Debt Program for possible wage garnishment and levy of personal property, and referral to other collection agencies.

[Rule 3.9 adopted effective 1/1/10; amended 1/1/12]

4. JUVENILE COURT RULES

4.1 CITATION

These juvenile court rules should be cited as "Marin County Rule, Juvenile" or "MCR Juv" followed by the rule number (e.g. Marin County Rule, Juvenile 4.1 or MCR Juv 4.1).

[Rule 4.1 adopted effective 5/1/98]

4.2 GENERAL COMPETENCY REQUIREMENT

A. Right to Competent Counsel. Every party in a dependency hearing shall have a right to competent counsel as defined in CRC 5.660(d).

B. Minimum Standards Applicable to All Counsel. All attorneys appearing in juvenile dependency proceedings, including attorneys representing public agencies, attorneys appointed by the Court, and privately retained attorneys, must meet the minimum standards of competence set forth in these rules.

[Rule 4.2 adopted effective 5/1/98; amended 7/1/07]

4.3 SCREENING FOR COMPETENCY

A. Requirements for Court Appointments for Dependency Representation. All attorneys who represent parties in juvenile dependency proceedings shall meet the minimum standards of training and/or experience set forth in these rules. Pursuant to an agreement between the Court and the Administrative Office of the Courts (AOC), the AOC is responsible for contracting with court appointed counsel in dependency matters. From time to time the AOC engages in a competitive procurement process for attorneys interested in representing parties in dependency cases. Certification and verification that attorneys have met the minimum standards of competency are required as part of that procurement process. The AOC has also established procedures to determine the appropriate caseloads and compensation for attorneys representing parties in dependency cases.

B. Admission for Private Counsel to Practice Before the Juvenile Court. Any attorney appearing in a dependency matter for the first time who was retained privately by a party to a dependency case shall complete and submit an Application for Membership to the Court within 10 days of his or her appearance.

Attorneys who meet the minimum standards of training and/or experience as set forth in MCR Juv. 4.4, as demonstrated by the information contained in the Application for Membership submitted to the Court, shall be deemed admitted to practice before the Court in juvenile dependency cases except as provided in subdivision C of this rule.

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C. Court's Discretion. Notwithstanding compliance with the standards enunciated in Rule 4.4, the Court may refuse to allow an attorney to practice dependency law before the Court if, in the opinion of the presiding judicial officer, the attorney has demonstrated actual incompetence in handling dependency cases.

D. Out of County Attorneys. If an attorney maintains his or her principal office outside of Marin County, proof of certification by the Juvenile Court of the county in which the attorney maintains an office shall be sufficient evidence of compliance to appear in a juvenile proceeding in this county.

[Rule 4.3 adopted effective 5/1/98; amended 1/1/10]

4.4 MINIMUM STANDARDS OF EDUCATION AND TRAINING

A. Minimum Requirements. An attorney certified to practice before the Juvenile Court shall, within the 12 months immediately preceding appointment or appearance, have completed at least eight hours of training or education in juvenile dependency law, which training or education shall have included coverage of applicable statutory and case law, Rules of Court and Judicial Council forms, and concepts of child development, abuse and neglect, and family reunification planning. The attorney shall also have completed additional training and education in the areas of substance abuse and domestic violence, as required. Evidence of completion of the required number of hours of training or education may include a copy of a certification of attendance issued by a California MCLE provider or proof of attendance at a program sponsored by a professional organization which provides training and/or education for its members, together with a copy of the training or education program schedule or curriculum. Attendance at a Court- or AOC-sponsored or approved program also will fulfill this requirement.

B. Renewal of Certification – Continuing Education. To maintain certification to practice dependency before the Juvenile Court, an attorney who previously has been certified by the Court shall submit evidence that he or she has completed at least eight hours of continuing training or education related to dependency proceedings since the attorney was last certified. Attorneys' continuing training or education as required in this subdivision may be in the areas set forth in subdivision A. of this rule or in other areas and/or disciplines generally recognized as having a direct or significant relationship to juvenile dependency practice.

[Rule 4.4 adopted effective 5/1/98; amended 1/1/10]

4.5 STANDARDS OF REPRESENTATION

A. Investigation. Attorneys in dependency proceedings are expected to thoroughly investigate the allegations of the petition or other moving papers and the reports filed in support thereof; conduct comprehensive interviews of their clients to

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ascertain their knowledge of and/or involvement in the matters alleged and reported; contact social workers and other professionals associated with the case to determine whether or not the allegations and/or reports are supported by competent evidence; consult with and, if necessary, seek appointment of experts to advise the attorney or the Court on matters which are beyond the expertise of the attorney or the Court; and secure such other evidence or information as is available and may be necessary effectively to present the client's position to the Court.

B. Interests of Client. Attorneys shall ascertain their clients' interests and wishes. If a client is a minor child who is placed out of home, the attorney shall interview the child's caretaker. Minors' counsel (or his or her agent) shall make at least one visit to each child at the child's placement prior to the jurisdiction hearing. Thereafter, the attorney (or the attorney's agent) should make at least one visit to the child at the child's placement prior to each review hearing.

C. Advising the Client. Attorneys shall advise their clients of the possible courses of action and of the risks and benefits of each. This shall include the risks and benefits of resolving disputes without hearing and of the necessity of adhering to Court mandated actions, efforts and time limits.

D. Cooperation. Attorneys shall represent their clients within applicable legal and ethical boundaries and shall work cooperatively with the other attorneys and the Court, explore ways to resolve disputed issues without hearing if it is possible to do so without compromising their clients' interests, and observe state and local rules and mandated timelines.

E. Duty to Continue Representation Unless Relieved by the Court. Counsel appointed to represent a parent, guardian or child in a juvenile dependency proceeding *shall* continue to represent that party unless relieved by the Court. Any request to withdraw or to be relieved shall be by noticed motion and served on all interested parties.

F. Procedures for Reviewing and Resolving Complaints Concerning Attorneys.

1. *Lodging of Complaints.* Any party to a juvenile dependency proceeding may lodge a written complaint with the Court concerning the performance of his or her attorney. A complaint concerning the performance of an attorney appointed to represent a minor may be lodged on the child's behalf by the social worker, Court Appointed Special Advocate (CASA), guardian *ad litem*, a caretaker relative, or a foster parent.

2. *Court Review and Resolution.* The Court shall review the complaint and, if it appears that the attorney may have failed to act competently, shall provide a copy of the complaint to the attorney and allow a reasonable opportunity for the attorney to respond in writing. The Court shall consider the complaint and

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the response, if any, and issue such orders as it deems appropriate, on a case by case basis. Should the Court determine that an attorney has acted incompetently, the Court shall order that the attorney be discharged and that competent counsel be substituted. Notice of substitution of counsel shall be served on counsel for all parties of record.

G. Informing the Court of a Dependent Child's Interest in Another Proceeding, Court or Forum. At any time during the pendency of a dependency proceeding, any interested person may notify the Court that a child who is the subject of the dependency proceeding may have an interest or right which needs to be protected or pursued in another proceeding, court or forum. If the child's attorney becomes aware that the child may have a right or interest which requires protection in another proceeding, court or forum, the attorney shall notify the Court of such right or interest at the earliest reasonable opportunity.

1. *Content and Form of Notice.* Notice to the Court may be given by the filing of Judicial Council form JV-180 or by the filing of a declaration. In either case, the person giving notice shall set forth the nature of the right or interest to be pursued or protected, the name and address, if known, of the agency or judicial forum in which the right or interest may be affected and the nature of the proceedings being contemplated or conducted there.

a. *Child's Attorney Filing Notice.* If the person filing the notice is the child's attorney, the document shall state what action on the child's behalf the attorney believes is necessary, whether the attorney is willing or able to pursue the matter on the child's behalf, whether the association of counsel specializing in practice before the agency or court may be necessary or appropriate, whether the appointment of a guardian *ad litem* may be necessary to initiate or pursue the proposed action, whether joinder of an administrative agency to the Juvenile Court proceedings pursuant to Welf. & Inst. Code §362 may be appropriate or necessary to pursue or protect the child's interests, and whether further investigation may be necessary.

b. *Filing of Notice by Person Other than Child's Attorney.* If the person filing the notice is not the child's attorney, a copy of the notice shall be served on the child's attorney.

2. *Hearing.* 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 such interest should be pursued or protected. If the Court determines that further action on behalf of the child is required, the Court shall do one or more of the following:

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- a. Authorize the child's attorney to pursue the matter on the child's behalf;
- b. Appoint an attorney for the child if the child is unrepresented in the other proceeding, court or forum;
- c. Notice a joinder hearing pursuant to Welf. & Inst. Code §362 compelling the responsible agency to report to the Court regarding performance of its statutory duties to the child;
- d. Appoint a guardian *ad litem* for the child for the purpose of initiating or pursuing appropriate action in the other proceeding, court or forum;
- e. Take such other action as the Court deems necessary or appropriate to protect the welfare, rights and interests of the child.

[Rule 4.5 adopted effective 5/1/98; amended 1/1/04]

4.6 GENERAL RULES FOR DEPENDENCY CASES (W&I §300 ET SEQ.)

A. Calendars and Case Assignments. In general:

1. The Court shall attempt to group hearings by hearing type and calendar them so as to minimize the time parties and other participants must wait. The Judicial Officer shall determine, prior to calling the calendar, the order in which the cases will be called, applying principles that minimize waiting time. Whenever a child who is the subject of a dependency petition is present, the child's case shall take priority on the calendar and be heard first.
2. To the extent possible, juvenile dependency cases shall be assigned to one Judicial Officer for all purposes. All siblings' cases should be calendared together and heard by the same Judicial Officer.
3. Every time a juvenile is declared a dependent, the Court orders a Court Appointed Special Advocate (CASA) for the juvenile. Requirements for CASA programs are described in CRC 5.655.
4. Attorneys for parties shall provide accurate time estimates for contested hearings. The Court will calendar contested hearings whenever possible on consecutive days.
5. The Court and other juvenile dependency stakeholders have implemented a juvenile dependency mediation program, which may be used at all stages of juvenile dependency proceedings. At the Court's discretion, the Court

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refers matters to juvenile dependency mediation. The juvenile dependency protocol is available for review in Court Administration.

6. Counsel shall be responsible for arranging coverage of conflicting, calendared events. Calendared juvenile proceedings will not be continued because an attorney is unavailable except in extraordinary circumstances. Unavailable counsel must arrange appropriate, alternative coverage.

B. Availability for Contested Hearing. Contested hearings, including those in which time has been waived, will be set for hearing at the earliest date consistent with the best interests of the child. With the exception of previously scheduled contested Juvenile Court hearings, the hearing will have priority over all other matters and commitments of the Court, counsel and witnesses.

C. Juvenile Dependency Declarations and Orders (D&Os). Uncontested matters arising between regularly scheduled hearings may be resolved by way of Declaration and Order (D&O). A party seeking such an order shall prepare a declaration and proposed order. The declaration shall set forth the reasons for the proposed order and reflect that CASA and all parties have agreed to the proposed order. A proof of service must be attached to the original D&O showing service on all parties and upon CASA at the time it is submitted to the Court for consideration. The party submitting the D&O shall immediately notify all other parties if the Court declines to sign the proposed order. The order becomes effective immediately upon being signed by the Court unless otherwise indicated in the order.

No matter may be resolved by way of D&O if the Court or any party elects to have the matter considered and determined on the record in court.

D. Continuances. Continuances are disfavored and will be granted only upon a showing of good cause and a showing that the requested continuance will not be detrimental to the child. A written application for a continuance in the form of a D&O shall be submitted whenever possible at least five court days before the date upon which the hearing for which the continuance is sought is set. The declaration shall set forth the reason for the requested continuance and the reasons why the declarant believes that the requested continuance will not be detrimental to the child. The declaration shall reflect that CASA and counsel for all parties were contacted and agreed to the requested continuance. A copy of the D&O shall be served upon all parties and CASA and the original shall be filed with the Court, together with the proof of service.

If any party objects to the requested continuance, the party seeking a continuance must file a written motion for continuance with the Court at least two court days prior to the hearing and must serve copies of the motion upon all other parties at the time of filing.

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E. Adding Matters to Calendar. Any party wishing to add a matter to the calendar must file a calendar request, using a calendar request form available in the Clerk's Office on request. A calendar request must be filed at least two court days before the calendar in question, setting forth the reason the matter is sought to be calendared and showing that the attorneys for all other parties and all self-represented parties have been contacted and agree that the matter may be calendared on the desired date. The names of the persons contacted and the name of the party represented by each shall be set forth in the calendar request. A copy of the calendar request shall be faxed, mailed or delivered to the Superior Court Juvenile Desk for filing, to CASA and to all parties by the deadline and a proof of service must be attached to the calendar request. No other filings will be accepted by fax. Attorneys are responsible for notifying their clients of such calendaring.

Unless all parties agree that a matter may be added to calendar in this fashion and to the date proposed, the matter must be brought before the Court by way of a properly noticed motion and, if necessary, an order shortening time.

F. Interpreters. If and when a party or attorney becomes aware of the need for an interpreter, he or she shall promptly notify the Superior Court Juvenile Desk Clerk that an interpreter will be required and shall specify the language (and dialect where applicable) of the party or witness for whom the interpreter is needed and of the date, time and place where the interpreter's services will be required. The Court will arrange for the attendance of an appropriate interpreter or interpreters. All interpreters for parties must be present before the case in which they are to interpret will be called. An interpreter for a witness must be immediately available at the time the witness is called to testify.

G. In-Custody Parents. An in-custody parent who has made known his or her desire to attend a dependency proceeding must be present in court before the case will be called. Counsel for an in-custody parent is responsible for notifying the jail and other appropriate authorities of the need to produce the parent in court and, if applicable, for securing an appropriate transportation order. If the parent is in custody in the Marin County Jail, counsel shall telephone the Bailiff's Station at the earliest possible time, but no later than 24 hours prior to the scheduled court appearance, to arrange for the parent's presence in court.

H. Confidentiality. Dependency proceedings are confidential. Except in those cases where authorized by law or in which the express permission of the presiding judicial office has been obtained, no person who does not have a direct interest in a matter before the Court shall be permitted to remain in the courtroom while the matter is being heard.

All documents filed with the Court, including, but not limited to, petitions, psychological assessments, social workers' reports, and any attachments thereto, are confidential. No participant in a dependency proceeding may give or show copies of any document filed in the proceeding to anyone who is not a party or attorney for a party to

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the proceeding unless the release of a particular document to a non-party is authorized by law, court rule or Standing Order or the express permission of the presiding judicial officer.

It shall be the duty of counsel to advise their clients of all confidentiality requirements and of the prohibition against disclosing confidential information to third parties and that violation of confidentiality is a misdemeanor, punishable by fine, imprisonment or both, and may also be punished as a contempt of court.

I. Psychological and Psychiatric Evaluations. In cases in which the court has ordered the preparation of a psychological or psychiatric assessment of a parent or child, the parties shall confer and attempt to agree on an evaluator and on the scope of the evaluation.

The Court shall maintain a list of psychologists and other professionals who are willing to accept appointment in Juvenile Court proceedings. Said list and curriculum vitae will be made available to counsel upon request. The parties shall first attempt to agree on a professional from the Court's list. If the parties cannot agree to a listed professional, a professional not on the Court's list may be used if all parties agree and the professional is willing to accept appointment. If the parties cannot agree, the Court will select the evaluator.

If the parties agree on the scope of an evaluation, the issues the parties wish the evaluator to address shall be reduced to writing, approved by all parties and submitted to the evaluator. If the parties cannot agree on the scope of the evaluation, the Court will specify its scope and a copy of the Court's order shall be provided to the evaluator by the Court or by a party designated by the Court.

Child Protective Services shall provide a copy of their entire file to the evaluator, unless all parties agree that only specified documents need be submitted. Other parties may provide the evaluator with written material, provided that copies of all such writings are concurrently delivered to counsel for all other parties and to CASA.

Before the issuance of the evaluation report, no person shall initiate *ex parte* oral communications with the evaluator on any subject related to the evaluation. Nothing in the rule shall prevent a party or his or her attorney from communicating with the evaluator in any fashion when such communication is in direct response to a request from the evaluator.

The evaluator selected or appointed pursuant to this rule is the Court's expert under Evidence Code §730. The original of the expert's report shall be provided to the Superior Court Juvenile Desk. The Juvenile Desk will lodge and stamp the report and place the report in an envelope marked "**CONFIDENTIAL.**" Psychological and psychiatric reports shall not be attached to social workers' reports. Child Protective Services shall promptly provide copies of the report to all counsel and to CASA. No

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person shall provide a copy of any such report directly to any party unless specifically authorized to do so by the Court.

J. Authorization to Administer Psychotropic Medication. The procedures for completing and filing the forms and for the provision of notice to obtain authorization to administer psychotropic medication are as specified in CRC 5.640.

K. CASA Report Procedure. CASA may submit a written report in advance of any hearing pertaining to the child. Any such report must be submitted to the court at least two court days prior to the hearing. At least two court days before the hearing, the CASA program will copy and distribute the report to the attorney for each party (or the parties themselves if self-represented), and the social worker and/or probation officer. The court for good cause may order copies of the report to be distributed to other interested persons, including but not limited to de facto parents, foster parents, service providers, and the District Attorney.

L. Notice of Hearing to Child.

1. *Detention Hearings.* The social worker shall notify the child of the detention hearing and ascertain whether the child wishes to attend his or her detention hearing. The social worker shall be prepared to give evidence, orally or by declaration, at the detention hearing verifying that the social worker notified the child of the hearing and determined the child's wishes regarding attendance. (A form of "Notice to Child" is available in the Clerk's Office on request.) If the child expresses a desire to attend the detention hearing and the social worker does not believe that the child's attendance will be detrimental to the child, the social worker shall ensure that the child is present.

2. *Other Hearings.* If a child wishes to attend any other hearing, the social worker shall ensure that the child is present at such hearing.

[Rule 4.6 adopted effective 5/1/98; amended 7/1/11]

4.7 DISCOVERY

A. Mandatory Discovery. The social services agency shall submit all mandatory discovery to the Court with the filing of the petition. Upon receipt, the Court shall ensure that all attorneys are notified of the availability of such discovery.

B. Discovery Motions – Prerequisites. All parties are encouraged to cooperate in the free exchange of discoverable information. If a party is dissatisfied with another party's voluntary discovery compliance, he or she shall contact the opposing party and make a good faith attempt to resolve the discovery dispute informally. If the dispute cannot be resolved informally, the party seeking discovery shall file and serve a written

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discovery motion. Discovery motions may be set and heard on the assigned judicial officer's 9:00 a.m. *ex parte* calendar.

C. Discovery Motions – Contents and Timeliness. Discovery motions must be filed and served at the earliest practical opportunity, but in no event later than five court days before a scheduled hearing for which the discovery is sought. A discovery motion shall identify with specificity the evidence sought and its relevance, and shall detail all efforts undertaken to secure the discovery informally, including but not necessarily limited to the mode and manner by which the discovery was sought and the nature and outcome of all discussions with opposing counsel. Copies of written discovery requests or demands and correspondence pertaining to the requested discovery shall be attached to the motion. If discovery has been opposed on grounds of privilege, the motion shall address whether or not privilege is applicable. The response, if any, shall be filed and served by no later than 4:00 p.m. on the court day before the hearing. Courtesy copies of all materials shall be delivered to the assigned judicial officer contemporaneously with their filing.

[Rule 4.7 adopted effective 5/1/98; amended 1/1/04]

4.8 PERIODIC JUVENILE DEPENDENCY MEETINGS

A. Inter-Agency Meetings. The Presiding Judge of the Juvenile Court or other designated judicial officer shall convene monthly meetings of representatives of the agencies involved in dependency cases. The agencies include, but are not necessarily limited to, the Department of Social Services (DPSS), the Public Defender, Family and Children's Law Center, Legal Aid, CASA, and County Counsel. The meetings encourage open communication and discussion and focus on procedural, calendaring, and service issues.

B. Local Blue Ribbon Commission on Foster Care. The Presiding Judge of the Juvenile Court or other designated judicial officer shall convene quarterly meetings of stakeholders involved in juvenile dependency issues. The stakeholders include, but are not necessarily limited to, DPSS, the Public Defender, Family and Children's Law Center, Legal Aid, CASA, County Counsel, Marin County Office of Education, conflict counsel, juvenile dependency mediators, foster parents, former foster children, and Court Administration. The purpose of these meetings is to review, develop and incorporate best practices, systemwide, for adjudicating dependency cases and addressing other social service and educational needs of children in the foster care system.

[Rule 4.8 adopted 5/1/98; amended 1/1/10]

4.9 TRIAL

A. Attendance of Assigned Social Workers. Assigned social workers shall be present at all contested hearings and prepared to be cross-examined. The social workers'

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files shall be present in court and, if required by law, these rules, or order of Court, shall have been provided to all counsel in advance of the hearing. If reference is made to a social worker's notes or file, a copy of each referenced document shall be made available to the Court for reference.

B. Elective Trial by Declaration. Upon agreement of the parties, contested dependency hearings, including jurisdiction, disposition, review, and selection and implementation hearings under Welf. & Inst. Code §366.26, may be heard upon declaration and written offers of proof subject to cross-examination, as follows:

1. *Court-Appointed Experts.* A court-appointed expert's report shall be his or her direct testimony. A party who wishes to cross-examine or present additional evidence through the expert shall be responsible for subpoenaing the witness.

2. *Other Witnesses.* The declarations of all other witnesses and the reports of privately retained expert witnesses will be deemed their direct testimony. If the party proffering the witness declaration or expert report wishes to offer additional information through the witness, he or she must provide such information by supplemental declaration.

3. *Declaration Deadlines and Cross-Examination Demands.* Witness declarations and offers of proof shall be produced at least five court days prior to the hearing. At least two court days prior to the hearing, a party who wishes to cross-examine a witness must notify the proponent of the witness's declaration or report that the party intends to cross-examine the witness.

4. *Producing Witness for Cross-Examination.* Upon timely notification of another party's intention to cross-examine a witness, the proponent of the witness's declaration or report must produce the witness in court for cross-examination. If the proponent of the declaration or report fails to produce the witness pursuant to this rule, the court will not consider the witness's declaration or report.

5. *Discretion to Allow "Live" Testimony.* For good cause, the Court may allow "live," direct testimony.

6. *Documentary Evidence.* Except when properly offered in rebuttal, copies of any documentary evidence a party intends to introduce shall be attached to and served upon all other parties with his or her witness declarations and offers of proof.

7. *Welf. & Inst. Code §355 Applicable.* Nothing in these rules shall be construed to modify or limit the applicability of Welf. & Inst. Code §355 at jurisdiction hearings.

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C. Trials Other Than by Declaration – Witness Testimony. Attorneys seeking to introduce witnesses at trials and contested hearings shall have prepared and submitted to all counsel and the Court a written summary of the testimony of each anticipated witness at least three court days prior to the first day of hearing, or as soon thereafter as possible if counsel cannot, with reasonable diligence, meet such deadline.

[Rule 4.9 adopted effective 1/1/04]

**5. PROBATE RULES
(SEE ALSO CRC TITLE SEVEN)**

ORGANIZATION - ADMINISTRATION - PROCEDURE

5.1 CITATION

These probate rules should be cited as "Marin County Rule, Probate" or "MCR Prob" followed by the rule number (e.g., Marin County Rule, Probate 5.1 or MCR Prob 5.1).

[Rule 5.1 adopted effective 5/1/98]

5.2 PROBATE CALENDAR DAYS AND PRESIDING OFFICER

A. Calendar Call. The Court's probate calendar is heard each Monday at 8:30 a.m., as designated by the Presiding Judge. When Monday or the day designated for the probate calendar is a legal holiday, the calendar is heard at the same time on the next court day.

B. Telephone Appearances. Counsel and self-represented parties may appear by telephone as allowed by CRC 3.670. Refer to MCR Civ 1.26 for procedure.

C. Presiding Officer. If matters are heard by the Probate Commissioner, an announcement that the Commissioner sits as a Temporary Judge on stipulation of all counsel will be made at the beginning of each probate calendar. Should any party object to the Commissioner hearing the matter as Temporary Judge, the objection must be made at the time the matter is called for hearing. A failure to object shall be deemed a stipulation that the Commissioner hear the matter as Temporary Judge.

1. *Report of Commissioner.* When a party declines the *pro tem* stipulation, the Commissioner is assigned to hear the matter and to report on the matter under Code of Civil Procedure §259, the Government Code and other relevant statutes and rules.

[Rule 5.2 adopted effective 5/1/98; amended 7/1/11]

5.3 COURT HEARING PROCEDURE GENERALLY AND ORDERS

A. "Ready" and "Not Ready" Matters. A matter is considered "ready" when all required documents *and the proposed order* are in the file *at least five court days* preceding the hearing, no opposition has been received, and the Court is prepared to grant the relief requested. Approved orders signed by the Court will be available in the Clerk's Office by 10:00 a.m. the first business day after the hearing.

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If no appearance is made on a matter which is *not "ready,"* it will be continued at least two weeks. Information on continuances may be obtained by calling the Probate Examiner at (415) 444-7315.

B. Order of Calendar Call and Witnesses. Matters are heard in the following order: ready matters and continuances, uncontested matters with defects to be corrected, other matters estimated to take five minutes or less, sales, contested matters with a hearing time of 20 minutes or less. If a contested matter will take in excess of 20 minutes, it will be heard at the end of the calendar, if time allows, or may be specially set. If witnesses are to be called, contact the Probate Examiner to ascertain if the matter will be heard or must be specially set for another date.

C. Oral Objection. If an oral objection to the granting of a matter is made, and the attorney for the estate has not appeared, the matter will be continued for at least two weeks for the filing of objections and any response to the objections. Any previously signed order will be set aside.

D. Orders. Orders on "ready" matters will be signed and filed. Conformed copies and related papers will be placed in "Will Call" in the Clerk's Office. No documents will be mailed unless a self-addressed, stamped envelope is provided.

E. File Review Prior to Hearing; Telephone for Probate Recording. All files are reviewed by the Probate Examiner prior to the day of hearing. Tentative rulings may be obtained online (http://www.marincourt.org/tentative_landing.htm) or by telephoning the Probate recording at (415) 444-7170 after 12:00 p.m. on the court day preceding the hearing.

F. Appearance Not Required. Matters on the probate calendar which are "ready matters" (see above) do not require an appearance.

G. Appearance Required. Personal appearance by counsel will be required in the following cases:

1. *Contested Matters.* Counsel are required to appear in all contested matters. If the matter will take longer than 20 minutes to be heard, counsel should appear to have the matter set for hearing; all interested counsel must be present for such setting.

2. *Uncontested Matters Where Court's Tentative Ruling Differs From Relief Requested.* In uncontested matters where the judicial officer recommends relief different from that sought, counsel must appear and object. If no appearance is made, the order will be signed in the form recommended by the judicial officer.

3. *Confirmation of Sales.* Hearings on petitions for court confirmation of sales of real property.

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4. *Appointment of Conservator/Guardian.* On applications for appointment of guardian or conservator, an appearance by proposed conservatee is required unless an adequate doctor's declaration is on file or the Court Investigator's Report indicates that the proposed conservatee has been advised of his/her rights, is in agreement with the conservatorship and does not wish to attend the hearing or the appearance is excused by the Court.

5. *Other Matters.* Any matter which by law requires the personal appearance of any person or any matter which the Court may in its discretion require an appearance.

[Rule 5.3 adopted effective 5/1/98; amended 7/1/10]

5.4 CONTINUANCES

A. Renote Requirements on Continuances and Off-Calendar Matters. Generally, no further notice is required when a properly noticed probate matter is continued to a specified date. Where a matter has been ordered off calendar, new notice will be required if the matter is later reset on calendar. Any matter requiring publication which is taken off calendar will require new publication.

B. Continuance Requested by Counsel. Unless formal objections have been filed, or an appearance has been requested by the Court, the moving party may request a continuance by telephone to the Probate Examiner's Office no later than noon of the court day preceding the hearing. A continuance will not be granted if there is opposing counsel unless the request is made in open court or by stipulation of all counsel. In addition:

1. *Special Sets.* If a matter has been specially set, it may not be continued or advanced without the written stipulation of all counsel and the approval of the judicial officer scheduled to hear the matter.

2. *Probate Sales.* Probate sales cannot be taken off calendar or continued except for good cause. Appearance by counsel is required at the time set for sale.

[Rule 5.4 adopted effective 5/1/98; amended 7/1/08]

5.5 EX PARTE MATTERS

A. Contents of Petition. A petition for an ex parte order must be verified and must contain sufficient evidentiary facts to justify issuing the order. Evidence to support such nonappearance matters should be contained in the verified petition and/or declarations under penalty of perjury timely filed before the hearing date; oral evidence is available only in accordance with the California Rules of Court governing Law and Motion matters. Conclusions or statements of ultimate facts are not sufficient to support

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such ex parte petitions and a foundation should be shown for the petitioner's personal knowledge.

B. Special Notice Allegation. All petitions for ex parte orders must contain a statement on special notices. The statement shall either recite that no request for special notice is on file and in effect or shall list the parties requesting special notice and have attached the specific waivers of notice by such parties or proof of service on such parties.

C. Presentation of Petition. Ex parte petitions will be heard between 8:30 a.m. and 9:00 a.m. by appointment. Please call the Probate Examiner at 444-7315 to schedule a date and time.

D. Separate Order Must Accompany Petition. Except where a Judicial Council form is used, a petition for ex parte order must be accompanied by a separate order complete in itself.

E. Ex Parte Orders. An ex parte order may be signed by either the Commissioner or the Judge.

[Rule 5.5 adopted effective 5/1/98; amended 7/1/08]

5.6 QUESTIONS OF PROCEDURE

Should counsel encounter procedural problems that cannot be resolved by reference to the Probate Code, Rules of Court, these Local Rules, or legal research, such matters may be presented to the Court informally. Initially, such matters should be presented to the Court by letter or directly to the Probate Examiner so that proper consideration can be given to the problem.

[Rule 5.6 adopted effective 5/1/98; amended 7/1/08]

5.7 SETTLEMENT CONFERENCES

A. Mandatory Settlement Conference. A mandatory settlement conference shall be held in all cases where a trial or evidentiary hearing has been demanded. The date for the settlement conference shall be assigned at a status conference.

B. Settlement Conference Statement. Counsel shall lodge an original and two copies of a settlement conference statement in the Calendar Department (Room 113) 10 court days before the settlement conference so that the statements can be distributed to the settlement panelists. The court will impose sanctions of \$49 per day for statements lodged less than five court days before the settlement conference. The date and time of the settlement conference and trial/evidentiary hearing shall be typed on the face sheet of the statement. The settlement conference statement shall include the following, where applicable:

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1. A brief statement of the case;
2. A statement of facts including: (a) factual and legal contentions in dispute; and (b) citations of authorities which support legal propositions;
3. The current offer or demand of party filing statement;
4. The date when the last face-to-face settlement discussion was held;
5. Presentation of any special barriers to settlement.

C. Required Attendance. Attendance at settlement conferences by counsel completely familiar with the case is required. Counsel must be accompanied by his/her client. *Exceptions to this rule require advance written approval by the Court.*

D. Sanctions. Failure of an attorney and/or party to prepare for, appear at, or participate in a settlement conference, unless good cause is shown for any such failure, is an unlawful interference with the proceedings of the Court, and the Court may impose sanctions, including, but not limited to, any or all of the following: monetary sanctions to be paid to the Clerk of the Court; monetary sanctions to be paid to the other parties which may include, among other things, costs, actual expenses and counsel fees; and the Court may order an appropriate change in the calendar status of the action.

[Rule 5.7 adopted effective 5/1/98; amended 7/1/08]

PLEADINGS, ORDERS AND NOTICE

5.8 CONFORMED COPIES

If a conformed copy is desired, an additional copy must be submitted. The Court will conform a maximum of two copies of any pleading at the time of filing. Parties requesting that the Clerk's Office mail them conformed copies of their filings must provide a self-addressed stamped envelope of proper size and with sufficient postage. If no envelope is provided, the conformed copy will be placed in the Will Call cabinet in the Clerk's Office in Room 113 for a maximum of sixty (60) days. If the envelope provided or the postage is insufficient to mail the entire conformed copy, only the face copy of the pleading will be mailed and the conformed copy will be placed in the Will Call cabinet for a maximum of sixty (60) days.

[Rule 5.8 adopted effective 1/1/10]

5.9 FORMS APPROVED BY JUDICIAL COUNCIL

For matters for which a printed form has been adopted for mandatory use by the Judicial Council, such form shall be used. All pertinent items must be checked. If a form approved or adopted by the Judicial Council or a Marin County local rule form is inadequate for a given circumstance, an addendum may be attached. No printed forms other than those so approved or adopted may be used.

[Rule 5.9 adopted effective 5/1/98; amended 7/1/08]

5.10 DECLARATIONS

A declaration may be used in lieu of an affidavit pursuant to Code of Civil Procedure §2015.5.

[Rule 5.10 adopted effective 5/1/98; amended 1/1/04]

5.11 CONTENT OF PROBATE ORDERS

An order must be complete in itself and must set forth with particularity all matters actually passed on by the Court, the date of hearing, necessary findings, the relief granted, and the names of persons and legal descriptions of property or amounts of money affected. A probate order should be drawn so that its general effect may be determined without reference to the petition on which it is based.

[Rule 5.11 adopted effective 5/1/98]

5.12 ORDERS FOR CONTINUING PAYMENTS MUST HAVE TIME LIMITS

All orders for continuing payments must provide that payments shall begin as of a fixed date and continue for a fixed period not to exceed one year. The Court ordinarily will not make orders for continuing payments to run until further order of the Court.

[Rule 5.12 adopted effective 5/1/98]

5.13 NOTICES (SEE ALSO CRC 7.51)

A. Generally.

1. *Service.* When notice of hearing is required -- whether by personal service, mailing, publication or posting -- petitioner must give such notice or cause it to be given, and file the necessary proof of service.

2. *Content.* Notices must specify *all* the relief sought. Failure to specify all relief sought will result in renoticing the petition.

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3. *Amended Petitions.* Statutory notice requirements apply to all amended petitions, even though the prior petition has already been noticed for hearing.

4. *Continued Dates and Off Calendars.* Generally, no further notice is required when a properly noticed probate matter is continued to a specified date. Where a matter has been ordered off calendar, new notice will be required. Any matter requiring publication which is taken off calendar will require new publication.

5. *Additional Notice.* The Court may require *additional notice in any matter.* 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 compensation for extraordinary services are requested. The Court may require notice in such cases to include not only the time and place of hearing but also a summary of the matters to be determined, or that a copy of the petition be served with the notice.

B. Notices to Minors. When a minor, who is over the age of 12, is entitled to notice, the giving of notice to a parent is insufficient. The Court requires notice to a minor to be addressed to the minor and mailed individually and directly to the minor. Notice in care of a parent is insufficient although a copy shall also be sent to the parents.

C. Direct Notice Required. Notice in care of an attorney will be accepted only if a Request for Special Notice is on file or an appearance has been made.

D. Notice to Guardians, Conservators, Conservatees. In Guardianship and Conservatorship proceedings, direct notice shall be mailed to the conservatee or minor and to their attorney if they are represented. Notice to a conservatee must be accompanied by a copy of the petition. When a guardian or conservator has been appointed for the person entitled to notice in a non-conservatorship or guardianship matter (i.e., a civil matter, etc.), the Court requires that notice be given directly to the conservator or guardian.

E. Notice to Heirs and Devisees Without Known Addresses. If the address of an heir or devisee is unknown, Petitioner must file a declaration describing efforts made to locate that person before the Court will prescribe an alternate form of notice or dispense with notice. The declaration must state the name of the person whose address is unknown, the last known address of the person, the approximate date when the person was last known to reside there, the efforts made to locate the person, and any facts that explain why the person's address cannot be obtained. The declaration must include a description of the attempts to learn of the person's business and residence addresses by: (1) inquiry of the relatives, friends, acquaintances, and employers of the person entitled to notice and of the person who is the subject of the proceeding; (2) review of appropriate city telephone directories and directory assistance; and (3) search of the real and personal

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property indexes in the recorder's and assessor's offices for the county where the person was last known or believed to reside. (See CRC 7.52(a).)

F. Notice to Trust Beneficiaries. If a personal representative presents an account or petition that affects the interest of a beneficiary of a trust and the representative is either named to act or is acting as the sole trustee, then the Court will require notice to beneficiaries as required by Probate Code §1208. In appropriate circumstances the Court may require the appointment of and notice to the guardian ad litem for potential beneficiaries if their interest may diverge significantly from those of the beneficiaries in being. This notice requirement applies to both testamentary trusts and pour over wills to an intervivos trust. The Court requires that a copy of the trust document be lodged with the court to verify the persons requiring notice or a declaration by the attorney be filed stating the trust beneficiaries entitled to notice.

G. Notice on Termination of Guardianships and Conservatorships. Notice must be given to a *former* minor or conservatee on the settlement of a final account. Notice must also be given to the personal representative of a deceased minor or conservatee. If the representative of the estate is the same person as the guardian or conservator presenting the account, notice must also be given to the heirs and devisees of the deceased minor or conservatee.

H. Notice to Heirs and/or Beneficiaries of a Deceased Beneficiary. If an heir or beneficiary whose interest has vested dies during administration of a probate estate, notice is required to be given to the personal representative of the beneficiary's estate, or if none, to the heirs and/or beneficiaries of the will of the deceased beneficiary.

I. Posted Notice. In all cases where posted notice of hearing is required, the Probate Clerk will prepare and post the notice. The clerk is not responsible for publications or mailings. Other notices will be posted upon request.

J. Order Prescribing or Dispensing With Notice. In all cases where notice is prescribed by the Court, an order prescribing notice must be obtained at the time the petition is filed. The petition and the proposed order prescribing notice should be presented to the Commissioner prior to filing. Where notice may be dispensed with, an order dispensing with notice must be obtained.

[Rule 5.13 adopted effective 5/1/98; amended 1/1/04]

SPOUSAL PROPERTY PETITION AND ELECTION

5.14 FILING AND CONTENTS OF SPOUSAL PROPERTY PETITION

If a spousal property petition is filed with a petition for probate of will or for Letters, the spousal property petition must be filed as a separate petition. (CRC 7.301.)

[Rule 5.14 adopted effective 5/1/98; amended 1/1/04]

5.15 REQUIRED ALLEGATIONS

A. Source of Property. In petitions where the decedent died *intestate*, the petition must contain the date of marriage and a precise identification of the property community, quasi community, or separate property. The declaration must state facts supporting the character of the property as community, quasi community, or separate property. A copy of the latest deed for any real property should be attached to the petition. If any property is claimed to be community but was acquired by gift, devise, descent, joint tenancy survivorship, or similar means, the petition must state with particularity the way in which the property was converted to community property. For all transmutations of title to real or personal property made after January 1, 1985, there must be an express written declaration that is made, joined in, consented to or accepted by the spouse whose interest in the property is adversely affected. If the decedent died *testate*, generally attachment of the Will to the petition will suffice.

B. Claims Based on Documents. If the community or quasi-community property claim is based on any document, a copy of the document showing signatures, when feasible, must be attached to the petition. However, if the document is lengthy and only portions of it are relevant to the claim, only the relevant portions need be attached. If it is believed that disclosure of the document would be detrimental, the document or the relevant portions may be paraphrased in the petition accompanied by a statement that a copy of the document itself will be made available to the Court.

[Rule 5.15 adopted effective 5/1/98; amended 7/1/00]

5.16 ELECTION OF SURVIVING SPOUSE TO ADMINISTER

If the surviving spouse elects under Probate Code §13502 to administer property, the surviving spouse must file an election and state he or she has been fully informed regarding the reasons for the election, including the potential delay and increased compensation. If the surviving spouse files the election to transfer one-half of the community property to a trustee (see Prob. C. §13503), the surviving spouse's one-half shall not be included in the basis for statutory compensation.

[Rule 5.16 adopted effective 5/1/98]

APPOINTMENT OF EXECUTORS AND ADMINISTRATORS: PROOF OF WILLS

5.17 SPECIAL LETTERS OF ADMINISTRATION

The verified petition for a special administrator must be personally presented to the Judge or Commissioner. Such petitions ordinarily will not be granted without 24 hours' notice to the surviving spouse, the nominated executor, and any other person who, in the opinion of the Judge or Commissioner, appears to be entitled to notice. The petition should include the *specific* reason indicating the necessity of the appointment. Except in a will contest, Letters of Special Administration will issue for only a specified period of time. Although preference is given to the person entitled to Letters Testamentary or of Administration if it appears that a bona fide contest exists, the Court will consider appointing a neutral person or corporate fiduciary.

A special administrator cannot be granted powers under the Independent Administration of Estates Act (IAEA) unless proper publication and notice has been completed.

[Rule 5.17 adopted effective 5/1/98]

5.18 PETITION FOR PROBATE OF WILL AND LETTERS OF ADMINISTRATION

A. Holographic Will and Foreign Language Will. When a holographic instrument is offered for probate, all copies presented must be accompanied by a typewritten copy. Where an instrument written in a foreign language is offered, it must be accompanied by a copy translated into English by an official translator approved by the Court.

B. Attachments. Copies of all instruments offered for probate must be attached to the petition.

C. Listing Devisees and Heirs.

1. Even though a decedent died testate, the petition must contain the names and relationships of all the heirs of the decedent. An heir is any person who would be entitled to distribution of a part of the decedent's estate including those who would be heirs if the decedent had a predeceased spouse or if the decedent had died intestate. When second generation heirs are listed, the deceased ancestor through whom they take shall be named, along with the ancestor's relationship to decedent.

2. All heirs or devisees, or other persons named in the will and each person named as executor or alternate executor who is not petitioning must be

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listed in the petition. In addition, if the interest of the devisee is contingent as of the date of the petition or the happening of an event, such as survivorship for a specific period, then the contingent devisee must also be listed. Also to be listed in the petition is each person provided for in the original will whose bequest has been revoked in a subsequent codicil.

3. If a named devisee predeceased the decedent or did not survive for the designated survival period, that fact must be stated together with the approximate date of death.

4. If an heir or devisee died after the decedent, that person should be listed with the notation that he or she is deceased and the date of death. If a personal representative has been appointed, the deceased heir or devisee should be listed in care of the name and address of his or her personal representative. If no personal representative has been appointed, that fact should be alleged.

D. Value of Estate. If the value of the estate is under \$100,000, the petition must be accompanied by a declaration showing why the estate is being probated, rather than passing by summary proceedings.

[Rule 5.18 adopted effective 5/1/98; amended 7/1/08]

5.19 NOTICE REQUIREMENTS OBTAINING LETTERS IN DECEDENT'S ESTATES

A. Letters Testamentary and Letters of Administration. The attorney is responsible for obtaining Letters, including notice and publication. Notice must be given to the Attorney General and foreign consulate as required by the Probate Code.

B. Methods of Giving Various Notices. See MCR Prob 5.13 above. Notice must be given to all living individuals or entities identified in the petition for probate.

C. Requirement of Publication of Notice to Administer Estate. The publication of Notice of Petition to Administer Estate under Probate Code §8120 is sufficient to include all instruments which are offered for probate, filed with and specifically referred to in the petition for which notice is given. Any other wills or codicils not specifically mentioned in the petition must be presented to the Court in an amended petition and a new Notice of Petition to Administer Estate must be published and mailed. It is the responsibility of the attorney to arrange for publication; the Clerk does not have this responsibility.

The proper newspaper for publication must be selected. The priorities are:

1. Publication is required in the adjudicated newspaper for the city where the decedent resided at the time of death, or where decedent's property is located

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if the decedent is a non-resident. (See Appendix B for the list of adjudicated newspapers.)

2. If there is no such newspaper in the city or the decedent resided in an unincorporated area, then notice shall be published in a newspaper of general circulation which is found and circulated in the community where the decedent lived. For an unincorporated area, publication may be made in the adjudicated newspaper for the postal address.

Publication must conform to law. Currently, the law requires publication 15 days in advance of the hearing date. Three publications in a newspaper published once a week or more often with at least five days between the first and last publication dates (not counting the publication dates), are sufficient.

D. Defective Notice.

1. *Defective mailing.* If the publication is correct but the mailing defective, the hearing normally will be continued to allow enough time for the required new mailing.

2. *Defective publication.* If the mailing is correct but the publication defective, the matter must be taken off calendar and a new notice must be given by publication and mailing.

[Rule 5.19 adopted effective 5/1/98; amended 7/1/10]

5.20 PROOF OF WILLS

In uncontested matters, both witnessed and holographic wills may be proved by declaration without the need of testimony in open Court. There is a preference for a non-beneficiary to prove a holographic will. Where more than one testamentary instrument is offered for probate, each instrument must be proved by a separate declaration.

[Rule 5.20 adopted effective 5/1/98]

5.21 LOST OR DESTROYED WILLS

The petition for probate shall include a written statement of the testamentary words or their substance. Evidence will be required to overcome the presumption of revocation. A copy of the will admitted to probate, if available, shall be attached to the order for probate.

[Rule 5.21 adopted effective 5/1/98; amended 1/1/04]

5.22 WILL WITH DELETIONS OR INTERLINEATIONS

Where the will offered for probate contains alterations by interlineation or deletion on the face, the petition for probate should contain allegations to explain the alteration and support petitioner's position in the matter. The petition should request that the interlineated portion be admitted or not admitted; that the deletions take effect or be disregarded; or make such other request as petitioner finds to be appropriate. The petition should set forth in an attachment, statements of all relevant facts regarding the alteration, for example, whether the will was in possession of decedent, and should include a statement of applicable law.

[Rule 5.22 adopted effective 5/1/98]

BOND

5.23 APPLICATION OF BOND SECTION

These guidelines (MCR Prob 5.24 to 5.29 below) apply to guardians, conservators and trustees, as well as to personal representatives.

[Rule 5.23 adopted effective 5/1/98]

5.24 RESERVED [Adopted 7/1/08]

5.25 REQUIREMENT OF BOND/WAIVER OF BOND (SEE CRC 7.201)

A. Personal Representatives in Probate Estate. Even if the Will waives bond, or if the Court directs no bond be filed, or be filed in a reduced sum, the Court on its own motion, or on petition of any person interested in the estate may, for good cause, require the bond be given or amount increased, either before or any time after issuance of letters.

1. *No Bond Required.* Ordinarily, no bond will be required of the personal representative in the following circumstances: (a) where the Will waives bond of the nominated personal representative; (b) where the petitioner is the sole beneficiary under the Will, or (c) all beneficiaries of the estate waive bond. Where appropriate, counsel should file a declaration to assist the Court. The Court, in its discretion, may require a bond.

2. *Bond Required.* In all other circumstances, except for those set forth above, the Court will require a bond. If the personal representative has full IAEA powers, a bond for both personal and the equity in real property must be obtained. If the personal representative has limited IAEA powers, a bond shall be obtained for all of the property, excluding the real property.

B. Conservatorships/Guardianships. Ordinarily, bond will not be waived in conservatorships or guardianships.

[Rule 5.25 adopted effective 5/1/98; amended 1/1/04]

5.26 REDUCING BOND THROUGH USE OF DEPOSITORY FOR BLOCKED ACCOUNT

A. Before Issuance of Letters. The receipt and agreement of depository required by the Probate Code must be filed prior to the issuance of Letters.

B. After Appointment. Bonds may be reduced at any time after appointment by a petition and order reducing bond, together with a receipt of a depository showing assets in the amount of the requested reduction have been so deposited. Such a petition must set forth the assets remaining in the estate, after excluding those held by the depository, and it must appear that the reduced bond adequately covers the amount to be protected.

C. Direct Transmittal to Depository. If the assets to be deposited are in the possession of a bank, savings and loan association or trust company other than the named depository, the order should direct the entity in possession to deliver such assets directly to the named depository and further direct the depository, on receiving such assets, to issue its receipt and agreement to the fiduciary. (Fin. C. §765)

D. Withdrawals or Releases From Depository. An order authorizing release from a blocked account may be obtained ex parte. The petition should set forth the approximate bond, and the purpose for which the withdrawal is being made. The order may provide for funds to be paid directly to a taxing authority or beneficiary or other person entitled thereto.

E. Letters. Any Letters issued where accounts have been blocked should include the statement: "Account located at (institution name) has been blocked and receipts for the blocked account have been filed with the Court."

[Rule 5.26 adopted effective 5/1/98]

5.27 BOND MODIFICATION

A. Duty and Application. It is the duty of the fiduciary or the fiduciary's attorney, upon becoming aware that the bond is insufficient (e.g., on filing of an inventory or submitting an accounting), to apply immediately for an order increasing the bond. Such application may be made ex parte.

B. Bond Increase. When the bond of a fiduciary must be increased, the Court favors filing of an additional bond rather than a substitute bond. Where assets will be coming into or passing through the hands of the fiduciary so as to require an increase of

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bond, the fiduciary must set forth the information necessary to enable the Court to determine the amount of the increase.

C. Bond Decrease. When the fiduciary's bond should be decreased, the Court favors using an order reducing the liability on the existing bond rather than a substitute bond. Where a decrease in bond is sought because distribution has been made, copies of receipts evidencing the distribution should be presented with the petition.

[Rule 5.27 adopted effective 5/1/98]

5.28 NONRESIDENT EXECUTORS

A nonresident nominated to serve as executor without bond will usually be required to post bond.

[Rule 5.28 adopted effective 5/1/98; amended 7/1/08]

5.29 BOND OF SPECIAL ADMINISTRATORS

In the case of ex parte appointments of special administrators, the Court will usually require a bond even if the Will waives the bond and the beneficiaries waive bond.

[Rule 5.29 adopted effective 5/1/98]

INVENTORY AND APPRAISAL

5.30 PREPARING INVENTORY AND APPRAISAL

A. Preparation. The California Probate Referees' Association has published a pamphlet, *Probate Referees' Procedures Guide*, describing the suggested form for listing various inventory assets as well as its opinion as to whether particular assets should be listed on Attachment 1 or 2. Although not an official publication, this pamphlet is a good reference. Copies are available from the California Probate Referees' Association, 465 California Street, Suite 702, San Francisco, CA 94104. Please refer to this pamphlet for specific information on completing an inventory and appraisal.

B. Due Date. The inventory and appraisal for a decedent's estate is due within four months from appointment of a personal representative.

[Rule 5.30 adopted effective 5/1/98; amended 1/1/04]

5.31 APPOINTMENT OF REFEREE

A. Procedure for Request. To obtain appointment of a Probate Referee, the appropriate box on the Order for Probate should be checked. The Clerk will return the Order with a Referee appointed. If a Referee has not been assigned on the Order for Probate, an Order Appointing Probate Referee should be submitted to the Court.

B. Request for Particular Referee. Requests for the appointment or nonappointment of a certain Referee will generally be denied and are discouraged.

C. Waiver of Appointment of Referee. The appointment of a Probate Referee may be waived for "good cause" under Probate Code §8903, et seq.. The decision whether good cause exists will be made by the Court on the basis of the facts set forth in the petition. The petition, including a copy of the proposed inventory and appraisal, and notice of hearing shall be served on all persons who are entitled to notice pursuant to Probate Code §8903. The petition shall state the source of the values included in the inventory and appraisal. Waivers of appointment are not routinely granted.

[Rule 5.31 adopted effective 5/1/98]

5.32 RESERVED [Adopted effective 7/1/08]

5.33 SUFFICIENCY OF BOND

If there is a bond in force, the inventory and appraisal must disclose on its face, at the place on the form above the attorney's signature, whether the amount thereof is sufficient or insufficient. See MCR Prob 5.27 regarding bond modification.

[Rule 5.33 adopted effective 5/1/98]

5.34 OBJECTION TO APPRAISED VALUE OF ASSETS

Prior to the filing of the inventory and appraisal, counsel are encouraged to engage in informal discussion with the Probate Referee to resolve disagreements over the value of particular assets. After the filing of the inventory and appraisal and before a hearing on the Petition for Final Distribution, the personal representative or an interested person may file a written objection to the value of assets on the appraisal.

[Rule 5.34 adopted effective 5/1/98; amended 7/1/08]

CLAIMS

5.35 CLAIMS PROCEDURES

All claims in probate proceedings must conform to the provisions of Probate Code §9000 et seq.

[Rule 5.35 adopted effective 5/1/98]

5.36 NOTICE TO CREDITORS

Notice to creditors must be given as provided in the Probate Code. A showing that affirmative efforts to locate and notify creditors, both known and reasonably ascertainable, is required under the Probate Code and must be set forth in the final report.

[Rule 5.36 adopted effective 5/1/98]

SALES OF ESTATE PROPERTY

5.37 GENERAL INFORMATION

A. Judicial Approval. For estates being administered with full authority under IAEA, judicial approval of sales or exchanges of real or personal property is no longer required; otherwise confirmation of sales is still required.

B. Notice. Notice shall be given to the devisee of specifically devised property and to all residuary beneficiaries. The original purchasers of the property whose bid is being returned to Court for confirmation shall also be noticed.

C. Exclusive Listings for Sale of Property. A personal representative acting under IAEA has authority to enter into an exclusive agreement to sell real property without prior Court approval. If Court confirmation is sought, either because of limited IAEA or pursuant to the Agreement of Sale, at the hearing on confirmation of sale, the Court may determine the total commission without regard to the terms of the exclusive agreement.

D. Purchase of Estate Property by Personal Representative. Although the purchase of estate property by the personal representative is generally prohibited, such purchase may be allowed under limited circumstances subject to Court approval.

[Rule 5.37 adopted effective 5/1/98; amended 7/1/08]

5.38 SALES OF PERSONAL PROPERTY

A. Tangible Personal Property.

1. *Necessity for Appraisal.* In all cases other than those administered with full IAEA, the sale of tangible personal property will ordinarily not be approved unless the property has been appraised. For this purpose, a partial inventory and appraisal may be filed or a letter appraisal may be obtained from the appointed Probate Referee.

2. *Commissions.* Commissions on sales of tangible personal property will be allowed only to individuals holding a license authorizing them to deal in the type of property involved. A commission will be allowed on the original bid only when the commission is requested in the return of sale. When there is an overbid in Court, a commission may be allowed to the successful broker, and, if the original bid was subject to a commission, apportionment between the brokers will be made according to the same rules as prescribed for real estate sales. The amount of the commission is within the Court's discretion and will ordinarily conform to the amounts found below.

B. Securities. The petition for authority to sell securities must set forth a minimum sales price as to all securities except those listed on an established exchange. The minimum price must be a recent market quotation from the New York Stock Exchange, American Exchange or an over the counter market. If there is no recent market quotation available or the securities are "closely held," the petition must set forth the basis for fixing the minimum sales price.

C. Condominiums, Community or Cooperative Apartments. A condominium or cooperative apartment is an interest in real property and must be sold as such, unless it is held as a limited partnership. (Civ. C. §783) The sale of a cooperative apartment will not be confirmed subject to the original (returned) purchaser later obtaining the acceptance of a Board of Directors or other governing body. If there is an overbid, the Court, at the request of the personal representative, will then continue the matter for the purpose of obtaining acceptance. If the personal representative does not wish to continue the matter for this purpose, the Court will not accept the overbid.

[Rule 5.38 adopted effective 5/1/98; amended 7/1/08]

5.39 RETURN OF SALE OF REAL PROPERTY

A. Publication of Notice of Intention to Sell Real Property. Notice of Intention to Sell Real Property must be published in decedents' estates (except for estates in which there is a power of sale in the will or estates being administered under full IAEA) and in all conservatorships/guardianships unless the Court has granted the

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conservator/guardian power to sell. Publication must be in a newspaper published in the county in which the real property lies.

If an executor having power of sale in the Will publishes a notice of sale of the real property and proceeds with the sale and a technical defect appears, the defect cannot be cured by exercising the executor's power of sale. The executor must publish a new notice.

B. Contents of Notice and Purpose of Notice. The notice should include the date and place of sale, *not* the date of the confirmation hearings. The published notice is a solicitation for offers. No offer can be accepted until the date on or after the time for making bids expires. In addition to a legal description of the property, the notice should contain the street address or other common designation of the property, when available, and should also state the following, where applicable:

1. If an exclusive listing has been given, the notice should so state.
2. If the property is to be sold subject to an encumbrance, the notice should so state.
3. If the property is to be sold for cash only, the notice must so state.
4. If the estate would prefer all cash but will accept part cash and part credit, the notice should include the following language: "All cash, or part cash and part credit, the terms and conditions of credit as acceptable to the fiduciary and the Court."

C. Effect of Notice. Any offer accepted and returned to Court for confirmation must conform to the terms of sale contained in the notice.

[Rule 5.39 adopted effective 5/1/98]

5.40 RETURN OF PRIVATE SALE FOR COURT CONFIRMATION

A. Appraisal and Reappraisal. In order for a private sale to be confirmed, there must be on file an appraisal by the Probate Referee of the property and, if required, a reappraisal by the Probate Referee if the decedent's date of death or guardian's or conservator's appointment occurred more than one year before the date of the confirmation hearing. The appraisal and reappraisal should be on file prior to the hearing date on the return of sale but counsel may bring the reappraisal to the court hearing.

B. Market Exposure of Property. Whenever it is brought to the attention of the Court that the fiduciary has denied bona fide prospective buyers or their brokers a reasonable opportunity to inspect the property, or the property has not had maximum

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market exposure, the returned sale will not be confirmed, and the sale will be continued to allow inspection and further exposure to the market.

C. Second Deeds of Trust. The Court will approve the taking of a promissory note secured by a junior deed of trust upon a showing that it serves the best interests of the estate.

D. Hearing on Return of Sale and Overbids. Counsel must be prepared to state the minimum necessary overbid price. Counsel should give notice to the original purchaser or his agent of the time and place of hearing and advise that they be in Court for the hearing.

E. Earnest Money Deposit by Overbidder. When a sale is confirmed to an overbidder, the overbidder, *at the request of the personal representative*, must submit at the time of hearing a certified or cashier's check in the amount of 10 percent of the entire amount of the bid, but not to exceed the amount of the cash down payment.

F. Bond. The petition for confirmation of sale of real estate should set forth the amount of the bond in force at the time of sale. If no additional bond is required, or if bond is waived, that fact should be alleged. If additional bond is required after confirmation of sale of real property, the petitioner should provide sufficient information to the Court to determine the net proceeds of sale and the amount of the required additional bond. If proceeds are to be placed in a blocked account, the matter will be placed on the following week's probate calendar for verification that a receipt for the blocked account is on file. If additional bond is required in the confirmation order, the Court will not enter the order until the additional bond is filed. (CRC 7.206.)

G. Absence of Attorney for Estate at Confirmation Hearing. If someone is present who wishes to overbid and the estate's attorney is absent, the hearing will be continued, except where the fiduciary is present and requests that the sale proceed without the attorney.

H. Partial Interest. Where the estate has a partial interest in real property, all information in the petition should refer **ONLY** to the partial interest, including the overbid amount. If the additional interest is also being sold outside of Court, the total bid necessary should be announced in open court.

[Rule 5.40 adopted effective 5/1/98; amended 7/1/08]

5.41 BROKER'S COMMISSIONS

A. Improved Real Property. The Court will ordinarily allow a broker's commission not to exceed 6% of the first \$100,000 and 5% of any excess over \$100,000. It is understood that commissions are negotiable and the parties may agree to a lesser percentage.

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B. Unimproved Real Property. The Court will ordinarily allow a broker's commission not to exceed 10% of the first \$20,000, 8% of the next \$30,000, and 5% of the balance of the sale price. In the Court's discretion, a flat 10% may be allowed. In each instance, the Court will determine what is "unimproved" real property.

C. Commission Rates at Real Property Situs Will Apply. When the real property is not located in Marin County, the Court will allow commissions based on the Marin Probate Court schedules unless it is shown that a larger commission would be allowed based on the schedule in effect in the Probate Court of the County in which the property is located.

1. *Commissions in Excess of Schedule.* A commission exceeding the normal schedule will be allowed only if it is reasonable in the opinion of the Court. The written agreement of the affected beneficiaries to the allowance of such commission should be obtained.

D. Broker Bidding for Own Account Not Entitled to a Commission. A broker bidding for his own account is not entitled to receive or share in a commission.

E. Broker's Commissions in Overbid Situations. The broker's commission in overbid situations depends upon who is represented by a broker.

1. *Only original bidder represented by broker.* When the original bidder is represented by a broker and the successful overbidder is not, the original broker is allowed a full commission on the amount of the original bid returned.

2. *Where overbidder represented by broker.* The overbidder's broker receives a full commission on the overbid price confirmed by the Court, reduced by one-half (1/2) the commission on the original bid, which latter commission will be split equally between the original bidder's broker and any listing broker involved in the sale. Overbidder's commission is limited by Probate Code §10162 to half the difference between the successful overbid and the returned bid if the original bidder is not represented by a broker. If the broker's have an agreement regarding the splitting of the commissions, it must be signed by all brokers. Reference to the multiple listing is not sufficient to alter the statutory requirements for the splitting of broker's commissions.

F. Order Must Allocate Commission. The order confirming sale must show the total commissions allowed and any allocation agreed on between brokers.

[Rule 5.41 adopted effective 5/1/98; amended 7/1/09]

ACCOUNTS

5.42 IN GENERAL

All accounts filed in probate proceedings, including guardianship, conservatorship, and trust accounts, must be typewritten and must conform to the provisions of the Probate Code. The provisions relating to accounting can be found in Probate Code §§1061 et seq. The summary of account must be in carry value (not market value). An additional schedule must be provided showing the market value of assets at the end of the accounting period per Probate Code §1063(a). The account must state the period covered by the account. A personal representative's account must begin with the date of death of the decedent. Accounts not conforming to the Probate Code will not be approved. When a future accounting is required, the following language shall be included in the last paragraph of the proposed order for approval of an intermediate accounting: "The [First/Second/Third etc.] Account and Report covering the accounting period from <insert applicable date> to <insert applicable date> shall be filed by _____."

[Rule 5.42 adopted effective 5/1/98; amended 7/1/10]

5.43 BONDS

In any account where bond has been posted, allegations must be included as to the total bond(s) posted, the fair market value of personal property on hand at the close of the account period plus the estimated annual gross income from the real and personal property, and any additional bond required.

[Rule 5.43 adopted effective 5/1/98]

5.44 TRUSTEE'S FIRST ACCOUNT

The starting balance of a testamentary trustee's first account must conform to the trustee's receipt(s) filed on distribution of the assets of the decedent's probate estate. The petition for settlement of a trustee's account must include the names of beneficiaries and remainderpersons and set forth the trust provisions for distribution of principal and income.

[Rule 5.44 adopted effective 5/1/98]

5.45 WAIVER OF ACCOUNT

A. By All Interested Parties. Waiver of accounting is permitted when each person entitled to distribution files either a written waiver of accounting or a written acknowledgment that the distributee has already received that to which he/she is entitled. A beneficiary of a specific cash bequest or non-income producing assets ordinarily need not execute a waiver of the accounting.

B. Effect of Waiver. If an account is waived under Probate Code section 10954, the details of receipts and disbursements need not be listed in the report. However, the report must list the information required by law, including information as to creditors' claims, sales, purchases or exchanges of assets, changes in the form of assets, assets on hand, whether the estate is solvent, detailed schedules of receipts and gains or losses on sale (where an amount other than the amount of the Inventory and Appraisal is used as a basis for calculating fees or commissions), costs of administration (if reimbursement of these costs is requested), the amount of any fees or commissions paid or to be paid, and the calculation of such fees or commissions as described in rule 7.705.

C. Waiver by Trustee. A trustee who is also the personal representative may not waive an accounting of himself/herself. The waiver may be executed by a co-trustee or by all trust beneficiaries presently entitled to distribution. This applies to testamentary trusts and to pourover wills into intervivos trusts. A testamentary trustee who waives the accounting of the personal representative must have filed a consent to act as trustee.

[Rule 5.45 adopted effective 5/1/98; amended 1/1/04]

DISTRIBUTION OF PROBATE ESTATE

5.46 NOTICE REQUIREMENTS ON PETITIONS FOR DISTRIBUTION

A. Basic Notice Requirements. Unless the Court has ordered that notice be dispensed with, at least 15 days before the time set for the hearing of a petition for partial, preliminary or final distribution, the petitioner shall cause notice of the time and place of hearing to be served on the following:

1. Each non-petitioning personal representative or non-petitioning personal co-representative.
2. The devisees/heirs whose interest in the estate is affected by such petition.
3. The heirs of the decedent in intestate or partially intestate estates.
4. The State of California if any portion of the estate is to escheat to it.
5. The persons who have filed a Request for Special Notice.
6. The persons (or to their attorney, if they have appeared by attorney) who have given notice of appearance in the estate in person or by attorney.
7. If the personal representative is also the trustee, the income beneficiaries of the trust *must* be noticed.

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8. In an insolvent estate all creditors having filed creditors' claims must be noticed.

B. Notice to Prior Representative and Attorney. If there has been a change of personal representative or a substitution of counsel, notice of hearing on any petition for distribution must be given to such prior representative and any substituted counsel unless:

1. A waiver of notice is executed by the prior representative or counsel is on file or included with the petition; or

2. An agreement on the allocation of compensation is on file or included with the petition; or

3. The file and petition demonstrate that the commissions the prior personal representative or the fees of the substituted counsel have been previously provided for and allowed by the Court.

C. Proof of Notice. Proof of the giving of notice shall be filed prior to the hearing and, if it appears to the satisfaction of the Court that the notice has been regularly given, the Court will so find in its Order.

D. Additional Notices. Whenever the Court deems that the notice which has been given is insufficient, it may require such further and additional notices to be given as it deems proper.

[Rule 5.46 adopted effective 5/1/98]

5.47 PRELIMINARY DISTRIBUTION

A. Preliminary Distribution Under Probate Code §11620. In addition to any other requirements, a petition for preliminary distribution must state the approximate value of the property remaining in the estate after the proposed distribution, an estimate of the total amount of unpaid taxes, unpaid claims and other liabilities, a statement of why final distribution cannot be made and when it will be made. An inventory and appraisal which includes the property to be distributed should be on file.

B. Ex Parte Petition for Preliminary Distribution. Absent an emergency, preliminary distributions should be set for noticed hearing. The Probate Code provides for an ex parte petition for preliminary distribution. The urgency justifying such ex parte application must be set forth.

[Rule 5.47 adopted effective 5/1/98]

5.48 FINAL DISTRIBUTION IN GENERAL

A. List of Assets and Description of Property Required. A petition for final distribution, whether or not an account is waived, must list assets on hand and list and describe the property to be distributed, either in the body of the petition, or by a schedule in the accounting, or in a separate exhibit incorporated in the petition by reference. Description by reference to the inventory is insufficient. In the Order for Final Distribution real property must be described by legal description and include the parcel number.

B. Specific Statement How Estate to be Distributed. The petition for final distribution must state specifically how the estate is to be distributed. A general allegation that distribution is "in accordance with the terms of the Will" or "in accordance with the laws of intestate succession" is insufficient.

C. Non-Prorata Distribution. When the petition seeks a non-prorata distribution, it must show the computation on which the proposed distribution is based. Consents of interested beneficiaries must be filed.

D. Decree of Distribution. Whether or not an accounting has been waived, the decree of distribution must set forth specifically the manner in which the estate is to be distributed by showing the distributee's name and a description of the property, including the legal description of real property, and the amount of cash (as of a date certain) to be distributed. This must be in the body of the decree. Mere reference to allegations in the petition is insufficient and not acceptable to the Court.

1. *Blocked Funds.* The decree should provide that the savings institutions or other depository holding blocked funds belonging to the estate draw checks payable to named distributees. Funds held in blocked accounts in lieu of bond will not be released to the personal representative for distribution.

E. Preliminary Distribution Receipts. Receipts for any preliminary distribution must be on file prior to the final distribution.

[Rule 5.48 adopted effective 5/1/98]

5.49 ADDITIONAL REQUIREMENTS RE: PETITION FOR FINAL DISTRIBUTION

A. Allegations Re: Creditor's Claims. In addition to the allegation that all reasonably ascertainable creditors have been notified, the petition for final distribution whether or not on waiver of accounting and whether or not the personal representative is acting under the IAEA, must describe all creditors' claims presented to the personal representative (even if not filed with the Court) and indicate the disposition of each claim. If a claim has been rejected, the date of service of notice of rejection must be stated, as

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well as its disposition, whether by suit or otherwise. This information must be set forth in the petition for final distribution even though it may have been presented to the Court in whole or in part in prior accountings or petitions for distribution.

B. Allegations Relating to Independent Acts. The petition for final distribution must list and describe all independent acts taken without prior Court approval and must contain an allegation that the notice period for the advice of proposed action was met or waived and that no objections were received. The originals of the advice of proposed action with attached declarations of mailing must be available but need not be filed with the Court.

C. Allegations Re: Character of Property. In all cases where the character of the property may affect distribution, whether the decedent died testate or intestate, the petition for distribution must contain an allegation as to the separate or community character of the property.

D. Community and Quasi Community Property Elections. If a spousal election has been made, the date of the filing of the documents exercising such election and the nature of the election should be set forth in the petition.

E. Change of Ownership. If real property is or was an asset of the estate, any petition for distribution of real property should allege that the change of ownership report was filed with the County Recorder or assessor of each county in which any real property included in the inventory is located.

F. Payment of Taxes. The petition for final distribution must address the question of the source of the payment of the federal estate tax and California estate tax, if any. If the Will has a clause directing the payment of the taxes out of the residue of the estate, this should be alleged. If there is no tax clause or there is a tax clause which does not direct the source of payment, the amounts required to be prorated or charged must be stated. The final account must show the computation and the order of final distribution must show the proration.

G. Retention of a Reserve. The decree of final distribution must specifically set forth the use that may be made of retained funds (e.g. income taxes, closing costs, property tax reassessment, etc.). The petition for final discharge must show the disposition of all amounts held in reserve and vouchers, if requested by the Court, must be filed for any distributions unless account is waived.

H. Franchise Tax Board Clearance. If the estate exceeds \$1,000,000 at the date of death and if \$250,000 or more is distributable to non-resident beneficiaries, the certificate of the California Franchise Tax Board must be on file. A final account will not be approved until the certificate has been filed.

[Rule 5.49 adopted effective 5/1/98; amended 7/1/08]

5.50 AGREEMENTS FOR DISTRIBUTION; ASSIGNMENTS; DISCLAIMERS

A. Agreements. If the distributees agree to distribution in a manner other than that provided by the Will or by the laws of intestate succession, such agreement must be in writing, signed and acknowledged by all parties affected by the distribution, and filed in the probate proceeding.

B. Assignments. The Probate Court will distribute directly to the assignee of an heir or devisee only when a duly acknowledged assignment is on file.

C. Disclaimers. If a disclaimer has been filed, the Petition for Distribution should set forth the date of filing, the person disclaiming, the property of the estate affected and the person or persons entitled to receive distribution of the property disclaimed.

[Rule 5.50 adopted effective 5/1/98]

5.51 DISTRIBUTION TO PERSONS UNDER CONSERVATORSHIP OR GUARDIANSHIP

The decree should provide for distribution of the property to the minor or the conservatee rather than to the guardian or conservator, but must provide that actual payment or delivery be made to the guardian or conservator.

[Rule 5.51 adopted effective 5/1/98]

5.52 DISTRIBUTION TO MINORS

A. Delivery to Parent. Where delivery of the assets is to be made to the minor's parent, the declaration by the parent complying with the provisions of Probate Code §3401 must be on file before the hearing date.

B. Depository. Where a depository is to be used, the receipt and agreement of the depository must be filed as required under Probate Code §2328 and the decree of distribution shall so provide. The decree shall direct distribution of the minor's funds to a specific depository, including its location, in the name of the minor and shall state that the funds cannot be withdrawn without Court order.

[Rule 5.52 adopted effective 5/1/98]

5.53 DISTRIBUTIONS TO TRUSTEES

If distribution is to a trustee who is not the personal representative, the consent of the nominated trustee to act must be on file prior to the hearing on the petition for distribution to the trustee. A written declination should be filed by or on behalf of the

trustee who does not choose to act. The decree must contain the terms of the testamentary trust.

[Rule 5.53 adopted effective 5/1/98]

5.54 DISTRIBUTION TO REPRESENTATIVE OF DECEASED HEIR OR BENEFICIARY

When a beneficiary dies during the administration of an estate and survives any survival period stated in the Will, the decree should provide for distribution to the named personal representative of the estate of the beneficiary or where applicable, to the person(s) entitled thereto under Probate Code §13100. Counsel must file a certified copy of Letters Testamentary or the original affidavit required by Probate Code §13101 before the hearing date.

[Rule 5.54 adopted effective 5/1/98]

5.55 DISTRIBUTION TO INTESTATE HEIRS

Heirs who take by virtue of intestacy must be sufficiently described to permit the Court to determine if the laws of intestate succession have been properly applied. If an heir takes by right of representation, the Petition must indicate his parentage, and the approximate date of the parent's death.

[Rule 5.55 adopted effective 5/1/98]

5.56 DISTRIBUTION TO "MISSING" HEIR

When distribution is to be made to the State of California because there are no known heirs or there is an heir or devisee whose whereabouts is unknown, the notification requirements of the Probate Code must be followed. In addition, alternative distributees must be set forth. (Prob. C. §11603(c).)

[Rule 5.56 adopted effective 5/1/98; amended 1/1/04]

5.57 INTEREST ON GENERAL PECUNIARY LEGACIES

The Court will strictly enforce the policy regarding interest on general pecuniary legacies set forth in the Probate Code and will order payment of interest at the statutory rate on all general pecuniary bequests not paid within one year from the date of decedent's death unless payment of interest is waived in the Will.

[Rule 5.57 adopted effective 5/1/98]

MISCELLANEOUS PETITIONS AND ORDERS

5.58 FAMILY ALLOWANCE

A. Necessary Allegations of Petition. All petitions for family allowance must show that the allowance is necessary and reasonable, including:

1. The nature and separate and community character of the probate estate and whether or not it is solvent;
2. Whether others are entitled to family allowance;
3. The approximate needs of the applicant, with reference to his or her standard of living; and
4. The applicant's income from other sources.
5. The petitioner shall file an income and expense declaration prior to the hearing. (Judicial Council Form FL-150.)

B. Duration of Family Allowance. All orders will limit family allowance to a definite period of time. If the order is on an ex parte petition, family allowance will normally not be granted for a period exceeding six months.

C. Before Inventory Filed. Before an inventory is filed an order for a family allowance may be made or modified ex parte or on noticed hearing.

D. After Inventory Filed. After an inventory has been filed an order for a family allowance may be made or modified only on noticed hearing.

[Rule 5.58 adopted effective 5/1/98; amended 7/1/08]

5.59 STATUS REPORTS

The statutory requirements for filing of status reports annually in lieu of accountings is taken seriously by the Court. Attorneys failing to comply with the statutory requirements may expect to have their statutory compensation reduced. All status reports must explain why the case has not been closed and when the attorney expects to file a petition for final distribution. The Order must require the filing of an additional status report on or before the date fixed for the Petition for Final Distribution if the petition is not to be filed by that date.

[Rule 5.59 adopted effective 5/1/98]

5.60 OBTAINING FINAL DISCHARGE

A Declaration and Order for Final Discharge shall include a copy of the Judgment for Final Distribution and a receipt or other satisfactory evidence from each distributee. The Court may excuse the filing of a receipt on a showing that the personal representative is unable, after reasonable effort, to obtain a receipt that the property has been delivered to or is in the possession of the distributee. In the case of real property, the personal representative shall file a statement that identifies the date and place or location of the recording of the judgment of final distribution or other appropriate recording information. If funds have been retained as a reserve, the application for final discharge shall contain the disposition of all funds and all receipts. The Court in its discretion may require a supplemental account for the reserve.

[Rule 5.60 adopted effective 5/1/98; amended 1/1/06]

5.61 PROCEEDINGS TO ESTABLISH FACT OF DEATH

A. Filing Under Decedent's Name. A petition to establish the fact of death must be filed in the name of the deceased person whose interest is to be terminated.

B. Separate Petition Preferred. Although the Probate Code authorizes a petition to establish the fact of death to be included in a verified petition for probate of Will or for Letters of Administration for convenience of administration, attorneys are encouraged to file a separate petition.

C. Property Description. If real property is affected, a copy of the document showing the decedent's interest must be attached to the petition and incorporated therein, or the verified petition must set forth the entire instrument vesting title, including the recordation data. If personal property is affected, the location and description of the property and the decedent's interest therein must be set forth with particularity.

D. Death Certificate. A certified copy of the death certificate shall be filed with the petition.

E. Attorneys' Fees. There is no provision in the Probate Code for allowance of set attorneys' fees in proceedings to establish the fact of death and the Court will not fix such fees. The attorney should make fee arrangements directly with the client. However, if a surviving joint tenant failed during his or her lifetime to establish the fact of death of a previously deceased joint tenant, compensation for extraordinary services may be awarded in the probate proceeding involving the surviving joint tenant for those services performed after the death of the surviving joint tenant.

[Rule 5.61 adopted effective 5/1/98]

5.62 PETITION TO ESTABLISH IDENTITY OF HEIRS

A Petition to Establish Identity of Heirs may be filed when title to real or personal property vests in heirs, heirs of the body, issue, or children of the decedent without other specific identification. Like the proceeding to establish death, only the fact of identity is determined and the resulting judgment does not determine the legal right to the property involved.

[Rule 5.62 adopted effective 5/1/98]

5.63 TRANSFER OF ESTATE PLANNING DOCUMENTS TO CLERK

Only estate planning documents held by an attorney for safekeeping may be transferred to the Clerk of the Court under Probate Code §732. See Appendix C for Guidelines and the form to be presented to the Clerk.

[Rule 5.63 adopted effective 5/1/98]

5.64 REFUND OF GRADUATED PROBATE FILING FEES

The personal representative of a decedent's estate commenced between August 18, 2003 and January 1, 2008 may apply to the Court for a refund of the amount of the filing fees paid in excess of the filing fees that would have been payable on the original filing date for a Petition for Probate of an estate valued at less than \$250,000. The procedure below applies to Petitions for Probate that are either granted or voluntarily dismissed.

To apply for a refund, the personal representative shall file a declaration with the Court stating that the original amount of the filing fee exceeded the amount of the filing fee, as specified in CRC 7.552, and requesting a refund of the excess amount of the filing fee. The Court will confirm the original amount of the filing fee and will calculate the amount, if any, of the refund. The request for refund will be forwarded to the Court's Accounting Unit for processing and it will be remitted to the personal representative within thirty (30) calendar days.

[Rule 5.64 adopted effective 1/1/10]

GUARDIANSHIPS AND CONSERVATORSHIPS

5.65 TEMPORARY GUARDIANSHIPS AND CONSERVATORSHIPS

A. Good Cause Required. A temporary guardianship or conservatorship will not be granted without a showing of good cause. The petition should set forth facts showing the emergency or urgent nature of the request.

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B. Presenting Petition. The petition for temporary guardianship or conservatorship must be filed in the Clerk's Office (Room 113). A hearing for the appointment of temporary *conservator* will be set by the Court Investigator. A hearing for the appointment of a temporary *guardian* will be set by the Probate Examiner. Judicial Council form GC-330 (Order Appointing Court Investigator) must accompany the petition. A copy of the petition, all supporting documents, and the Probate Contact Information Form (Local Form PRO15) must be provided immediately to the Court Investigator so the report required by Probate Code §2250.6 can be prepared prior to the hearing.

C. Bond. A full bond will normally be imposed upon a non-corporate temporary guardian or conservator of the estate; if a lesser amount is requested, good cause must be shown in the petition. The Court may in certain cases require a bond of a temporary conservator or guardian of the person.

D. Notice. Notice must be given to the persons listed in Probate Code §§1510, 1511, 1821 and 1822. If the petition requests that notice be dispensed with to any persons required to receive notice, the Judicial Council Form GC-112 must be filed with the petition for appointment of a temporary conservator. The fact that a proposed conservatee may not understand the proceeding or be unable to attend is not a reason for dispensing with notice.

E. Powers of Temporary Guardians and Conservators. Temporary guardians or conservators have the same powers as permanent guardians or conservators with the following exceptions:

1. *Sales.* Temporary guardians or conservators may not sell any property including securities, vehicles, personal property, or real property.

2. *Change Of Residence Under a Temporary Conservatorship.*

a. *Hearing.* The court is required to hold a hearing within seven days after a petition is filed. (Prob. C. §2253(c).) The proposed conservatee is required to attend the hearing unless he/she is unable or unwilling to attend the hearing and does not object. The proposed conservatee has the right to legal counsel, the right to confront any witnesses presented by or on behalf of the temporary conservator, and to present evidence on his/her own behalf. The court, in granting the petition, must make a finding that the change of residence is required to prevent irreparable harm and that no means less restrictive of the proposed conservatee's liberty will be sufficient to prevent such harm.

b. *Order.* The order shall specify the specific place where the placement is authorized. The court may not authorize removal from the state without an additional showing of necessity. A conservator who

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“willfully” removes a temporary conservatee from the state without a court order is guilty of a felony. (Prob. C. §2253(g).)

c. *Investigation by Court Investigator.* If directed by the court, the Court Investigator does the following: (i) personally interview the proposed conservatee; (ii) inform the proposed conservatee about the proceedings and his/her rights; (iii) determine if the proposed conservatee objects, wishes to exercise his/her legal rights, is able and willing to attend the hearing, if legal counsel should be appointed, and whether the change of residence is required to prevent irreparable harm and no less restrictive means will suffice to prevent harm. The Court Investigator’s report must be filed at least two days before the hearing. The contents of the report must mirror the determinations above. (See Prob. C. §2253(b)(8).)

F. Special Powers. Good cause must be shown for special powers to be granted without a hearing. If special powers or other special orders are sought, they must be specified in the petition and supported by factual allegations. Specific written explanations must be submitted for each power requested under Probate Code §2590. In any case involving a special medically related power, a physician's declaration should be presented with the petition. Except in cases of emergency, no power of sale of real property will be granted without a noticed hearing.

G. Length of Appointment. A temporary conservator will be appointed only pending the hearing on the petition for appointment of the conservator.

[Rule 5.65 adopted effective 5/1/98; amended 7/1/09]

5.66 GUARDIANSHIPS

A. Notice of Petition for Appointment of Guardian. Notice of petition must comply with Probate Code §§1510-1511. Note that these sections require *personal service* on specified persons. In situations where an order dispensing with notice is sought on the ground that a relative within the second degree cannot be found with reasonable diligence and no other notice is required, the Court requires a declaration stating specifically what efforts were made to locate the relative.

B. Proposed Ward's Appearance at Hearing for Appointment of Guardian. The requirement of an appearance is within the discretion of the Court and will be decided on an individual case basis. Where the proposed ward is the natural child of the proposed guardian of the estate, an appearance by the proposed ward is not required.

C. Investigative Reports. Unless waived by the Court, an investigative report must be given to the Court prior to appointment of a guardian of the person and/or estate.

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1. *Non-Relative Petitioner.* In all cases where a non-relative petitions to be appointed guardian, the Department of Social Services will perform an investigation and make a report to the Court prior to the hearing date.

2. *Relative Petitioner.* When the proposed guardian is a relative, the court investigator will interview all parties at the time of the hearing and report to the Court.

D. Required Documents. The following documents must be filed with the petition:

1. *Guardian Information Form.* The Court requires that a Guardianship Information Form (see Appendix D) in support of the petition for guardianship of the person be filed with the petition by the proposed guardian. The Guardianship Information Form will become part of the confidential court file. A copy should be provided to the Court Investigator within 5 days after filing the Petition for Appointment of Guardian. The declaration shall include the following:

a. The need for guardianship including the specific reasons why the parents are unable to care for the proposed ward, and whether they consent to the guardianship.

b. A statement concerning the development of the minor, indicating with whom the minor has resided since birth, and any special emotional, psychological, educational or physical needs of the minor and the guardian's ability to provide for such needs.

c. Any arrest record of the guardian and each person who will reside in the guardian's home, including the nature of the offense, the date, place and disposition.

d. Any pending or prior proceedings in Juvenile Court involving the minor or any other persons who will be residing in the guardian's home including the date, place, and disposition.

e. Any prior contact by the minor, the guardian, and any persons who will reside in the guardian's home with Child Protective Services of the Department of Social Services.

f. A statement regarding the necessity for a visitation order. Any information regarding visitation orders which are currently in effect and any information concerning visitation issues between any of the parties. If visitation is an issue, a statement as to how often the parents visit.

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2. *Declaration Under UCCJEA.* A declaration under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) shall be filed with the petition and at any time there is a change of address of the ward.

3. *Confidential Guardian Screening* (Judicial Council Form GC-212).

4. *Duties of Guardian and Viewing of Videotape.* Before Letters of Guardianship are issued, each guardian of the person or estate must sign and file the Duties of Guardian form (Judicial Council Form GC-248). The guardian must also view the guardianship videotape shown in Room 116 and file the Acknowledgement of Guardian's Viewing of Videotape (Local Form FL026).

E. Inventory and Appraisal. At the hearing to appoint a guardian of the estate, a compliance hearing will be set in approximately 120 days to ensure the Inventory and Appraisal (I&A) has been filed as required by law. If the I&A has been filed, bond is sufficient, receipts for blocked accounts have been filed, and the notice required by law has been provided, the hearing will be dropped. If the requirements of this rule and the law have not been met, an appearance by the attorney and the fiduciary will be required.

F. Accounts and Reports. The report accompanying each accounting should contain a statement of the age, health and whereabouts of the ward. In addition, the report should contain an allegation concerning the amount of bond currently in effect and should address the question of the adequacy thereof.

1. *Conflicts of Interest.* The report accompanying an account shall include a disclosure of any actual or potential conflicts of interest as required by law. If no disclosures are required, the guardian shall include an allegation that no disclosures are required pursuant to Probate Code §§ 2111.5, 2351(d), 2401(c), and 2403(c)(2).

2. *Waivers Of Accounts.* Waivers of interim accounts will not be accepted. Waivers of final accounts on termination are not favored and the Court may require the ward to be present at the hearing.

G. Guardianship Status Report. A confidential guardianship status report is due annually on the Judicial Council form.

H. Discharges. Discharge of the guardian will not be made in the order settling final account. A separate declaration for final discharge must be submitted, together with the receipt executed by the former ward and a copy of the order settling the final account and ordering delivery of the assets to the former ward. The declaration must state the date on which the ward reached majority.

I. Copies. All filings regarding guardianships must be accompanied by a copy designated for the Court Investigator.

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J. Current Address. All attorneys and guardians are required to keep the Court informed of their current addresses and phone numbers as well as the current address and phone number of the ward.

K. Use of Minor's Assets for Support. In guardianship cases, if a minor has a living parent who receives or is entitled to support for the minor from another source, prior Court approval must be obtained before using guardianship assets for the minor's support, maintenance or education. The petition must set forth the parents' financial inability or other circumstances which would justify use of the guardianship assets. Such petition may be included in a petition for the appointment of a guardian. An order granting the petition should normally be for a limited period of time, usually not to exceed 6 months, or for a specific and limited purpose.

1. *Funds In Blocked Accounts.* A request for withdrawal of amounts necessary for the minor's support may normally be made ex parte if accompanied by a sufficient showing of the need. However, where the minor has a living parent, the petition must contain the allegations referred to above; in such cases the Court may require the obtaining of an order prescribing notice and a calendared hearing.

[Rule 5.66 adopted effective 5/1/98; amended 7/1/10]

5.67 ORDERS FOR WITHDRAWALS OF FUNDS IN BLOCKED ACCOUNTS

Withdrawals are handled informally by the Court upon ex parte petition by the guardian. Normally an attorney need not be involved. Where withdrawal is sought because the minor has reached majority, the order establishing the blocked account is not self-executing, a certified copy of the minor's birth certificate or other convincing evidence of the minor's age must be presented with the petition for withdrawal. The order must provide for the payment of the funds only to the former minor. Where withdrawal is sought prior to majority, the purpose of the withdrawal must be fully disclosed. Withdrawals are disfavored except in cases of medical emergencies or unusual needs which a parent is unable to meet.

In the case of guardianship estates consisting solely of blocked accounts established after settlement of litigation, orders establishing such accounts should provide for direct payment to the minor upon reaching the age of majority. Withdrawals prior to that time may be made by the guardian without assistance of counsel. Withdrawals may be sought by completing forms of petitions and orders provided by the Clerk. The purpose of the withdrawals must be disclosed in full to the Court. Withdrawals are disfavored by the Court except in the case of medical emergencies and unusual needs when parents cannot afford to pay.

[Rule 5.67 adopted effective 5/1/98; amended 1/1/10]

5.68 DISPOSITION OF MINOR'S FUNDS (PROBATE CODE §3410)

A. Contents of Petition. A petition under these sections must set forth jurisdictional facts, state the amount to be paid and by whom, the amount of fees and reimbursement of costs requested, the relief requested, and a statement of the reasons that the requested relief will best serve the interests of the minor.

B. Notice. The petition may be presented ex parte if the only relief sought other than reimbursement for filing fee and award of reasonable attorneys' fees is to deposit funds in a blocked account and the amount involved does not exceed \$20,000.00. Otherwise, the petition must be noticed.

C. Order. Where the minor's funds are to be deposited in a blocked account, the order must provide that the person holding funds shall disburse the ordered amount of fees and costs, if any, directly to the person(s) entitled thereto and disburse the balance to the selected depository, whose name and address must be specified. The order must also provide that the receipt by the depository of the funds and a copy of the order must be filed forthwith upon the deposit of the funds. The receipt must acknowledge that the funds may be withdrawn only on Court order.

[Rule 5.68 adopted effective 5/1/98]

5.69 CONSERVATORSHIPS

A. Special Requirements. In all conservatorship proceedings:

1. *Judicial Council Forms.* Adopted forms must be used and approved forms may be used.
2. *Copies.* An extra copy of all conservatorship filings must be given to the Clerk of the Court designated for the Court Investigator.
3. *Change Of Address.* Whenever the address of the conservatee is changed, the conservator must file a Pre-Move Notice of Change of Residence (Judicial Council Form GC-079) or a Post-Move Notice of Change of Residence (Judicial Council Form GC-080) within the timeframe required by law. Any changes to the address or phone number of the conservator or attorney must be promptly filed with the Court. Copies of all changes of address or telephone number must be provided to the Court Investigator.

B. Appointment of Conservator.

1. *Order Appointing Court Investigator.* An order appointing Court investigator must be signed and filed with the petition for appointment of conservator.

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2. *Confidential Supplemental Information.* All petitions for conservatorship must be accompanied by the Judicial Council form Confidential Supplemental Information.

3. *Confidential Conservator Screening* (Judicial Council Form GC-312).

4. *Handbook For Conservators and Viewing Of Videotape.* Before Letters of Conservatorship are issued, each conservator of the person or estate must: (a) obtain and file the Duties of Conservator indicating receipt of the Handbook for Conservators, and (b) view the conservatorship video shown at 8:30 a.m. Monday mornings in Room 116 and file the form entitled "Acknowledgment of Conservator's Viewing of Videotape."

C. Additional Powers of Conservator. The Court may, on the petition of the conservator either at the time of appointment or later, grant additional powers to the conservator as authorized by the Probate Code. The Court does not favor the granting of Special Powers absent a showing of good cause. Any additional powers will be tailored to the specific circumstances of each case. Ordinarily, the Court will not grant the power to sell real property.

D. No Attorneys' Fees in Order Appointing Conservator. The Court does not grant attorney fees in the Order Appointing Conservator.

E. Doctor's Declaration. A doctor's declaration on the Judicial Council Form is required stating not only that the proposed conservatee suffers from a deficit, but how that deficit prevents the proposed conservatee from functioning.

F. Professional Conservators. When seeking appointment, private *professional* conservators must include a statement that he/she is licensed under the Professional Fiduciaries Act of the Business and Professions Code, along with the license number and expiration date. All professional fiduciaries who are exempt from the definition of professional fiduciary under Business and Professions Code §6501, or who are exempt from the licensing requirement of §6530, must provide information about his/her exemption.

G. Limited Conservatorships. Counsel or the self-represented petitioner should prepare an order appointing the Public Defender as counsel for the proposed conservatee. Counsel or the self-represented petitioner should prepare an order directing the Golden Gate Regional Center to prepare a report on the powers requested by the proposed limited conservator.

H. Petition for Substituted Judgment. Prior Court approval is required for any action specified in Probate Code §2580, et seq. The petition must comply with the requirements of Probate Code §2583. If the petition requests authorization to establish a trust, the trust document must comply with the requirements of CRC 7.903. Ordinarily if

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the conservatee is unrepresented the Court will appoint counsel for the conservatee as Guardian Ad Litem from its Probate Panel for the limited purpose of reviewing the petition and representing the interests of the conservatee.

[Rule 5.69 adopted effective 5/1/98; amended 7/1/09]

5.70 NOTICE IN CONSERVATORSHIP PROCEEDINGS

Unless dispensed for good cause, notice of the hearing and a copy of the petition must be served on the conservatee as well as any attorney for the conservatee in all conservatorship proceedings. Notice of hearing shall be given in accordance with the Probate Code.

A. On Petition for Appointment of Conservator. There is no statutory basis for shortening the time of notice or for dispensing with notice on a petition for the appointment of a conservator.

B. Power of Attorney. If the proposed conservatee has executed a power of attorney, the attorney-in-fact should receive notice of the petition for conservatorship. This information should also be included in the petition for conservatorship.

C. On Final Accounts. On final accounts where the conservatorship has been terminated by death of the conservatee, the Court will usually require that notice of the hearing on the settlement of the final account be given to the personal representative of the probate estate, if one has been appointed or if none, to the personal representative named in the conservatee's will, or if none, to any beneficiary of the conservatee so far as is known to the conservator. If the personal representative is the same as the conservator, the devisees and heirs must be notified.

On final accounts where the conservatee is living, the conservatee must be served. In such cases, the proof of notice must clearly indicate that the conservatee received a copy of the notice and the petition.

D. Exclusive Broker Listings. A petition for authorization to grant an exclusive listing will be considered *ex parte*, but *only after prior authority to sell has been obtained on a noticed petition*. The petitions may be combined as a noticed petition. *All conservatorship sales will be subject to Court confirmation notwithstanding Probate Code provisions to the contrary*. It is not the policy of the Court to grant a conservator special power of sale of real property in conservatorships. However if granted, the conservator must notify the Court if the personal residence is to be sold and that the sale has been discussed with the conservatee.

[Rule 5.70 adopted effective 5/1/98]

5.71 MEDICAL AUTHORIZATION FOR CONSERVATORS

A. Medical Consent Authority. All conservators of the person have the power to consent to medical treatment of the conservatee so long as the conservatee does not object. In emergencies, the conservator may require the conservatee to receive medical treatment even though the conservatee does not consent. (Prob. C. §2354)

B. Exclusive Medical Consent Authority. If the conservatee has been adjudicated to lack the capacity to give informed consent for medical treatment pursuant to the Probate Code, the conservator has the exclusive authority to give such consent and may give such consent over the objection of the conservatee. The Court does not favor the granting of such exclusive authority and absent the express agreement of the conservatee will require a showing in accordance with Probate Code §812 that the conservatee lacks the capacity to give informed consent to any medical treatment. Such authority will only be granted if the following conditions are satisfied:

1. *Court Investigator Report.* It clearly appears from the Court file that a Court Investigator has advised the conservatee of the effect of granting such authority and of the conservatee's rights in regard to such request.

2. *Physician's Declaration.* A physician's declaration on the Judicial Council Form is filed stating a medical opinion that the proposed conservatee lacks the capacity to give informed consent to any medical treatment and that the proposed conservator should be granted the exclusive authority to give such consent and to consent over the objection of the proposed conservatee. Such declaration must state the factual basis for the opinion and the nature and extent of the physician's examination and investigation. Such declaration must also conform to the requirements of Probate Code §812.

3. *Conservatee Regains Capacity.* If a conservatee regains sufficient capacity to give informed consent to any form of medical treatment, the conservator shall promptly petition pursuant to the Probate Code to revoke any previous order granting the conservator exclusive authority to consent to medical treatment.

[Rule 5.71 adopted effective 5/1/98; amended 1/1/06]

5.72 ACCOUNTS AND REPORTS IN CONSERVATORSHIP PROCEEDINGS

In addition to the requirements set forth in the Probate Code, counsel are reminded and further advised of the following:

A. Inventory and Appraisal. The Inventory and Appraisal (I&A) is due 90 days from appointment. At the hearing to appoint a conservator of the estate, a compliance hearing will be set in approximately 120 days to ensure the I&A has been filed as

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required by law. If the I&A has been filed, bond is sufficient, and the notice required by law has been provided, the hearing will be dropped. If the requirements of this rule and the law have not been met, an appearance by the attorney and the fiduciary will be required.

B. Account and Report. The report accompanying an account shall include a disclosure of any actual or potential conflicts of interest as required by law. If no disclosures are required, the conservator shall include an allegation that no disclosures are required pursuant to Probate Code §§ 2111.5, 2351(d), 2359(c)(2), and 2403(c)(2).

C. Waivers of Account. Waivers of Account will be accepted in the Court's discretion only in the following instances:

1. When the proceeding is terminated by Court order, and the conservatee thereafter waives an account;
2. When the proceeding is terminated by death of the conservatee and (a) there is no Will and a written waiver is obtained from all of the conservatee's heirs, or (b) there is a Will and a written waiver is obtained from the personal representative and the beneficiaries under the Will after the order admitting the Will has become final. Waivers will be accepted only from heirs or beneficiaries who are competent adults.

D. Assessment Fees of Court Investigator. The fees of the court investigator must be paid before the accounting will be approved. A receipt for the fees should be on file. If the conservator believes these fees should be deferred, the conservator shall file a petition requesting deferral of fees and serve a copy of the petition on the investigator.

[Rule 5.72 adopted effective 5/1/98; amended 7/1/08]

5.73 SALE OF RESIDENCE BY CONSERVATOR

If the conservator petitions to sell the conservatee's residence, the petition must allege that the conservatee is unable to return to the residence or, if able, that the conservatee agrees to the sale, or that the sale is necessary to generate cash to support the conservatee. The petition shall include the information that the sale has been discussed with the conservatee pursuant to the Probate Code. The report shall include the responses of the conservatee. Where the sale of the conservatee's residence is sought, a copy of the petition must be provided to the Court Investigator at the time of filing the petition.

[Rule 5.73 adopted effective 5/1/98]

5.74 TERMINATION OF CONSERVATOR

A. Resignation of Conservator. Conservators who wish to resign must formally propose a competent successor and file a final accounting, subject to Court approval.

B. Petitions for Appointment of Successor Conservator. Petitions for appointment of successor conservators must be accompanied by a Notification to Court of Address of Conservatee and Conservator and a Confidential Supplemental Information Form.

C. Distribution of Assets. The order distributing assets must contain the name of the successor conservator, or, in the event the conservatee is deceased, the name of the personal representative and a list of the assets.

[Rule 5.74 adopted effective 5/1/98]

5.75 COURT APPOINTED ATTORNEYS FOR (PROPOSED) CONSERVATEE

If necessary, the Court will appoint an attorney to represent a (proposed) conservatee. Attorneys who wish to be considered for appointment may write a letter to the Probate Commissioner outlining experience and interests that are related to Probate Conservatorship law. Compensation for court appointed attorneys is set by the Probate Court. Compensation will be paid from the estate of the conservatee. If there is no estate or the estate qualifies as a small estate under Probate Code §2628 then compensation will be paid by the Court.

Upon appointment, attorneys will be furnished with a Court Order. Court appointed attorneys are expected to do the following:

1. *Court Investigator.* Remain in close communication with the Court Investigator.
2. *Personal Visit.* Personally visit the person they have been appointed to represent and to interview other individuals as the case may merit.
3. *Representation As To Conservatorship Only.* Represent the (proposed) conservatee only on the issue of conservatorship. Other legal work, such as wills, real estate transactions, estate transactions, estate planning, tenant disputes, must be approved separately by the Court.
4. *Keep Court Informed.* Inform the Court of the wishes, desires, concerns, and objections, of the (proposed) conservatee as well as provide the Court with an independent assessment of the situation.

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5. *Disclose Potential Conflicts of Interest.* If the court appointed attorney requests an independent professional fiduciary be appointed, court appointed counsel must disclose if he or she currently represents that professional fiduciary in any other proceeding. This disclosure must be in the form of a declaration filed with the Court. A copy of the declaration must be mailed to persons entitled to notice of the proceedings.

6. *Discharge.* Court appointed attorneys are expected to request discharge from the case at a time deemed appropriate by them and the Probate Court. At that time, the court appointed attorney will petition for discharge and for compensation. A declaration as to the nature and hours of work performed must be included with any petition for compensation. A Court appearance may not be necessary if all parties agree that discharge is appropriate. The matter may be handled ex parte with notice to the conservator and, if conservatee is not deceased, to the conservatee.

[Rule 5.75 adopted effective 5/1/98; amended 7/1/09]

TRUSTS

5.76 FILING OF ACTIONS CONCERNING TRUSTS

Generally, an action between a trustee and a trust beneficiary should be filed in the Probate Court.

A. Filed in Probate Court. In the following instances an action concerning a trust should be filed and placed on the probate calendar:

1. Petition is filed in an existing probate action;
2. Petition cites the Probate Code as cause of action;
3. Petition involves creditors' claims against the trust or involves the construction of trust or other internal matters of the trust.

B. Filed as a Civil Action. In the following instances an action concerning a trust should be filed as a civil action.

1. Complaint is in an existing civil action;
2. Complaint cites a code other than the Probate Code.

[Rule 5.76 adopted effective 5/1/98]

5.77 NOTICE REQUIREMENTS CONCERNING TRUSTS

A. Notice Generally. Trust matters brought under sections of the Probate Code applicable to trust (Prob. C. §§15000-19403) require thirty (30) days notice.

B. Notice to Trust Beneficiaries. If a personal representative presents an account or petition that affects the interest of a beneficiary of a trust and the representative is either named to act or is acting as the sole trustee, then the Court will require notice to beneficiaries as required by Probate Code §1208. In appropriate circumstances the Court may require the appointment of and notice to the guardian ad litem for potential beneficiaries if their interest may diverge significantly from those of the beneficiaries in being. This notice requirement applies to both testamentary trusts and pourover wills to an intervivos trust. The Court requires that a copy of the trust document be lodged with the Court to verify the persons requiring notice or a declaration by the attorney be filed stating the trust beneficiaries entitled to notice.

On termination of a conservatorship if the conservator and the personal representative or trustee are the same person, notice should be given to the trust beneficiaries.

[Rule 5.77 adopted effective 5/1/98]

5.78 PETITIONS FOR TRANSFER OF PROPERTY TO TRUST (“HEGGSTAD PETITIONS”)

A. Jurisdiction. Petitions should include an allegation of jurisdiction under Probate Code §§17000 et seq. If the trust is administered by a representative of the trustee, then sufficient proof must be provided such as notice by trustee of place of administration under Probate Code §16061.7.

B. Notice Requirements. Petitions should include an allegation of those entitled to notice.

C. Proof of Ownership. If the assets to be transferred to the trust are not specifically identified in the estate planning documents, then the petition should provide substantiation that the property was owned by the decedent. For transfer of real property, the deed showing ownership by the decedent must be provided. For accounts or investments, a statement by the financial institution identifying the account number and decedent’s name should be provided.

[Rule 5.78 adopted effective 7/1/10]

5.79 WAIVER OF ACCOUNT BY TRUSTEE

A trustee who is also the personal representative may not waive an accounting of himself/herself. The waiver may be executed by a co-trustee or by all trust beneficiaries presently entitled to distribution. This applies to testamentary trusts and to pourover wills to intervivos trusts. A testamentary trustee who waives the accounting of the personal representative must have filed a consent to act as trustee. Even though there is a waiver of accounting by the trustee, if the net probate income is to be paid over by the trustee to trust beneficiaries, the net probate income must be specified.

[Rule 5.79 adopted effective 5/1/98]

5.80 TRUSTEE'S FIRST ACCOUNT

The starting balance of a testamentary trustee's first account must conform to the trustee's receipt(s) filed on distribution of the assets of the decedent's probate estate. The petition for settlement of a trustee's account must include the names of beneficiaries and remainderpersons and set forth the trust provisions for distribution of principal and income.

[Rule 5.80 adopted effective 5/1/98]

5.81 DISTRIBUTIONS TO TRUSTEE

If distribution is to a trustee who is not the personal representative, the consent of the nominated trustee to act must be on file prior to the hearing on the petition for distribution to the trustee. A written declination should be filed by or on behalf of the trustee who does not choose to act. The decree must contain the terms of the testamentary trust.

[Rule 5.81 adopted effective 5/1/98]

5.82 SUBSTITUTED JUDGMENT

If a trust is established pursuant to the substituted judgment statutes for a conservatee, the Court will require bi-annual accountings of all trust assets and the trust shall remain under the jurisdiction of the Probate Court.

[Rule 5.82 adopted effective 5/1/98]

COMPENSATION

5.83 STATUTORY COMPENSATION IN DECEDENT'S ESTATE

A. Calculation Must be Shown. All petitions requesting payment of statutory compensation -- even if accompanied by a waiver of accounting -- must show the calculation of the compensation requested in accordance with CRC 7.705(a).

B. Basis for Computing Statutory Compensation on Waiver of Accounting. As an alternative to basing statutory compensation on the inventory values alone, where the petition for final distribution so requests, the Court will allow such compensation to be based on the inventory values plus income, plus gains on sales, less losses on sales, provided these figures are set forth clearly in the verified petition in accordance with CRC 7.705(b).

[Rule 5.83 adopted effective 5/1/98; amended 1/1/04]

5.84 EXTRAORDINARY COMPENSATION IN DECEDENT'S ESTATES

A. Factors. The following factors will guide the attorney and the Court in determining whether and in what amount attorneys' compensation for extraordinary services will be awarded:

1. The time required for the services.
2. Results obtained.
3. Benefits accruing to the estate and to beneficiaries.
4. Nature of services performed by personal representatives.
5. Amount of statutory compensation.

B. Declaration. Requests for extraordinary attorneys' compensation must contain detailed descriptions of the work performed, the hours spent on the work performed, the average hourly rate requested, the total amount requested and special circumstances related to the request. The declaration should include a statement which sets forth the number of hours spent on ordinary services and the total dollar value of services performed for statutory services.

C. Paralegal Services. Extraordinary attorney's services may include services of a paralegal acting under the direction and supervision of an attorney. The petition must set forth the hours spent, the qualifications of the paralegal, the work performed and the hourly rate. In addition, the petition should provide the court with assurance that the amount requested for extraordinary services of the attorney and paralegal combined do

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not exceed the amount appropriate if the attorney provided the services without the paralegal's assistance.

D. Examples of Services. Compensation may be awarded for extraordinary services, including but not limited to the following:

1. Sales, leases, exchanges, financing or foreclosure of real or personal property.
2. Contested or litigated claims against the estate.
3. Preparation of income, sales, withholding, gift or estate tax returns and handling of audits or litigation connected with tax liabilities.
4. Carrying on the decedent's business.
5. Will contest.

E. Litigation Connected With Estate. Extraordinary compensation for representing the estate in litigation outside the regular administration of the estate whether by the attorney for the representative or outside counsel should be requested in advance and will ordinarily be allowed upon a properly noticed petition estimating the cost of litigation. Upon proper showing the Court may authorize progress payments prior to completion.

[Rule 5.84 adopted effective 5/1/98]

5.85 PARTIAL ALLOWANCE OF COMPENSATION

A. Statutory Compensation. Partial allowance of statutory compensation will not be allowed on account before the filing of an inventory or the time for creditors' claims has run. Such allowance will be made in accordance with the work actually performed, but where no accounting is filed, the allowance may not exceed 50% of the statutory compensation computed upon the total value appearing in the inventories filed to that time. Where an accounting is filed, the allowance may not exceed 75% of the statutory compensation so computed.

B. Apportionment. Except in a case in which there is an agreement in writing on apportionment, where the personal representative has been represented by successive attorneys, compensation will not ordinarily be apportioned to a prior attorney for the personal representative until the final accounting has been approved.

C. Extraordinary Compensation. Extraordinary compensation will be allowed before final distribution only when it appears likely that the estate will remain in probate

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for an unusually long time, whether due to litigation or other cause, or on a showing that present payment will benefit the beneficiaries of the estate.

[Rule 5.85 adopted effective 5/1/98]

5.86 COMPENSATION FOR TRUSTEES, GUARDIANS, CONSERVATORS AND THEIR ATTORNEYS

A. Criteria. *Estate of Nazro* (1971) 15 Cal.App.3d 218 [93 Cal.Rptr. 116], states the following applicable criteria:

1. The gross income of the estate.
2. The success or failure of the administration of the fiduciary.
3. Any unusual skill or experience that the fiduciary in question may have brought to the work.
4. The fidelity or disloyalty displayed by the fiduciary.
5. The amount of risk and responsibility assumed.
6. The time spent by the fiduciary in carrying out fiduciary duties.
7. The custom in the community as to allowance to fiduciaries by settlors or Courts, and as to charges of corporate fiduciaries.
8. The character of the work performed, i.e., whether routine or involving skill and judgment.
9. The fiduciary's estimate of the value of the services.

B. Compensation to Conservators/Guardians of the Person. Compensation for guardians and conservators of the person will be awarded on the basis of the amount and quality of the services rendered, actual time expended and hourly rate. A declaration should accompany all requests for compensation.

C. Compensation to Conservators/Guardians/Trustees of the Estate.

1. *Corporate Trustee or Corporate Conservator - Percentage Guideline.* Where a corporate trustee or corporate conservator is actively managing an income producing trust, a reasonable fee should usually not exceed 8/10ths of 1% of the principal of the trust per annum at the estimated fair market value at the close of the accounting period. When all or a portion of the income-producing trust is actively managed real property, a fee of 1% of that portion of the fair

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market value of the corpus attributable to the real property will normally be considered reasonable. [Corporate trustee or corporate conservator includes **only** banks and financial institutions. All professional conservators and other trustees or conservators must request fees under paragraph 2 below.]

2. Noncorporate Trustee or Conservator - Percentage Guidelines Normally Inapplicable. The noncorporate or individual trustee or conservator shall ordinarily be compensated on a quantum meruit basis according to work actually performed under the principles described above. The noncorporate trustee or conservator must submit an itemized fee declaration. (See paragraph E below.) If the compensation requested is at or above the level of a corporate trustee or conservator, it shall be the burden of the applicant to demonstrate the facts for justification; and in justifying guideline computations, the applicant shall include the cost of services of professional assistants including accountants, investment counselors, property managers and others.

D. Attorneys' Compensation. Attorneys' compensation is allowed according to the work actually performed.

E. Fee Declarations. All requests for compensation shall specify the services rendered, the time expended and the hourly rate. When applicable, fees shall be divided into separate categories between work done on behalf of the estate (as "fiduciary fees" or "administrative fees") and work done on behalf of the person ("personal care fees" or "clerical fees"). Professional fiduciaries may apply for their customary fiduciary fees in the former category and should apply for an appropriate lesser rate in the latter category. The Court will evaluate the services as a whole rather than designate part of the services as "ordinary" and part of the services as "extraordinary."

F. Set-Up and Termination Fees Re: Trusts. The allowance of a special fee for setting up or terminating a trust is within the discretion of the Court and will be determined on the basis of the work actually performed.

G. When Will or Trust Instrument Sets Trustee's Fees. If the will or trust instrument contains provisions for a trustee's compensation, the trustee is entitled to compensation as provided therein. On a proper showing, the Court may allow a greater compensation when (1) the trustee's services are substantially greater than those contemplated by the testator or settlor at the time the will was signed or the trust was created, (2) the compensation provided in the will or trust is so unreasonably low that a competent trustee would not agree to administer the trust, or (3) there are extraordinary circumstances.

H. Payment in Guardianships, Conservatorships or Trusts. No compensation will be ordered paid in guardianships or conservatorship proceedings until the filing of an inventory and in no event before the expiration of 90 days from issuance of Letters. The

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Court prefers to determine the amount of fees at the time an account is considered. The period for which fees are requested should coincide with the accounting period.

I. Compensation Taken in Advance. There is no authority for payment of any compensation in decedent's estates, testamentary trusts, guardianships or conservatorships in advance of a Court order authorizing such payment. Where compensation is paid without Court authorization the Court will require an appearance by counsel or declaration stating the reasons therefore, and interest or a surcharge may be imposed.

[Rule 5.86 adopted effective 5/1/98; amended 7/1/10]

5.87 EXPENSES OF TAX RELATED SERVICES, ACCOUNTING AND BOOKKEEPING

The personal representative, conservator or guardian may employ tax counsel, tax auditors, accountants or other tax experts for the preparation of tax returns and for other tax related services, and pay from the funds of the estate for such services. The Court may deduct from the personal representative's statutory compensation any sums paid from estate funds for performance of the representative's ordinary duties such as ordinary accounting and bookkeeping services, including the preparation of schedules for court accountings.

[Rule 5.87 adopted effective 5/1/98; amended 7/1/08]

5.88 PROCEDURE FOR OBTAINING COMPENSATION

A. Form of Application for Compensation. An application for compensation may be included in a petition for settlement of account, in a petition for distribution, or in a separate petition. The application should request a specific amount and not merely "reasonable fees."

B. Contents of Application. All applications for compensation in trusts, guardianships and conservatorships must be supported by a description of the services forming the basis for the request, including the surrounding circumstances, the benefit to the estate and the hourly rate of counsel.

C. Notice. Notice will be required to a non-petitioning personal representative or fiduciary and when appropriate, to the residuary beneficiaries, or in an insolvent estate, to the major creditors.

D. Notice to Prior Representative or Attorney. If there has been a change of personal representative or fiduciary or a substitution of counsel, notice of hearing must be given to such prior representative, fiduciary or counsel of any petition in which compensation is requested by the present personal representative, fiduciary or counsel unless:

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1. A waiver of notice executed by the prior personal representative, fiduciary or counsel is on file;
2. An agreement on the allocation of compensation is on file or included in the petition; or
3. The file and the petition demonstrate that the compensation of the prior personal representative, fiduciary or counsel have been previously provided for and allowed by the Court.

E. Proposed Order for Extraordinary Compensation in Decedent's Estates.

When extraordinary compensation is requested, the amount requested should be inserted in the proposed order, even though the fees have not yet been allowed by the Court. If the Court allows a fee other than that requested, counsel may revise the order or have the Court change and initial the amount allowed.

[Rule 5.88 adopted effective 5/1/98]

5.89 COMPENSATION DECLARATIONS EXCEEDING 15 PAGES OR CERTAIN AMOUNT

Any declaration for compensation exceeding 15 pages or any declaration where the aggregate amount for any one type of service rendered exceeds \$20,000 (i.e., if services for the sale of real property exceed \$20,000) must include a summary of services rendered by category. The categories may include, but are not limited to, the following:

1. *Conservator Of Person.*
 - a. Visits to conservatee;
 - b. Medical arrangements for conservatee;
 - c. Living and care arrangements for conservatee.
2. *Conservator Of Estate/Personal Representative in Decedent's Estates.*
 - a. Sale of real and/or personal property;
 - b. Tax related services;
 - c. Litigation;
 - d. Bookkeeping services;
 - e. Financial management of assets requiring specific expertise;
 - f. Property management of specific assets (e.g., rental property).

[Rule 5.89 adopted effective 5/1/98; amended 1/1/04]

5.90 EXECUTOR/ATTORNEY COMPENSATION ON SALE OF REAL PROPERTY

Where the attorney or personal representative is also a licensed real estate agent or broker, the attorney or personal representative may collect the statutory fee as well as the commission on the sale of real property subject to prior Court approval, however, no extraordinary fees shall be awarded.

[Rule 5.90 adopted effective 5/1/98]

5.91 REIMBURSEMENT OF COSTS

A. Allowed Reimbursements. Allowable reimbursement costs include:

1. Court Clerk's fees;
2. Newspaper publication fees;
3. Surety bond premium;
4. Appraisal fees.

B. Absorbed as Part of Fee. The following costs are absorbed as part of the fee:

1. Photocopies and postage;
2. Secretarial and word processing time;
3. Paralegal time for ordinary services;
4. Computer time;
5. Local telephone calls;
6. Local travel, mileage and parking.

C. Reimbursed Only in Court's Discretion. The following costs may be reimbursed in the Court's discretion:

1. Substitutes for U.S. Postal Service (Federal Express, UPS, etc.);
2. Long distance telephone;
3. Long distance travel.

[Adopted effective 5/1/98; amended 7/1/10]

6. FAMILY LAW RULES

ADMINISTRATION OF FAMILY LAW LITIGATION

6.1 CITATION

These family law rules should be cited as "Marin County Rule, Family" or "MCR Fam" followed by the rule number (e.g., Marin County Rule, Family 6.1, or MCR Fam 6.1).

[Rule 6.1 adopted effective 5/1/98]

6.2 APPLICATION OF RULES

These Uniform Local Rules of the Marin County Superior Court supersede all previous family law local rules. Marin County Rules, Civil 1.3 to 1.10 (Law and Motion Matters) and 1.18 to 1.25 and 1.27 to 1.31 (Administration of Civil Litigation) do not apply to the Family Law Department except that such rules shall apply if a family law case is transferred to a Civil Department. Marin County Rule, Civil 1.26, relating to CourtCall, does apply in courtroom H only. Provisions of other sections of the local rules are observed when applicable. Family Law matters include all matters related to the Family Law Act, Uniform Parentage Act, the Domestic Violence Prevention Act, the Uniform Child Custody Jurisdiction and Enforcement Act, and any other matters in which family law issues are present.

[Rule 6.2 adopted effective 5/1/98; amended 7/1/07]

6.3 ASSIGNMENT TO JUDICIAL OFFICER

A. General. All family law matters, with the exception of those in which the Department of Child Support Services ("DCSS") appears, shall be assigned for all purposes (other than settlement conferences) to either the Family Law Judge or Family Law Commissioner as a judge pro tem. In the absence of the assigned judicial officer, the case is temporarily reassigned by the Presiding Judge to the other judicial officer hearing such family law cases. If a disqualification pursuant to CCP §170 et seq. is filed, the case is hereby assigned by the Presiding Judge to the other judicial officer for all purposes. Matters in which the DCSS appears will be assigned to the Child Support Commissioner as a judge pro tem, regardless of previous assignments, for all appearances regarding child support so long as the DCSS is appearing. Assignment of matters will be made at the time the petition or initial pleading or motion to modify is filed.

B. Refusal to Stipulate to Commissioner or Judge Pro Tem. Where a party declines to stipulate to a Court Commissioner to act as a Temporary Judge in hearing and ruling on a motion or order to show cause, the matter may be heard by the Commissioner

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pursuant to CCP §259(e) or (f) pursuant to the terms of any special reference. A Judge of the Court will thereafter approve, reject or modify the findings and conclusions of the Commissioner.

[Rule 6.3 adopted effective 5/1/98; amended 1/1/06]

6.4 FILING REQUIREMENTS GENERALLY

A. Time for Service and Filing. Moving and responsive pleadings and supporting documents shall be filed and served on the opposing party or attorney in accordance with CCP §1005.

B. Declarations. All supporting and opposing declarations shall be made on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is entitled to the relief requested and is competent to testify to the matters stated therein.

C. Conformed Copies. Parties requesting that the Clerk's Office mail them conformed copies of their filings must provide a self-addressed stamped envelope of proper size and with sufficient postage. If no envelope is provided, the conformed copy will be placed in the Will Call cabinet in the Clerk's Office in Room 113 for a maximum of sixty (60) days. If the envelope provided or the postage is insufficient to mail the entire conformed copy, only the face copy of the pleading will be mailed and the conformed copy will be placed in the Will Call cabinet for a maximum of sixty (60) days.

[Rule 6.4 adopted effective 5/1/98; amended 7/1/10]

6.5 PROOF OF SERVICE

Proof of timely service shall be filed with the Clerk of the Court no later than two business days before the date set for hearing. In unusual cases proof may be filed with the Court at the time of hearing. Parties should retain a file-stamped copy of the proof of service to show the Court in the event the original has not yet been placed in the court file. In the event no proof of service is filed with the Court prior to the time set for hearing, the matter may be taken off calendar.

All parties shall comply with the provisions of Family Code ("Fam. C.") §215, requiring service upon a party after entry of a final judgment of dissolution. Mail service upon a party is sufficient.

[Rule 6.5 adopted effective 5/1/98; amended 1/1/06]

6.6 FAMILY CENTERED CASE RESOLUTION

A. Policy and Effective Date. It is the policy of the Marin County Superior Court to benefit the parties by providing judicial assistance and management to the parties for the purpose of expediting the processing of the case, reducing the expense of litigation, and focusing on early settlement. This rule applies to all actions for marital dissolution, nullity, legal separation, domestic partnership dissolution, establishment of parental relationship, and such other cases assigned to the program by the Supervising Family Law Judge filed after January 1, 2012.

B. Forms to be Issued by Clerk Upon Filing of Petition. Upon the filing of a Petition in a Family Law action, the Petitioner shall receive the following from the clerk:

1. Notice of First Case Progress Conference.
2. Petitioner's Guide, Respondent's Guide, and Resource List.

C. Parties in Alternative Dispute Resolution. The Court allows the parties one stipulated continuance of the first Case Progress Conference up to 150 days. If the parties wish to continue alternative dispute resolution before coming to court, they may file a stipulation informing the Court and requesting a continuance of the first Case Progress Conference for a period up to 150 days. The form of Stipulation is available from the Clerk of the Court.

D. Cases Transferred From Other Jurisdictions. If a case is transferred from another jurisdiction after a Response has been filed, the first Case Progress Conference shall be set within 45 days from the filing of the action in this court. If no Response has been filed, the first Case Progress Conference shall be set within 90 days from the order of transfer. The Petitioner in a transferred case shall receive from the clerk the same information packet described in section B.

E. Service of Summons and Petition - Forms to be Served on Other Party. The Petitioner shall serve the following documents on the opposing party:

1. Summons, Petition, and Petitioner's completed Declaration Under Uniform Child Custody Jurisdiction Enforcement Act;
2. Blank form of Response;
3. Blank Declaration Under Uniform Child Custody Jurisdiction Enforcement Act;
4. Notice of Case Assignment and First Case Progress Conference; and
5. Respondent's Guide and Resource List.

F. Case Progress Conferences.

1. *Calendar.* The first Case Progress Conference shall be set 120 days after the filing of the Petition. This Conference shall be dropped from the calendar if a judgment resolving all issues has been filed before the date of the first Case Progress Conference.

2. *Service of Case Progress Questionnaire.* Each party must file and serve a Case Progress Conference Questionnaire at least five court days prior to each Case Progress Conference.

3. *Continuances of Case Progress Conference.* If the parties are in alternative dispute resolution and file a stipulation for continuance, no appearance will be required and the Court will continue the Case Progress Conference for up to 150 days.

4. *Purpose.* At the Case Progress Conference, the court will review the status of the case, determine whether the parties have filed proof of service of their preliminary declaration of disclosure as required by Fam. C. §2104, and discuss discovery plans, settlement options, alternative dispute resolution, and unresolved issues. The court may make orders as authorized by Fam. C. §§ 2450 and 2451.

5. *Appearance Mandatory.* Appearance at the Case Progress Conference, either by counsel or, if the party is self-represented, the party, is mandatory. The case is subject to dismissal if both parties fail to appear at the Case Progress Conference. (CCP §575.2(a).)

G. Recommended Timeline. The Court recommends that the parties proceed within the following timelines to be prepared for the Case Progress Conferences:

1. Proof of Service of Petition should be filed within 60 days after the filing of the Petition;

2. The law requires a Response to be filed within 30 days of service of the Petition.

3. If the Response is not filed within 30 days of service of the Petition (or within the time fixed by agreement of the parties, if the parties have agreed to an extension of time), the Request to Enter Default should be filed within 90 days after the date when the Response was due;

4. Petitioner's Proof of Service of Preliminary Declaration of Disclosure should be filed within 60 days after the filing of the Petition.

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5. Respondent's Proof of Service of Preliminary Declaration of Disclosure should be filed within 60 days after the filing of the Response.

[Rule 6.6 adopted effective 1/1/06; amended 1/1/12.]

6.7 EX PARTE MATTERS AND ORDERS

A. Ex Parte Applications. Except in an emergency or when the assigned judicial officer is unavailable, all applications for ex parte orders shall be made to the judicial officer to whom the case has been assigned. All applications for ex parte relief will be heard in open court at 8:30 a.m. in Department H and 9:00 a.m. in Department O Monday through Friday. The ex parte procedure shall not be used as a means of avoiding the calendaring requirements for non-emergency matters, and at the time of the hearing litigants should be prepared to make a showing justifying their need to proceed ex parte.

B. Conditions for Issuance of Ex Parte Orders. Before submitting ex parte orders for the judge's signature, parties shall comply when applicable with CCP §527.6, Fam. C. §§2045, 3060-3064 and CRC 3.1200 et seq and 5.118, including all requirements for a declaration setting forth that notice to the other party has been given or, alternatively, the reason notice has not been given. A party seeking an ex parte order shall notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances. Notice of the application may be by telephone. Notice of the application and/or service of the moving papers may be made by personal service or by facsimile transmission. The party seeking the order must notify the Court by calling 415-444-7044 and leaving a message no later than 10:00 a.m. the court day before the ex parte appearance. Parties appearing at the ex parte hearing shall serve the ex parte application or any written opposition on all other appearing parties at the first reasonable opportunity. Absent exceptional circumstances, no hearing shall be conducted unless such service has been made.

C. Modified Orders. If the Court modifies any requested orders, it is the responsibility of the applicant to conform all copies with the changes before filing and service.

[Rule 6.7 adopted effective 5/1/98; amended 1/1/12]

6.8 SPECIAL PROCEDURES FOR RESTRAINING ORDERS AND INJUNCTIVE RELIEF PERTAINING TO DOMESTIC VIOLENCE (FAM. C. §§6200-6389)

Applicants for protective orders under Fam. C. §6200 et seq. (Domestic Violence Prevention Act) shall file their request for restraining order in any existing or concurrently filed Family Law/Parentage action rather than file a new case.

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A person seeking the protection of a court restraining order may obtain the necessary forms and information about how to file for a temporary restraining order in the Clerk's Office. The Clerk's Office also has instruction pamphlets and referrals to agencies that may assist with filling out the forms.

An applicant for a domestic violence restraining order must complete a Request for Order (DV-100) and a Temporary Restraining Order (DV-110) and give it to the clerk in room 113 before 10:30 a.m., Monday through Friday. The clerk will give the completed forms to a judge to review. The Court will sign or reject restraining orders each day by 1:30 p.m. The applicant may pick up the forms at the Clerk's Office after 2:30 p.m. If the reviewing judge approves them, the clerk will set a date for the hearing and the restraining order will take effect when it is served on the restrained person.

There is no filing fee for domestic violence restraining orders or for civil harassment petitions in which violence or reasonable fear of violence is alleged.

[Rule 6.8 adopted effective 5/1/98; amended 1/1/05]

LAW AND MOTION

6.9 LAW AND MOTION CALENDAR

All law and motion matters shall be heard by the assigned Judge and/or Commissioner.

[Rule 6.9 adopted effective 5/1/98; amended 1/1/04]

6.10 FORMAT OF SUPPORTING DOCUMENTS AND EXHIBITS

A. Minimize Number of Attachments. The Court discourages the practice of attaching voluminous and numerous exhibits to declarations and points and authorities used in Law and Motion matters. Quote the applicable portion of a document, correspondence, deposition, or pleading, at the appropriate point in a declaration or points and authorities rather than use an attachment. However, if it is believed to be necessary to attach supporting documents and exhibits, then such documents and exhibits shall be submitted in an organized fashion, i.e., marked, separated, and tabbed (on bottom).

B. Discovery Exhibits. A party relying on discovery products such as interrogatory answers, deposition testimony, or responses to requests for admissions shall properly authenticate such evidence. Any exhibits should be limited to those questions and answers, testimony and/or responses relevant to the issues presented. Deposition testimony must be preceded by the title page of the transcript indicating the name of the deponent and the date of deposition; only relevant pages of the transcript shall be

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included. The original page numbers of the deposition must be clearly visible, and the material portions of the deposition testimony shall be highlighted.

C. Prior Court Order. Where a prior order of the Court is relevant, it is not necessary to submit a copy of the entire order as a separate exhibit. Instead, reference may be made to the date the order was filed and the pertinent language of the order (or a summary if not in dispute).

D. Reincorporation of Earlier Filed Documents. Parties are requested not to reincorporate earlier documents into a pending motion without providing copies of such documents in the format required by CRC 3.1110.

[Rule 6.10 adopted effective 5/1/98; amended 7/1/07]

6.11 DEADLINE FOR FILING PAPERS

A. In General. Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the day appointed for the hearing.

B. Deadline for Opposition. Except where a statute makes specific provision otherwise, opposition papers must be served and filed at least nine court days before the day of the hearing.

C. Deadline for Reply. Reply to opposition must be filed at least five court days before the day of hearing. Upon filing a reply, a file-stamped copy shall be provided to the Family Law Examiner by delivery to room C-24. No further papers may be filed without prior court order.

[Rule 6.11 adopted effective 5/1/98; amended 1/1/06]

6.12 CONTINUANCES

After service, three continuances, by agreement, may be obtained by telephoning the Law and Motion Clerk at (415) 444-7040 no later than 3:00 p.m., three court days before the hearing date, and paying the continuance fee, regardless of whether a response has been filed. A confirming letter must be sent by the party requesting the continuance to the Clerk with a copy to the opposing party. Additional continuances, or continuances within three court days of the hearing date, may not be by stipulation but only by order of the Court upon a showing of good cause.

[Rule 6.12 adopted effective 5/1/98; amended 7/1/07]

6.13 MATTERS TAKEN OFF CALENDAR

The matter may be taken off calendar by agreement of the parties and their attorneys. The parties or their attorneys shall so notify the Law and Motion Clerk by telephone no later than noon on the date the tentative ruling is to be released; otherwise, a tentative ruling will be issued. This notification shall be followed by a written transmittal signed by the party and/or the attorney confirming that the matter is to be taken off calendar.

[Rule 6.13 adopted effective 5/1/98; amended 7/1/07]

6.14 ORDERS SHORTENING TIME

If an order shortening time for service is requested, the supporting declaration shall state whether or not the responding party is represented by counsel, the name and address of the responding party's attorney and whether or not that attorney has been contacted and has agreed to the date and time proposed for the hearing. If the responding party (if unrepresented) or his/her attorney has not been contacted or has not agreed to the proposed setting, the supporting declaration shall clearly demonstrate why the hearing should be set on the proposed date without the consent of the responding party. Provision for immediate delivery of the pleading to responding party (if unrepresented) or responding party's attorney's office should be set forth in the order.

If an order shortening time is granted, it shall state on its face a reasonable schedule for filing of responsive and reply declarations.

[Rule 6.14 adopted effective 5/1/98; amended 7/1/07]

6.15 HEARINGS IN GENERAL

A. Tentative Rulings. Marin County utilizes a tentative ruling system pursuant to CRC 3.1308 for family law cases set for Law and Motion. The moving party in any family law and motion matter shall attach to any motion filed the Court Policy Statement (see Appendix E) concerning the availability of tentative rulings by telephone, and the proof of service shall indicate that this policy statement has been served or the hearing may be continued on the Court's own motion or on request of the party aggrieved by the non-compliance.

Tentative rulings may be obtained by calling (415) 444-7170 or online (http://www.marincourt.org/tentative_landing.htm) from 2:00 to 4:00 p.m. the court day preceding the scheduled hearing.

Each counsel/party desiring to present oral argument or request modification of the tentative ruling must contact the Court at (415) 444-7046, and all opposing counsel or parties, by 4:00 p.m. the court day preceding the scheduled hearing and briefly identify

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the issues to be argued. Contact with opposing counsel's office shall be deemed adequate notice; it is not necessary to speak to counsel directly. Unless both the Court and opposing counsel/parties have been notified of a request to present oral argument, no oral argument will be permitted unless the Court otherwise directs.

If oral argument is not requested, the tentative ruling shall become the order of the Court.

If the parties reach an agreement different from the tentative ruling, the parties shall appear or mail a stipulation.

B. Evidence at Hearing. A party seeking to introduce testimony at a law and motion hearing must comply with Fam. C. §217(c) and CRC 3.1306 and 5.114. Otherwise, evidence received at a law and motion hearing shall be by declaration, affidavit, or request for judicial notice, without oral testimony or cross-examination.

C. Length of Hearings. Hearings on the family law and motion calendar are limited to a maximum of 20 minutes. In the event the parties believe that the matter cannot be completed in 20 minutes, they shall, at the time the matter is called, so inform the Court. If the Court denies the request for an evidentiary hearing, the matter will proceed as set on the law and motion calendar; if the Court grants the request, the matter will be set at a later date for an evidentiary hearing.

[Rule 6.15 adopted effective 5/1/98; amended 1/1/12]

6.16 PREPARATION OF ORDER AFTER HEARING

Unless otherwise ordered by the Court, the prevailing party shall, within five (5) days following the Court's ruling, prepare a written order. The preparing party shall serve the order upon the responding party and the responding party shall, within five (5) days from receipt, approve the order, or refuse to approve the order and submit an alternative proposed order. The responding party's approval or proposed alternative order shall be in writing and shall be served upon the preparing party. For unopposed motions see CRC 3.1312(d).

If the responding party fails to approve or object to the order within five (5) court days of receipt, the moving party may then mail the order to the hearing judge for signature, accompanied by a letter (with copy to the responding party or counsel) stating that the order was mailed to the responding party on a certain date, and describing the circumstances surrounding the responding party's failure to sign it. If, pursuant to this rule, the responding party has served an alternative proposed order upon the preparing party, the preparing party shall submit both proposed orders to the hearing judge who will select and sign the order which, in his/her judgment, more accurately reflects the judge's intent.

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If the preparing party fails to prepare and mail the order as required, then the responding party may prepare the proposed order and mail it directly to the hearing judge without seeking the approval of opposing counsel, along with a letter to the hearing judge (with a copy to the opposing party or counsel) setting forth the applicable dates according to this rule, and requesting the judge to sign it.

The Court will not consider ex parte letters or other communications from parties and counsel after a matter has been submitted.

[Rule 6.16 adopted effective 5/1/98; amended 7/1/07]

6.17 CONTEMPT

A. Continuance to Retain Counsel. If a party cited for contempt appears without representation, one continuance may be granted to permit the citee to retain counsel.

B. Preparation of Order. After the contempt hearing, it shall be the responsibility of the moving party to prepare an order for the signature of the judge, setting forth the findings and orders of the Court.

[Rule 6.17 adopted effective 5/1/98; amended 1/1/04]

6.18 FINANCIAL INFORMATION TO BE PROVIDED TO THE COURT

A. Income and Expense Declaration With Supporting Documentation. A fully completed Income and Expense Declaration shall be filed by each party with their moving or responsive papers in all proceedings involving requests for child support, spousal support, attorneys fees, or other financial relief.

B. Full Financial Disclosure. A fully completed Income and Expense Declaration shall include all facts relevant to the parties' employment status, income, living arrangements, and payment of household expenses. Those facts include but are not necessarily limited to:

1. Commission, bonuses and overtime, with 2-year history and amounts.
2. All employment benefits, whether in cash or in kind, with 2-year history and amounts.
3. If depreciation has been claimed as a deduction or reduction of income, it must be explained and justified. Ordinarily, depreciation will be disregarded as a non-cash item.

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4. If annual income fluctuates, an income history of not less than 2 years, and description of the method used to calculate monthly income.

5. The identity of each income producing household member, the relationship of each to the party, gross and net income, contributions to household expenses, and financial arrangements, if any, between each household member and the party.

6. If a party is unemployed, an explanation must be provided. If relevant, a description of the party's most recent employment, reason for and verification of termination, gross and net income prior to termination, and a description of all efforts to seek employment since termination, if any, shall be set forth. If a party is disabled, retired or incarcerated, all pertinent facts shall be set forth.

C. Required Supplemental Documentation. In all proceedings where child or spousal support is an issue, in addition to filing fully completed Income and Expense Declarations, each party is required to serve on the opposing party and lodge (under seal) the following additional financial information and documentation: copies of the party's two most recent state and federal income tax returns and all K-1's for those years; documentation of all income of the filing party since the period covered by his/her most recent tax return (including W-2's, 1099's and K-1's); and copies of the two most recent federal income tax returns filed by any entity in which the party has or has had a 25% or greater interest within the past two years, together with statements of current income and expenses and current assets and liabilities of each such entity. A self-employed party shall provide his or her most recent annual business profit and loss or financial statement, together with current year to date profit and loss or financial statement for the business. These materials shall be served and lodged no later than the dates by which the parties' moving or responsive pleadings are due. All materials lodged under seal pursuant to this Rule may be returned upon request to the party submitting same at the conclusion of the hearing unless ordered to be retained by the Court. Such records are confidential and may not be used for purposes other than court proceedings. Such materials will be destroyed by the Court within a reasonable time after the hearing unless the submitting party requests their return.

D. Support Calculations. In all matters where child or temporary spousal support is an issue, a support calculation and explanatory declaration shall be filed, setting forth the assumptions and calculations utilized by that party to determine gross and net income figures, the amounts of child and spousal support calculated pursuant to current state law and/or guidelines, and any other assumptions used in calculating the support, including time-share, tax filing status, etc. If it is contended by either party that the guideline or presumed level of support is inappropriate, that party's declaration shall set forth his or her calculation of the amount alleged to be proper and the reasons therefor. Such declaration shall include all reasons or justifications urged by the party for varying from the guideline support levels. Further:

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1. The responding party's calculations/declaration shall be filed and served with the response. The moving party's calculations/declaration shall be filed and served with the reply.

2. The support calculations and explanatory declarations shall be signed by the party or the attorney for the party on whose behalf it is made.

The Family Law Facilitator is available to assist self-represented litigants in preparing child support calculations. (See Rule 6.43.)

[Rule 6.18 adopted effective 5/1/98; amended 1/1/06]

6.19 CHILD AND SPOUSAL SUPPORT PROCEEDINGS

A. Computer Software Use. The Court uses the Norton Supportax program to calculate guideline child support and temporary spousal support.

B. Temporary Spousal Support. The following presumptions for temporary spousal support will apply:

1. In cases where the recipient of spousal support is not receiving child support from the same payor, the presumed temporary spousal support will be 40% of the net income of the payor less 50% of the net income of the payee.

2. In cases where the recipient of spousal support is also the recipient of child support from the same payor, the presumed temporary spousal support will be 35% of the net income of the payor (after deduction of child support), less 45% of the net income of the payee (without addition of child support).

The Court may deviate from the presumed level of temporary spousal support, in its discretion, for good cause shown.

C. Calculation of Time-Share With Children. For purposes of determining the time-share factor for calculation of child support, the Court will use the following guidelines:

1. Full weekend = End of school Friday to beginning of school Monday = Three (3) days.

2. Short weekend = Dinner time Friday to dinner time Sunday = Two (2) days.

3. One evening per week = After school to after dinner = One-half (1/2) day.

4. One night per week = After school overnight = One (1) day.

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5. Summer = Twelve (12) weeks = Eighty-four (84) days.
6. Holidays:
 - a. Christmas school vacation = Fourteen (14) days.
 - b. Thanksgiving = Four (4) days.
 - c. Spring or Easter break = Seven (7) days.
 - d. Other holidays: Normally includes President's Day, Memorial Day, Mother's or Father's Day, Independence Day, Labor Day, Veteran's Day. Each equals one (1) day.

The Court will generally round off percentages in calculating time-share to the nearest 5% interval. The Court strongly discourages the counting of hours in determining time-share.

By way of example, the Court will presume the following time-share percentages for the following scenarios:

- Alternating full weekends = 78 days = 20%
- Alternating short weekends = 52 days = 15%
- Alternating full weekend + one month in summer = 78 + 24 = 102 days = 30%
- One full weekend per month = 10%
- Three days per week = 45%
- Four days per week = 55%

The Court may vary from these time-share guidelines in its discretion for good cause shown.

D. Modification. Every motion to modify child or spousal support shall include a declaration setting forth the following:

1. The date of the prior order.
2. The amount of the prior order.
3. Each party's gross and net incomes at the time of the prior order and the findings on which the prior order was based.
4. A specification of the substantial change in circumstances since the last order.
5. In any family law proceeding involving an award of or modification of an award of permanent spousal support, both parties to the proceeding must file a pleading which discusses each and every factor of Fam. C. §4320 in summary

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form. This pleading shall not consist of more than three pages and shall not have any attachments.

E. Stipulations. All stipulations for child and/or spousal support shall be in writing. The Court has available in the courtroom printed forms for such stipulations which should be executed by the parties and their attorneys prior to submission to the Court. Any stipulation for child support must contain all information required by statute, including a statement of guideline support or a statement in support of an amount different from the guideline support pursuant to Fam. C. §4056(a). Any stipulation containing support provisions where either party or minor children are recipients of public assistance benefits must contain the signature of a representative of the DCSS of the county paying assistance.

[Rule 6.19 adopted effective 5/1/98; amended 1/1/04]

TRIAL SETTING/READINESS AND SETTLEMENT (BENCH/BAR) CONFERENCES

6.20 TRIAL READINESS CONFERENCE

A. Memorandum That Civil Case is at Issue. Neither party shall file a Memorandum That Civil Case Is At Issue until they have served a preliminary declaration of disclosure as set forth in Fam. C. §§2103 and 2104. A Memorandum That Civil Case Is At Issue filed in violation of this rule shall be withdrawn upon request by any other party.

B. Continuances. Settlement conferences and trials may be continued only by order of the Court upon a showing of good cause.

C. Mandatory Trial Readiness Conference. Upon the filing of a Memorandum That Civil Case Is At Issue the Clerk shall send to each party a Notice of Mandatory Trial Readiness Conference, the purpose of which is to develop a case progress plan tailored to the particular needs of each case and to give the parties and counsel adequate time to prepare before a Bench/Bar Settlement Conference is set. No case shall be set for a Bench/Bar Settlement Conference without first having had a Mandatory Trial Readiness Conference.

1. *Appearance Required.* Represented parties may appear through counsel and self-represented parties are required personally to appear at the Mandatory Trial Readiness Conference.

2. *Trial Readiness Conference Statement.* Each party shall file with the Court a Trial Readiness Conference Statement no later than two court days prior

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to the Conference. The Trial Readiness Conference Statement shall contain information on the following subjects:

a. A general description of each of the parties, e.g., age, current health, education, occupation, number and age of children, etc.

b. A general description of the marital standard of living, e.g., net worth, income, ownership of residence and other property, and general lifestyle enjoyed during the marriage.

c. A general description of the issues presented in the particular case, e.g., child support, spousal support, tracing, valuation of assets, and any other issues.

d. A specific discovery plan and a time estimate as to when the case will be ready for the filing of substantive Bench/Bar Conference Statements and a meaningful settlement conference.

e. Identification of issues that have been settled and need not be addressed.

f. Certification that the parties have filed with the Court proof of service of their preliminary declarations of disclosure.

3. *Early Settlement Conference.* If the parties and counsel agree that a case may be settled without the necessity and expense of preparing for and appearing at a Bench/Bar Settlement Conference, the Court may set the matter for an early settlement conference before the trial Judge or Commissioner.

4. *Subsequent Trial Readiness Conferences.* The Court may set subsequent trial readiness conferences before determining that the case is ready to be set for a Bench/Bar Settlement Conference.

[Rule 6.20 adopted effective 5/1/98; amended 1/1/12]

6.21 SETTLEMENT CONFERENCE

When the Court determines at a trial readiness conference that a case is adequately prepared and ready for a meaningful settlement conference, a Bench/Bar Settlement Conference shall be set.

A. Panel. The settlement conference shall be conducted by a panel to be appointed by the Court.

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B. Attendance. Each party and the trial counsel for each party shall attend the Bench Bar/Settlement Conference. Counsel and parties are expected to be available for the entire day or until excused by the Settlement Conference Panel.

C. Trial Setting Conference. If the parties do not put a settlement of their case on the record at the Bench/Bar Conference, they will be ordered to appear in court the next day for trial setting. The parties are reminded that under Fam. C. §2105 they are required to file proof of service of their final declarations of disclosure 45 days before the date first set for trial.

[Rule 6.21 adopted effective 5/1/98; amended 1/1/12]

6.22 BENCH/BAR CONFERENCE STATEMENT GENERALLY

A. Issues and Contentions. Each party shall file a Bench/Bar Conference Statement, which shall set forth the issues and all contentions and positions to be raised at trial by that party.

B. Filing. An original plus three copies of the Bench/Bar Conference Statement shall be filed by each party ten (10) court days prior to the Bench/Bar Conference. The Court may impose sanctions of \$49 per day for late-filed statements, to be ordered at the Bench/Bar Settlement Conference. The statement filed by each party shall reflect the information and position of the filing party. No reply to the Bench/Bar Conference Statement shall be filed.

C. Updated Preliminary Declarations of Disclosure. At the time of filing the Bench/Bar Settlement Conference Statements, each party shall update his or her preliminary Declaration of Disclosure as necessary to reflect any material change in income or expenses of the party and any material change in the characterization or value of separate or community property and/or debts.

[Rule 6.22 adopted effective 5/1/98; amended 7/1/08]

6.23 CONTENTS OF BENCH/BAR CONFERENCE STATEMENT

The form of the Bench/Bar Conference Statements, and the information and documentation required to be included in such statements, shall be as set forth herein:

A. Form. The Statement shall be entitled "Bench/Bar Conference Statement."

B. Contents: Statement of Issues, Property, and Income and Expense Data. The Statement shall set forth the following information in the following order, as it applies to the filing party:

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1. *Introductory Paragraph.* The statement shall contain an introductory paragraph setting forth in summary form the date of the marriage, the date of separation, length of marriage, the names, ages and birth dates of any minor children. The introductory paragraph shall also set forth the parties' ages and health, education, business or professional experience, current occupation, and a general statement concerning the marital standard of living. If there are any special health or other needs of either party or the minor children, those needs shall also be discussed in this paragraph.

2. *Separate Property.* List each item of separate property, the date it was acquired, the basis upon which it is claimed to be separate property and, if a mixed asset, the basis for apportioning between separate and community. For each asset, state the current market value, the terms and balance of each encumbrance against the property, and the title history to the present of titled property.

3. *Community Property.* List each item of community property, the date it was acquired, the basis upon which it is claimed to be community property and, if a mixed asset, the basis for apportioning between separate and community. For each asset, state the current market value, the terms and balance of each encumbrance against the property, and the title history to the present of titled property.

4. *Tracing.* If either party claims a separate property interest in an asset, describe in detail, including dates, values and dollar amounts, all transactions relevant to the tracing and, if there is an issue about allocation of community and separate interests in a single asset, the basis for calculating the respective values of the community property and separate property interests.

5. *Funds Held By Others and Future Interests.* Identify and describe in detail all community property and separate property funds of the parties or either of them held by persons and entities other than the parties and all future interests of each party, and, as to each such fund or interest, state whether it is claimed to be community property or separate property or a mixed asset and describe the basis upon which such characterization is founded. Include all pertinent data (e.g., account numbers, etc.), state the conditions, if any, upon which the parties or either of them may access or acquire each such asset, and describe in detail all encumbrances relating thereto.

6. *Current Obligations and Claimed Credits.* Separately list all debts and obligations of the spouses which are liabilities of the community and, so far as known, debts and obligations which are alleged to be the separate liabilities of the respective parties. Identify each creditor, the purpose for which each debt was incurred, the date upon which it was incurred, the balance currently due thereon, the terms of payment, and the security, if any, held by the creditor. Credits

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claimed by either party against the other party or against the community and claims for reimbursement to the community from the separate property of either party (e.g., for community property debts paid from separate property, separate property debts paid with community property, fair rental value of community property or separate property used by a party post-separation, etc.) which are not fully detailed in a party's Bench/Bar settlement statement shall be deemed waived.

7. *Current Income and Expenses.* If child support, spousal support or attorney's fees are sought, complete and attach a current Income and Expense Declaration. Previously filed Income and Expense Declarations shall be attached if financial circumstances have not changed.

8. *Contentions About Child and Spousal Support.* Each party shall specify their contentions as to the amount of child support and amount and duration of spousal support. Include calculations showing guideline child support. If any child is a recipient of public assistance, and the County is the assignee of the support, the statement shall show that the DCSS has been notified of the time and date of the Bench/Bar Conference and provided copies of all pertinent, current financial documents (i.e., Income and Expense Declaration, Support Calculations, etc.).

9. *Contentions About Attorney's Fees, Accountant's Fees, Expert Fees, and Costs.* Each party shall include in their statement their position regarding requests for attorney's and accountant's fees, other expert fees, and court costs. Where appropriate, such requests shall be supported by adequate documentation.

10. *Welfare Status.* If applicable, set forth that the family is receiving public assistance, the amount, and how long public assistance has been paid for the family. If public assistance is being received, the statement must also provide that "the children are recipients of public assistance from _____ County and that county is the assignee of all rights to support herein. The DCSS of _____ County has been notified of the time and date of this conference."

11. *Notification of Use of Expert at Bench/Bar Settlement Conference.* Any party planning to use a forensic expert of any type either in person, by telephone or otherwise at the Bench/Bar Settlement Conference, shall include in the Statement the name, address and telephone number of the forensic expert and identify the issues on which the expert will be consulted.

12. *Proposed Division/Allocation of Property and Obligations.* Set forth a specific and detailed proposal for dividing and/or allocating community property, separate property, and all debts and obligations.

13. *Certification Re: Compliance With Disclosure Obligations.* Each party shall certify that his or her preliminary Declaration of Disclosure is current

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and complete and that he or she is unaware of any material changes in it. Such certification shall be signed by the party personally – signature of counsel is not sufficient.

[Rule 6.23 adopted effective 5/1/98; amended 7/1/08]

DISCOVERY MATTERS

6.24 POLICY REGARDING ONE DEPOSITION RULE

The Court construes the one deposition rule of CCP §2025.610 as permitting the taking of a bifurcated deposition. For example, a party may be required to appear for a deposition concerning the limited issues raised by an application for temporary relief and thereafter to submit to further deposition on other issues. Where issues in a particular case have been ordered bifurcated, the deposition of a party also may be bifurcated and separate depositions taken which are limited to those issues to be addressed in each stage of the bifurcated proceeding. Counsel electing to conduct a bifurcated deposition under this rule shall, in the deposition notice, conspicuously state such election and clearly specify the issue(s) to be addressed at the bifurcated deposition.

[Rule 6.24 adopted effective 5/1/98; amended 1/1/06]

6.25 OTHER DISCOVERY ISSUES

A. Meet and Confer. The parties are required to engage in good faith efforts to meet and confer to resolve discovery disputes without the necessity of court intervention. Discovery Referees may be utilized by the parties or the Court.

B. Preliminary Declaration of Disclosure. Upon 30 days written demand, or within any additional time ordered by the court, Preliminary Declarations of Disclosure will be exchanged. In the event a party fails to comply, sanctions may be imposed.

C. Referees. Case Management and Discovery Referees nominated by parties and/or appointed in cases pending before the Court shall be members in good standing of the State Bar of California. The Court will maintain a list of qualified referees which will be made available to counsel and parties upon request.

[Rule 6.25 adopted effective 5/1/98; amended 7/1/07]

PROCEDURES FOR TRIAL

6.26 DUTY TO NOTIFY COURT IF CASE SETTLES

The parties or their counsel shall notify the Court immediately by telephone if the case settles and will not proceed to trial. The notification shall be promptly followed by a written transmittal signed by the party and/or the attorney confirming that the case has settled.

[Rule 6.26 adopted effective 5/1/98; amended 1/1/04]

6.27 RESERVED [Adopted effective 7/1/08]

6.28 GUIDELINES AND POLICIES RE: TANGIBLE PERSONAL PROPERTY

A. Reference for Characterization and Valuation. In all family law cases, the Court will consider ordering a reference (as authorized by Fam. C. §2554) for all issues concerning characterization and valuation of tangible personal property together with any other issues lending themselves to a factual determination by a referee. If so ordered, the payment of the referee's fees shall be in accordance with CCP §645.1. Either party may request a reference at the time of trial setting or upon noticed motion.

B. Motor Vehicles. The Court will normally fix the value of a motor vehicle at the mid-point between the high and low values shown in the latest edition of the Kelley Auto Blue Book unless good cause is shown to fix a different value. The parties should agree on motor vehicle valuations through counsel in advance of trial.

C. Unusual Items. Where there are items of unusual nature or uncommon value, such as oriental rugs, antiques, jewelry, works of art, handcrafted items, etc., the parties are urged to stipulate prior to trial to the use of a joint qualified appraiser and to admission of the appraiser's report into evidence without necessity of the appraiser's personal appearance at trial.

D. Common Items. Valuation of common household furniture, furnishings, tools, etc., for purposes of marital dissolution proceedings is fair market value at the time of trial, not purchase price or replacement cost. (Used furniture and furnishings normally have minimal value on the open market.)

[Rule 6.28 adopted effective 5/1/98; amended 1/1/12]

6.29 EXPEDITED TRIALS/HEARINGS

A. Stipulation and Calendar Priority. In all matters set for trial or evidentiary hearing, the parties may, and are encouraged to, stipulate to an expedited trial/hearing. An expedited trial/hearing will receive priority in calendar setting.

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B. Presentation of Evidence. In an expedited trial/hearing, the direct testimony of all witnesses, including experts, shall be presented by offer of proof or declaration, subject to cross-examination. An expert's report qualifies as an offer of proof or declaration. All offers of proof and/or declarations to be submitted as direct testimony shall be filed with the Court and served on all parties no later than 20 days before the date set for hearing, except upon leave of court for good cause shown.

C. Cross-Examination and Presence of Witness. A party who elects to cross-examine any witness whose direct testimony is tendered by offer of proof or declaration shall notify the tendering party of his/her election to cross-examine the witness no later than 10 days before the trial, except upon leave of court for good cause shown. It is the responsibility of the party presenting the evidence of the witness to ensure the presence of the witness for cross-examination.

D. Consideration of Evidence by Court. Declarations and offers of proof, including experts' reports, shall be received in evidence and considered by the Court if, but only if, the presenting party has complied with this Rule, including production of witnesses for cross-examination after appropriate notice.

[Rule 6.29 adopted effective 5/1/98; amended 1/1/04]

DEPARTMENT OF CHILD SUPPORT SERVICES CALENDARS

6.30 GENERAL PROCEDURES

A. DCSS Calendar. All matters in which the DCSS is appearing will be set on the DCSS Calendar. Matters not involving issues of support will *not* be set on this calendar. If matters involving support in which the DCSS is involved are inadvertently set on another calendar, the matter will be set on the DCSS calendar upon notice to the court. The filing of the Notice Regarding Payment of Support pursuant to Fam. C. § 4200 shall constitute notice that the DCSS is involved in the case.

B. Notice Required. All attorneys and parties shall give notice to the DCSS and opposing parties of any action filed to establish, modify or enforce a support order as required by Code Civ. Proc., §1005 and Fam. C. §4251.

In all matters where the DCSS is appearing, a Notice to Local Child Support Agency of Intent to Take Independent Action to Enforce Support Order (Governmental Judicial Council Form FL-645 or its equivalent) must be filed and served upon the DCSS at least 30 days prior to the filing of any independent enforcement action. (Fam. C. §17404(f)(2).)

C. Actions Exempt. Actions prosecuted by the DCSS pursuant to the Welfare and Institutions Code, Uniform Parentage Act (Part 3 of Div. 12 of the Family Code

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commencing with §7600) or the Uniform Interstate Family Support Act (Chapter 6 of Part 5 of Div. 9 of the Family Code commencing with §4900) are exempt from the time standards set forth in these rules. The DCSS shall comply with the time standards found in applicable state and federal regulations.

D. Service of "Order to Produce." The DCSS may include an "Order to Produce" with any motion or order to show cause served upon a party which seeks to establish or modify a support order and with any Order of Examination and Order to Appear. The "Order to Produce" shall provide a summary of the provisions of these rules dealing with the filing of Income and Expense Declarations and the exchange and submission to the Court of wage stubs (or other documents evidencing income for the preceding three months), tax return information for the previous year and, when applicable, a business profit and loss financial statement and bank statements. The form and language of the "Order to Produce" shall be consistent with applicable rules of Court and shall be subject to approval of the Court. All litigants in DCSS cases shall also be required to exchange information and submit support calculations, as required by these rules, to the extent permitted by law, whether or not first delivered to the DCSS.

E. Specialized Forms. The Court may approve specialized forms of pleadings and orders that are unique to the requirements of the DCSS for use on the DCSS calendars.

F. Stipulations. Where the parties enter into stipulations on the record in open court on the DCSS calendar, the DCSS shall prepare the form of order from that stipulation for submission to the Court unless otherwise ordered by the Court.

[Rule 6.30 adopted effective 5/1/98; amended 1/1/04]

CHILD CUSTODY/VISITATION

6.31 PROCEDURES

A. Initial Child Custody Recommending Counseling. All motions and orders to show cause are immediately referred, through the Clerk's Office, to Family Court Services of the Marin County Superior Court for orientation and child custody recommending counseling (hereinafter "CCR counseling"). CCR counseling is an opportunity for the parents to work with a child custody recommending counselor (hereinafter "CCR counselor"), either together or separately, in order to create a detailed agreement that suits their children's specific needs. This agreement will be signed by a judicial officer and become the custody order. Absent an agreement between the parties, the CCR counselor will make a written recommendation for an order of custody and visitation. Such report will be available to each party prior to the hearing. As to the CCR counseling process, the parties are referred to the Child Custody Recommending Counseling Orientation Booklet available through Family Court Services.

B. Failure to Attend CCR Counseling Conference Appointments at Family Court Services. The Court may impose a fine on a party who receives reasonable notice of the CCR counseling appointment and fails to appear. Inquiry may be made by the Court on the reasons why one or all of the parties missed their appointment. Fines as deemed appropriate by the judicial officer may be levied and collected by the Court Collections Division. A “Failure to Appear” report will be filed by Family Court Services prior to the imposition of any fine. Failure to cancel or re-schedule an appointment at least 48 hours before the appointment may result in sanctions.

C. Contact With Family Court Services. Ex parte communication in child custody proceedings is governed by Fam. C. § 216 and CRC 5.235. Parties who submit written communications to Family Court Services regarding issues raised in the motion/order to show cause must provide a copy to the other party (or to his or her counsel, if that party is represented) at the same time it is provided to Family Court Services.

D. Settlement Conferences. Upon the request of either party on form FL027 (Appendix L) or on the Court’s own motion, the Court may set a contested custody/visitation matter for a settlement conference. Both parties are required to appear in person at the settlement conference and to appear with counsel if he/she is represented. The Court may, in its discretion, appoint a panel to assist the Court and the parties at the settlement conference. The panel may include attorneys, mediators, and/or mental health professionals. Experience requirements for panelists may be obtained from the Court’s Alternative Dispute Resolution Coordinator (415-444-7040) or from the Court’s website. Any such panelists will be appointed to serve as the Court’s own expert pursuant to Evid. C. §730, and the Court may find good cause to permit the panelists to review Family Court Services’ recommendations and other confidential information in the file, pursuant to Fam. C. §3025.5.

E. Criminal Protective Orders in Child Custody/Visitation Proceedings. Prior to issuing a child custody/visitation order the Court will review its local database to determine whether there exists a criminal court protective order that involves any party to the action per CRC 5.450(c).

1. *Coexistence of Orders.* As provided by Pen. C. section 136.2(f)(1) and (2), a family, juvenile, or probate court order may coexist with a criminal protective order; provided that orders permitting contact between the restrained person and his or her children provide for safe exchange of the children and do not contain language that violates a “no contact” order issued by the criminal court; and further that the family, juvenile, or probate court order specifies the time, day, place and manner of transfer of the child, as provided in Fam. C. section 3100. The family, juvenile, or probate court order should make reference to and acknowledge the precedence of enforcement of the appropriate criminal protective order.

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2. *Modification of Order.* The family, juvenile, or probate courts responsible for issuing custody or visitation orders of the minor children of a restrained person subject to a criminal protective order may modify the criminal protective order if: (a) both the restrained person and the protected party are subject to the jurisdiction of the family, juvenile, or probate court; (b) both the restrained person and the protected party are present before the court; and (c) the criminal protective order is made explicitly subject to modification by a family, juvenile, or probate court.

F. Optional Form FL027. Both parties may file and serve form FL027 (Appendix L) at any time before the custody/visitation hearing.

G. Intake Sheet Required. Petitioners and Respondents with minor children who are ordered to Family Court Services for custody and visitation matters shall submit a fully completed FCS Intake Sheet and a copy of their respective custody and visitation documents to Family Court Services. The Family Court Services Intake Sheet is provided in Appendix F.

[Rule 6.31 adopted effective 5/1/98; amended 1/1/12]

6.32 CONTESTED CUSTODY/VISITATION ISSUES

A. Appointment of Attorney for Child. Where the Court appoints an attorney for a child pursuant to Fam. C. §3150 et seq., the appointment order shall be substantially in the form prescribed by the Judicial Council (Form FL-323.)

B. Complaint Procedure for Minor's Counsel. In a family law proceeding in which the Court has appointed counsel for minor children, any party or counsel or minor child may present a complaint about the performance of appointed counsel. The complaint must be in writing, filed and served on all counsel and self-represented parties, and a copy must be delivered to the courtroom clerk of the Supervising Family Law Judge. The Supervising Family Law Judge shall respond to the complaint, either by setting the matter for hearing or by issuing a written response.

C. Private Mediation/Evaluation. For good cause shown, the Court may approve a request for appointment of a private mediator and evaluator. Costs are to be divided equally, as agreed upon by the parties, or by Court order, and the appointment will be pursuant to Fam. C. §3111 and/or Evid. C. §730. The Court will assign a return date in its order of appointment.

D. Child Endangerment. If, during CCR counseling, a concern arises about a child's immediate well-being (serious abuse, neglect or endangerment), the CCR counselor shall refer the case to Child and Family Services (CFS) for investigation and notify the parties, counsel, and Court by written memorandum. CCR counseling shall be stayed during the investigation by CFS. The CCR counselor will continue to monitor the

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case and shall resume CCR counseling upon being notified by CFS of the conclusion of the investigation.

E. CCR Counselor Recommendations and Testimony. Marin County is a recommending County. (See Fam. C. §3183.) Any subpoena requiring the appearance of a Family Court Services CCR counselor/evaluator at deposition or trial shall be hand delivered to Family Court Services at least 10 days prior to the appearance date. It must be accompanied by a deposit of \$250 for half-day or \$500 for full-day testimony. No deposition of a Family Court Services CCR counselor or of an evaluator who is appointed pursuant to Fam. C. §3111 and/or Evid. C. §730 may be taken in the absence of a Court order authorizing the deposition.

F. Locating Qualified Private Child Custody Evaluator. The Court has prepared an information sheet on how to find qualified child custody evaluators. (See Appendix M.)

G. Contact With Evaluator. No attorney for any party shall initiate any oral or telephone contact with an evaluator to discuss the merits of the case. Any written material provided by a party shall be maintained by the evaluator and, following completion of the evaluation, be provided to either party upon written request from the party/attorney. This does not apply to raw data of the evaluator.

H. Raw Data of Evaluator. If either party wishes access to the raw data of the evaluator, then upon appropriate subpoena, the evaluator will deliver copies of the raw data only to a qualified expert.

I. Report of Evaluator. The evaluator shall deliver a copy of the report to the Court and to the parties' attorneys and to any unrepresented party. If the evaluator believes that providing the report directly to a party will create a clear and present danger of personal injury or harm to a party or child, the Court may issue protective orders or any other orders that the Court may deem appropriate.

J. Prohibition of Dissemination of Report. No party or attorney shall give, show or describe an evaluation report or any part of it to anyone other than his or her own experts. This means that they are specifically prohibited from showing, giving or describing the report or any part of it to any member of the public, to any child of the parties (except that an attorney for a child may discuss the report with his/her client or, in appropriate cases, allow the child to read it or have a copy), anyone connected with either party, including, but not limited to employers, employees, friends, relatives, teachers, mental health professionals other than those treating the minor child and/or the party providing the report. Except by court order, no party shall give, show or describe any part of the report dealing with the other party or the child to the mental health professional treating the party providing the report. A copy of the report may be given, without court order or stipulation, to any appointed Special Master, attorney for a child, or professional

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performing services in connection with a recommendation of the evaluator, Special Master, or attorney for a child.

K. Peremptory Challenge to Evaluator. No peremptory challenge is allowed to a Court-appointed evaluator, whether such person is a Family Court Services staff member, any county employee, or a mental health professional. (See CRC 5.220(d).)

L. Withdrawal by Evaluator. A Court-appointed evaluator may petition the Court to withdraw from a case. Any such petition shall be served on all parties/counsel, and may be made on any of the following grounds:

1. Both parties have refused to cooperate with the evaluator, making it impossible or unreasonably difficult for the evaluator to complete his/her responsibilities.
2. One or both parties have harassed or annoyed the evaluator, or have made threats of physical or emotional harm to the evaluator, making it impossible or unreasonably difficult for the evaluator to complete his/her responsibilities.
3. One or both parties have failed to complete their financial obligations to pay the evaluator for the cost of the evaluation as ordered by the Court.
4. Any other good cause for allowing withdrawal.

M. Evaluator Complaint Procedure. The procedure for processing a complaint concerning a court-appointed evaluator shall be as follows:

1. The complainant shall attempt to resolve the matter with the evaluator before pursuing his/her complaint as provided in this rule.
2. Except in extraordinary circumstances, complaints about the performance of an evaluator shall be addressed after issuance of the evaluation report.
3. Written notice of a complaint, specifying the conduct objected to, shall be provided to the evaluator and the other party and lodged with the Court by direct delivery to the judge within 20 days after issuance of the evaluation report. A written response from the evaluator (and the other party, at his/her election) shall be provided to both parties, as well as lodged with the court, no later than 10 days after the complaint was provided to the evaluator, the other party, and the Court.
4. Within 10 days after receipt of the evaluator's response the Court shall issue a written statement as to what action, if any, it deems appropriate to deal with the complaint including, but not limited to, finding that the complaint is not

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justified and no action will be taken, setting a settlement conference, setting a hearing, appointing an adjunct evaluator, or removing the evaluator from the case.

5. If either party or attorney for a minor is not satisfied with the Court's determination, he/she may file a motion requesting other specified relief. Such motion shall be served on the evaluator as well as the other party. The evaluator shall appear at the hearing. The cost of the evaluator's appearance shall be advanced by the complainant, with the Court reserving jurisdiction over the allocation of such cost.

N. CCR Counselor Complaint Procedure. The procedure for processing a complaint concerning a Family Court Services CCR counselor shall be as follows:

1. The complainant must register the complaint verbally or in writing with the supervisor of Family Court Services, who will make a record of the complaint.

2. The supervisor will conduct an investigation of the matter including consultation with the CCR counselor. Within 15 days, the supervisor will determine either to replace the challenged CCR counselor, add a second CCR counselor to the case, or take no action. The date and action will be recorded by the supervisor and the complainant will be informed promptly in writing.

3. The complainant may appeal the supervisor's action by noticed motion to the Judge of the Family Law Department. The Judge will rule on the complaint within 15 days of the date of the hearing.

O. Submission of Child to Evaluation. If an evaluation is ordered by the Court, neither parent shall subject the child to further examination or evaluation by another expert without the consent of the Court or of the Court-appointed counsel for the child.

P. Interview of Child and Child in Court.

1. Counsel (except for court-appointed counsel for a child(ren)) are prohibited from interviewing children for any purpose whatsoever.

2. The CCR counselor may interview the child as appropriate.

3. It is the policy of the Court not to have any child in the courtroom or at any Court proceedings without the Court's prior consent. Child(ren) shall remain in the corridor outside of the courtroom or elsewhere in the courthouse in the care of a responsible adult, if for unavoidable reasons they must be brought to court.

Q. Evaluator Domestic Violence Training. In December of each year, the Court will send a letter to all known child custody evaluators requesting their certificates of completion of the annual update training in domestic violence. Any evaluator who

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fails to provide the certificate of completion will be ineligible for appointment in the following calendar year. (See CRC 5.230(f).)

[Rule 6.32 adopted effective 5/1/98; amended 7/1/11]

6.33 PARENTING COORDINATOR

The Marin County Superior Court permits parties, by stipulation only, to agree to the appointment of a Parenting Coordinator.

A. Authority of Parenting Coordinator. No Parenting Coordinator will have authority to make orders on subjects which are, by law, reserved to the Court for adjudication, such as *substantial changes* in time sharing arrangements, an award of physical custody, an award of legal custody, or orders which substantially interfere with a party's contact with his/her children.

B. Format of Stipulation. The Court has approved a form "Stipulation and Order re Appointment of Parenting Coordinator" for use in such cases. Any parties stipulating to appointment of a Parenting Coordinator must follow the format of this form order. A copy of the form order is available upon request in the Clerk's Office.

[Rule 6.33 adopted effective 5/1/98; amended 7/1/09]

6.34 SUPERVISED VISITATION

A. Professional Supervision. The court maintains a list of professional visitation supervisors who have certified their qualifications per the non-binding standards set forth in Standard of Judicial Administration 5.20. That list may be obtained from Court Administration.

B. Nonprofessional Supervision. In any proceeding in which the Court orders that child visitation be supervised by a nonprofessional supervisor, the visiting party must provide to the proposed visitation supervisor(s) a copy of the *Guide for Supervised Visitation* Provider (Local Form FL039, Appendix G).

Visitation supervised by a nonprofessional provider means that the visitation supervisor is performing the service at no charge. The visitation supervisor may be a friend, relative, or other responsible adult. She/he must be present at all scheduled visits between the child and the parent.

[Rule 6.34 adopted effective 7/1/09; amended 1/1/12]

ATTORNEY'S FEES AND COSTS

6.35 ATTORNEY'S FEES

A party requesting an award of attorney's fees shall file with the Court the following:

A. Income and Expense Declaration. A completed Income and Expense Declaration on the current Judicial Council form shall include the income information with respect to the party against whom the order is sought.

B. Attorney Declaration. A declaration of the attorney shall set forth facts which describe in detail the services rendered, the time expended with respect to each specific service and the hourly rate charged by that attorney. The declaration shall further state such facts as may be relevant to the Court's determination of the reasonableness of the fees.

C. Bifurcation Re: Fees and Costs. Where counsel requests fees pursuant to Fam. C. §271, the Court will normally withhold a decision thereon until all other issues have been determined and will not receive an attorney's declaration relating thereto until commencing the consideration of the attorney's fee issue.

[Rule 6.35 adopted effective 5/1/98; amended 1/1/04]

JUDGMENTS

6.36 REVIEW OF JUDGMENTS

A. Court Review. The Court has developed a Family-Law Judgment Checklist Form for use in preparing Family Law Judgments for submission to the Court. Copies of the form shall be available upon request from the Clerk's Office. This form must be completed, signed, and submitted to the Court with all Family Law Judgments, except Summary Dissolutions under Fam. C. §2400 *et. seq.*.

B. Court Clerk Review. The Court Clerk's office will review and check for compliance with the following:

1. Respondent has appeared or default was taken.
2. An Appearance, Stipulation and Waivers and/or Declaration for Default or Uncontested Dissolution or Legal Separation has been filed unless the matter was heard at trial.
3. Date on which marital status ends has been inserted.

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4. A completed Family Law Judgment Checklist Form has been submitted.

[Rule 6.36 adopted effective 5/1/98; amended 7/1/00]

6.37 GENERAL

Where a judgment of dissolution is sought to be obtained by written agreement of the parties after a response has been filed (uncontested) or by default after service of the Petition, etc. on the respondent, the affidavit/declaration provisions of the Family Code may be used unless the Court requires the appearance of any party. Default or uncontested judgments may be obtained only after one of the following has occurred: (1) the default of respondent, or (2) respondent has appeared and the parties have stipulated to proceed uncontested.

A respondent appears either by filing a properly completed Response or a properly completed Appearance, Stipulation and Waivers. If respondent has filed a Response, the parties may appear in open court and orally stipulate to waive notice of time and place of trial, statement of decision, etc., and agree that the matter shall be heard on the uncontested calendar.

[Rule 6.37 adopted effective 5/1/98]

6.38 DEFAULT OR UNCONTESTED JUDGMENT BY AFFIDAVIT OR DECLARATION

To obtain a Judgment of Dissolution by Declaration (non-appearance) pursuant to Fam. C. §2336, the following completed forms must be submitted to the Clerk's Office:

1. Declaration for Default or Uncontested Dissolution, signed by one of the parties. The relief sought in the declaration must agree with relief sought in the Petition if there is no agreement. If either party is receiving public assistance, that fact shall be stated.
2. Current Income and Expense Declaration if (1) support is to be ordered, (2) there are minor children and child support is not reserved, or (3) the marriage has existed for 10 years or more, unless parties have otherwise agreed in a Marital Settlement Agreement or Stipulation.
3. Request to Enter Default or Appearance, Stipulation and Waiver form, whichever applies.
4. Original and three copies of Judgment.
5. Original and two copies of Notice of Entry of Judgment.

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6. Two self addressed stamped manila envelopes with proper postage for the parties, with a return address of the Marin County Superior Court.

No court appearance is necessary unless the Court requires it, in which case the Court shall so notify the parties.

[Rule 6.38 adopted effective 5/1/98; amended 1/1/10]

6.39 DEFAULT JUDGMENTS

A. Notice and Acknowledgment of Receipt. Unless the Court orders otherwise, a default will not be entered based on a Notice and Acknowledgment of Receipt signed by a person other than the party to whom it is directed.

B. Child Support, Spousal Support or Attorneys Fees Awards. No award of child support, spousal support or attorney's fees will be granted unless there is either an attached written agreement between the parties settling those issues, or there is sufficient information on which the Court may base an order, including a fully completed and executed Income and Expense Declaration (with information on both parties where available).

C. Community and/or Separate Property. No division of community property (assets or debts) or confirmation of separate property will be ordered, unless there is either an attached written agreement between the parties settling those issues, or there is a completed Property Declaration attached to and served with the Request to Enter Default.

D. Visitation. Where the judgment is taken by default, and either supervised visitation or denial of visitation is requested, unless a written agreement of the parties concerning custody and visitation is submitted with the judgment, a factual declaration under penalty of perjury shall be submitted with the judgment which shall include the following:

1. *Where a party is seeking to deny visitation between a child and the defaulting party:* The specific reasons visitation should be denied; the date upon which the last visitation between the child and the defaulting party occurred; and a statement either that the whereabouts of the defaulting party is unknown, or, if known, the defaulting party's address.

2. *Where a party is seeking supervised visitation between a child and the defaulting party:* The reasons such visitation should be supervised; when and where supervised visitation should occur; the name and address of the person or agency who/which will perform the supervision; and the method by which the supervisor is to be compensated.

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3. *Other information.* The date upon which the parties separated, the identity of the primary caretaker of the child(ren) during the last six months and the extent of contact between the child and the non-caretaker parent during that time.

The Declaration shall be mailed to the defaulting party with the Request to Enter Default, and proof of mailing shall be filed with the Court.

[Rule 6.39 adopted effective 5/1/98; amended 1/1/04]

6.40 ALL DEFAULT/UNCONTESTED JUDGMENTS

A. Form of Orders. All orders concerning child custody, visitation and support, spousal support, and attorney's fees, shall be set forth either in the body of the judgment or in an attached marital settlement agreement.

B. Child Custody. All judgments must contain provision for legal and physical custody.

C. Child Support. The amount of child support must either be specified in the order or reserved. Beginning, ending and due dates must be provided. A wage assignment must be ordered or an alternative authorized by law provided. All agreements for child support shall be accompanied by the Judicial Council form "Stipulation to Establish or Modify Child Support" or must contain language consistent with that form. If either party is receiving public assistance, the signature of an attorney in the DCSS consenting to the child support provision must be affixed to the judgment. The judgment shall contain a provision for medical support pursuant to Fam. C. §§3750-3753.

D. Spousal Support. Spousal support for each party must be addressed. A support amount may be requested, support may be terminated or the issue may be reserved. Spousal support provisions must state beginning, ending and due dates.

E. Division/Confirmation of Property. The division of the community assets/debts and confirmation of separate property may be set forth either in the body of the judgment or in an attached agreement incorporated in the judgment by reference. Real property shall be described by its complete common address and/or legal description.

F. Restraining Orders. All restraining orders in a judgment must be followed by a date of expiration not more than five years from the effective date of the judgment. Good cause for granting such orders shall be shown.

[Rule 6.40 adopted effective 5/1/98; amended 1/1/06]

6.41 STATUS ONLY JUDGMENT

A "Status Only" or "Bifurcated" judgment may be obtained by motion or stipulation. An Application for Separate Trial must accompany a Motion for Bifurcation. Proof of Service of the moving party's Preliminary Declaration of Disclosure shall be served and filed with the motion.

Upon obtaining a judgment of dissolution, the party obtaining it shall serve a copy of the judgment upon the other party and file a proof of such service. In any cases in which the DCSS has filed a Notice Regarding Payment of Support pursuant to Fam. C. §§4200-03, 4350-52 and 7635, and/or there has been an assignment of support pursuant to Welf. & Inst. Code §11477(a), the DCSS shall be served with a copy of any judgment.

[Rule 6.41 adopted effective 5/1/98; amended 1/1/06]

6.42 CONTESTED JUDGMENTS

Following trial, unless a statement of decision is required, the party directed by the Court to do so shall prepare the judgment in accordance with the Court's decision no later than 20 days after the decision is received. The judgment so prepared shall be served upon the other party who shall, within 10 days of receipt, either approve or refuse to approve the judgment, in writing. If approval is refused, alternative proposed language shall be submitted in writing to the preparing party.

If the responding party fails to approve the judgment or to submit alternative language, the preparing party may present the proposed judgment to the Court for signature together with a declaration (with a copy to the responding party) stating that the judgment was served upon the responding party on a certain date and describing the circumstances surrounding the responding party's failure to approve the judgment. If the responding party has submitted alternative proposed language to the preparing party, the preparing party shall submit both proposed forms of judgment to the Court, and the Court shall select and sign that form of judgment which best reflects the Court's decision.

If the party directed to prepare the judgment fails to prepare and serve the judgment as required, then the other party may prepare the proposed judgment and mail it directly to the Court without seeking the approval of opposing counsel, along with a letter to the Court (with a copy to the opposing party) setting forth the applicable dates according to this rule and requesting the Court to sign it.

[Rule 6.42 adopted effective 5/1/98; amended 1/1/04]

FAMILY LAW FACILITATOR

6.43 GENERAL

Marin County has a Family Law Facilitator located in Room 244 on the court floor of the Civic Center. The telephone number is (415) 444-7130.

The Facilitator, an attorney, provides educational materials to parents concerning the process of establishing parentage and establishing, modifying and enforcing child support and spousal support in the courts; distributes necessary court forms and voluntary declarations of paternity; provides assistance in completing forms; prepares support schedules based on statutory guidelines; and provides referral to the local child support agency, family court services, and other community agencies and resources that provide services for parents and children.

In furtherance of the policy of this state to furnish a speedy conflict-reducing system for resolving financial issues that is accessible to families with low- and middle-incomes, the Facilitator can work with Family Court Services and self-represented litigants simultaneously to mediate financial issues along with custody issues. (Fam. C. §§ 10001, 10005, 20000.)

[Rule 6.43 adopted effective 7/1/99; amended 7/1/07]

7. MISCELLANEOUS RULES

7.1 CITATION

These miscellaneous rules should be cited as "Marin County Rule, Miscellaneous" or "MCR Misc" followed by the rule number (e.g., Marin County Rule, Miscellaneous 7.2 or MCR Misc 7.2).

[Rule 7.1 adopted effective 5/1/98; amended 1/1/10]

7.2 CONDUCT OF ATTORNEYS

Attorneys are expected, at a minimum, to conduct themselves in accordance with the requirements of the State Bar Act and the State Bar mandated Rules of Professional Conduct. In addition, the Court encourages all attorneys to abide by the standards set forth in the Code of Civility which have been approved by the Board of Directors of the Marin County Bar Association. (Copies of the Code of Civility can be obtained from the Clerk's Office or the Marin County Bar Association.) The Court may consider the Code of Civility and the standards contained therein when making rulings regarding sanctions.

[Rule 7.2 adopted effective 5/1/98]

7.3 COURTROOM DRESS

No person shall appear in court unless wearing a shirt, shoes, pants (or skirt), dress or other appropriate attire (no shorts, sleeveless shirts).

[Rule 7.3 adopted effective 5/1/98]

7.4 LATE APPEARANCES

An attorney, defendant or other person who is late for a scheduled court appearance may be subject to disciplinary action such as sanctions or contempt proceedings. A defendant who is late for court may be subject to having bail increased or terminated, or O.R. terminated.

[Rule 7.4 adopted effective 5/1/98]

7.5 COURT INTERPRETERS

Where a party or defendant or other person is entitled to and requires the assistance of a court interpreter, the party, defendant or counsel of record shall notify the Court at least three calendar days before the hearing. Where it is later determined that the interpreter is not needed, defendant or counsel shall provide notice to the Court at least 24

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hours before the hearing. If such notice is not provided and the Court incurs costs of the interpreter, the Court will bill the requesting party for such costs.

[Rule 7.5 adopted effective 5/1/98; amended 7/1/09]

7.6 MEDIA COVERAGE

The use of photographic, video, or audio recording or transmission equipment in the courtroom is prohibited without advance approval of the judge pursuant to CRC 1.150.

Any and all video, cell phone and other photography through courtroom windows or into the courtroom from the hallway is subject to the same restrictions that apply to the use of cameras in the courtroom and shall require prior approval by the judge of the affected courtroom. (See CRC 1.150.)

Any and all video, cell phone and other photography in the hallway itself shall require prior approval by the presiding judge, or designee, and the County of Marin. Television, video and still photography inside the Marin County Civic Center, other than in a courtroom with the express authorization of the judge, requires a special permit, obtained from the Marin County Community Development Agency.

Television cameras, video cameras and/or camera operators, still photographers, media reporters or any combination thereof shall not block corridors, access to any courtroom, or the ingress to or egress from the courthouse.

[Rule 7.6 adopted effective 7/1/09]

7.7 USE OF LAPTOPS OR OTHER ELECTRONIC DEVICES

The use of laptops and/or electronic devices by counsel or any member of the public in specific courtrooms will be regulated by each individual trial judge.

In no event shall an attorney or any member of the public use wireless internet connections, whether by laptop computers or any form of electronic access, to record, photograph or transmit any court proceeding unless otherwise specifically authorized by CRC 1.150.

[Rule 7.7 adopted effective 7/1/09]

7.8 COURT FILE RETRIEVALS AND VIEWING

A. Public Index Search. All attorneys, parties, proprietary records research vendors and members of the public shall search the Court's public index for case numbers and/or case names of files they wish to review.

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B. Court Files Located at the Courthouse. There is no retrieval fee for files located at the courthouse. Attorneys, parties, proprietary records research vendors and members of the public may request up to six (6) court files per day for viewing. If available and not in use by the Court, these files will be available for viewing the business day following the date of the request.

To request more than six (6) court files located at the courthouse to be viewed at one time, a \$15.00 retrieval fee per every six additional files requested will be due and payable at the time the request is made.

C. Court Files Located at an Offsite Records Storage Facility. Files located at offsite storage facilities can take up to a week for retrieval. Retrieval fees of \$5.00 for each file are due at the time the request is made. There is no limit to the number of files that may be requested from offsite storage. The clerk will advise the requestor of the date the file will be available for viewing. Court files retrieved from offsite storage warehouses will be kept in the Records Management Office for five (5) business days from the date they are available for viewing before being returned to offsite storage unless the requestor contacts the Court to ask that they be held longer. If the requestor does not view the files during the five-day viewing period and the files are returned to offsite storage, the requestor will be charged a new retrieval fee.

D. Confidential Court Files Not Listed in the Public Index. No information whatsoever will be provided to a requestor regarding court files that are determined to be confidential under California law unless the requestor is a party to the case or the current attorney of record. Requestors must present valid photo identification at the time of the request. Confidential court files include establishment of parental relationship (paternity), adoption, termination of parental rights, and juvenile dependency or delinquency.

[Rule 7.8 adopted effective 1/1/10]

7.9 COURT RECORDS RESEARCH

A. Research Requests. The fee for research requests shall be \$15.00 for each search of records or court files that take longer than ten (10) minutes. The fee is due and payable at the time of the request. If the requestor seeks information on more than one record or court file at one time, the Court presumes that the search will take longer than 10 minutes and a \$15.00 fee will be charged for the first two records and a \$5.00 fee will be charged for each additional record or court file.

If submitting research requests by mail, requestors must enclose a self addressed stamped envelope with proper postage and a check made out to Marin County Superior Court. On the memo line, write “amount not to exceed \$35.00,” if the amount of the research is unknown, or the amount previously provided by the Court.

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B. Clerk's Declarations on Record Searches. Upon request, the Court will draft a Clerk's Declaration on Court letterhead stating the disposition of a court case or a statement that no record was found. The fee for a Clerk's Declaration is \$25.00 for each record included in the Declaration.

C. Birth Date or Social Security Number Matches in Court Records. No matching of birth date or social security number will be conducted by the Court. That research must be conducted by the requestor, by viewing the court file or other court records.

[Rule 7.9 adopted effective 1/1/10]

7.10 COPIES OF COURT RECORDS

A. Copies of Court Files. For copy jobs of 50 pages or fewer, the requestor must prepay for copies at \$0.50 per page. Copies may be made at the time of the request or mailed to the requestor within five business days. For copy jobs of more than 50 pages, requestors must leave a deposit, in an amount determined by the Court, based upon the estimated number of copies. Copies shall be ready for pick up within 10 business days, along with a final tally of the number of pages copied and the remaining cost.

B. Copies of Court Dockets, Registers of Action and Minute Orders. Upon request, the Court will use its computer system to print dockets, registers of action, or minute orders. Copy fees of \$0.50 per page are due and payable at the time of printing. Once printed, the requestor shall purchase the printed document. The requestor may not view the printed document and decline to pay the copy fee.

C. Copies of Court Orders, Filed Documents, or Other Court Records for Governmental Agencies. Governmental agencies requesting copies of court orders, filed documents, or other court records shall include self addressed stamped envelopes with postage sufficient to cover the cost of their copies.

[Rule 7.10 adopted effective 1/1/10]

7.11 COURT FORM PACKETS

The Court prints and assembles packets of court forms for such matters as dissolution (divorce), alternative dispute resolution and termination of parental rights. These packets consist of Judicial Council forms and local court forms that are required to be filed with the Court, as well as instructions on how to complete them. The packets may be obtained from the Clerk's Office in Room 113. The fee for form packets is \$3.00 for the Dissolution packet (not Summary Dissolution), \$1.00 for the Civil Trial Delay/Alternative Dispute Resolution packet and \$1.00 for the Small Claims packet. There is no charge for Domestic Violence or Civil Harassment packets.

[Rule 7.11 adopted effective 1/1/10]

7.12 CHECK CASHING

A. Acceptance. The Clerk shall accept a personal check, cashier's check, or money order offered in payment of any fee, fine or bail deposit provided the following conditions are met:

1. The personal check, cashier's check, or money order is in U.S. dollars, with a dollar sign (\$) and the word "dollars" printed on it;
2. The amount of any such payment shall not exceed the face amount;
3. The check is not post-dated or stale-dated;
4. All instruments shall be made payable to the "Marin County Superior Court" or other similar designee (no two-party checks);
5. The numeric figures on the check shall agree with the amount written in words; and
6. The sum shall be payable in U.S. currency.

B. Post-Dated Checks. A post-dated check may be held by the Clerk until the date it becomes negotiable.

C. Refusal. Personal checks from persons known to have previously tendered worthless or "Not Sufficient Funds" checks to the Clerk or other persons shall be accepted at the discretion of the Court Executive Officer or designee.

D. Insufficient Funds Checks. Pursuant to Penal Code §476(a), insufficient funds checks (worthless documents) received by the Court may be referred either to the District Attorney for prosecution, or the Enhanced Court Collections program for enforcement.

[Rule 7.12 adopted effective 5/1/98; amended 7/1/09]

7.13 PAYMENT IN COINS

Pursuant to 31 U.S.C. §§459-460, the Clerk shall not accept coins as payment of any bail, fee or fine in amounts exceeding: twenty-five cents consisting of pennies, nickels and dimes; and ten dollars consisting of dimes, quarters and half dollars.

[Rule 7.13 adopted effective 5/1/98]

7.14 ORDERS TO DISBURSE FUNDS

All orders to disburse funds previously deposited with the Court shall clearly state the full name and mailing address of each payee and the exact amount to be paid to each. In the case of final disbursement of funds in interest-bearing deposits, the order shall designate who is to receive any interest remaining in the account after the disbursement has been made.

[Rule 7.14 adopted effective 5/1/98]

7.15 DIGITAL SIGNATURES

The Court will allow the use of a digital signature, which shall have the same force and effect as the use of a manual signature, if and only if it complies with all of the requirements of Government Code §16.5.

[Rule 7.15 adopted effective 7/1/99]

7.16 JUDICIAL FAIRNESS COMMITTEE

Pursuant to the applicable Standards of Judicial Administration, the Court supports the establishment of a local committee to assist in maintaining a courtroom environment free of bias or the appearance of bias. In furtherance thereof, the Court has endorsed the Statement of Organization of the Marin County Judicial Fairness Committee approved and adopted jointly by the Boards of Directors of the Marin County Bar Association and the Marin County Women Lawyers.

[Rule 7.16 adopted effective 7/1/99]

7.17 JUROR QUALIFICATION AND SELECTION

A. Jury Commissioner. The Court Executive Officer is appointed as the Jury Commissioner and is designated as the "attaché" of the Court to perform all functions set forth in the Trial Jury Selection and Management Act (CCP §190 et seq.). Said functions may be performed by such Deputy Jury Commissioner as may be designated by the Court Executive Officer.

B. Source Lists. All persons selected for jury service shall be selected at random, from a source or sources inclusive of a representative cross section of the population of the area served by the court. Marin County Superior Court will use the list of registered voters and the Department of Motor Vehicle's list of licensed drivers and identification card holders.

These two source lists are combined for use in the computer; using predetermined matching criteria, the computer then compares the names on the two lists and eliminates

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any duplicates which results in a single merged file list. In addition, the following process will occur in order to create a master file list and to generate a master list.

1. *Elimination of Deceased and Disqualified Names.* The merged list will be compared to the most recent list of death certificates provided by the Local Registrar of Births and Deaths. Any duplicates will be automatically purged from the merged list by the computer. The names and service records of jurors who served during the past 24 months will also be prepared for input and then compared with those in the merged file. The computer will be programmed to skip the name of a citizen who has served within 24 months of the date for which names are drawn.

2. *National Change of Address System.* Once the master list file is created it will be compared to the United States postal National Change of Address (NCOA). This is a file containing 113+ million permanent change of address records. This will assist in eliminating additional inconsistencies and duplications in the master list and remove all those potential jurors no longer living in Marin County.

3. *Master List Generation.* After the source lists are combined, duplicates eliminated, and disqualified individuals purged, as set forth in this rule, a master list will be produced by using the complete randomization technique and shall be generated at least once each year.

C. Qualification and Summoning. Qualifying and summoning prospective jurors from the master list will be performed as one integrated process. This is also known as a “one-step process”. On a daily basis, one month prior to each jury term, the jury clerk will determine the number of potential jurors to summon, based on the usual summons yield and the anticipated calendar load. The correct number of names from the master list will be input and a summons/questionnaire will print for the individuals selected.

1. *Randomization – Method of Selection.* Before the selection process is begun each month, the master list will be updated. No new names will be added to the file, but deletions will be made on the list where required. The names of those persons whose deferred service date falls within the month for which selection is being made, and is more than 30 days from their initial service date, will be added to the list of jurors for that date. The names of these jurors will be distinguished on the list from those selected at random.

The selection process, using the complete randomization technique, will be performed by the computer drawing names from the master list. This selection method implies that each name from the combined source list is assigned or already has associated with it a number which is matched to a computerized

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random number generator or to a random number table as a means of selecting a subset or sample.

2. *Specifications of Forms.* The qualification/summoning forms generated by the computer will include:

a. A summons and response form for juror use in reporting disqualification or requesting excuse by mail. The summons forms will instruct the prospective juror to telephone a special number or use the Court's online juror system (http://www.marincourt.org/jury_services.htm) between the hours of 5:00 p.m. of the evening prior to his/her service date and 8:00 a.m. that morning, in order to find out if they need to report or not.

b. Information on jury duty including the date, time, and a map showing the location of the jury assembly room, telephone numbers to call, and a brief outline of his/her duties.

All forms will elicit only information necessary to determine the qualification of the prospective juror and will not be made public until he/she has been summoned and has appeared at the courthouse.

3. *Delivery and Follow-up.* The specified summons and qualification forms will be sent by first-class mail. As provided by CCP §209, any prospective trial juror who has been summoned for service, and who fails to attend upon the court as directed or to respond to the court or jury commissioner and to be excused from attendance, may be arrested and, following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

D. Disqualification, Exemption, Excuse and Postponement Policy.

1. *Disqualification.* All persons are eligible and qualified to be prospective trial jurors with the exception of those described in CCP §203.

2. *Exemptions/Excuses.* In accordance with CCP §204, no eligible person shall be exempt from service as a trial juror by reason of occupation, race, color, religion, sex, national origin, or economic status, or for any other reason. No person shall be excused from service as a trial juror except for undue hardship, upon themselves or upon the public.

The authority for granting and denying requests for excuse is delegated to the Jury Commissioner by the Presiding Judge. The written excuse policy of the court will be followed at all times. The only grounds for excuse are extreme hardship and serious medical situations. Excuses may only be requested after a

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person has been summoned for jury duty. Requests for excuse may be made by telephone or by mail prior to reporting.

The Deputy Jury Commissioner may, upon written request, defer the service of a prospective juror for good cause, or may excuse prospective jurors from service altogether, if they are:

- a. Persons infirm due to age, illness or are mentally or physically disabled.
- b. Persons responsible for the actual and necessary care of the sick or aged and infirm dependents, or parents with small children requiring that parent's personal care and attention during the day.
- c. Persons with excessive travel distance or lack of available transportation to the Court.
- d. Federal or state judicial officers and/or active-duty military personnel.

If it is determined that the excuse status of an individual may change, his/her name will be reentered on the master list. Any request for a permanent excuse or exemption due to medical or other reasons, requires approval and authorization by the Jury Commissioner.

3. *Postponement.* A potential juror may request postponement of jury service for up to 90 days. Postponements may be obtained by calling Jury Services or using the Court's online juror system (http://www.marincourt.org/jury_services.htm).

E. Term of Service. The term of service is one trial/one day and is considered fulfilled when he or she has:

1. Served on one trial until discharged.
2. Been assigned to a trial department for jury selection and served until excused by the Deputy Jury Commissioner.
3. Attended court but was not assigned to a trial department for selection of a jury before the end of that day.
4. Served one day on call with same day notice to appear in court.

[Rule 7.17 adopted effective 5/1/98; amended 1/1/10]

7.18 COURT REPORTERS

A. General Provisions. Official and pro tempore court reporter services and compensation are described in §68086 et seq. of the Gov. Code, and in other applicable statutes, CRC, and rules of this Court. All matters required by law to be reported at the Court's expense shall be reported. All other matters shall be reported at the request of the Court or the parties, subject to the availability of an official court reporter.

As required by law, court reporting services shall be provided at the Court's expense in all felony and juvenile matters and proceedings under the Lanterman-Petris-Short (LPS) Act. Court reporting services may also be provided at the request of the Court or the parties for certain types of civil proceedings. **For the purposes of this local rule, "civil" is defined as all matters other than criminal, juvenile and LPS (e.g. civil, family law, probate.)** These services, however, will be subject to the availability of a court reporter and the cost of court reporting services will typically be borne by the parties.

Generally, the Court will not provide court reporters for the following types of proceedings: case management and status conferences; ex parte applications or hearings; orders to show cause; civil harassment; civil, family law and probate law and motion; infractions and small claims. Court reporters may be used in such proceedings, but they shall be obtained, and the expense shall be borne, by the party requesting a reporter. The party requesting a reporter shall file five (5) days' advance written notice to the clerk of his/her request to have a reporter present during any of these proceedings.

At the court's discretion, in settlement of unlimited civil cases, the terms thereof shall be placed on the record by a court reporter or shall be reduced to writing and signed by all necessary parties, and the fact of the settlements shall be entered into the Court's minutes.

B. Use of Electronic Recording. Pursuant to Gov. Code §69957, electronic recording may be used in the following types of proceedings, when an official reporter is unavailable: infractions, misdemeanors, limited jurisdiction civil matters, limited jurisdiction civil appeals, infraction and misdemeanor appeals, and small claims trials de novo.

In an appeal from a limited civil case in which the proceedings were officially recorded electronically in accordance with CRC 8.835, the original recording or a copy prepared by the court may be transmitted as the record of oral proceedings without being transcribed in lieu of a reporter's transcript or settled statement, pursuant to CRC 8.837(d)(6)(A). The trial judge will not order that a transcript be prepared as the record of the oral proceedings. (See CRC 8.837(d)(6)(B).

In an appeal from a misdemeanor case in which the proceedings were officially recorded electronically in accordance with CRC 8.868, the original recording or a copy prepared by the court may be transmitted as the record of oral proceedings without being

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transcribed in lieu of a reporter's transcript or settled statement, pursuant to CRC 8.869(d)(6)(A). The trial judge will not order that a transcript be prepared as the record of the oral proceedings. (See CRC 8.869(d)(6)(B).)

In an appeal from an infraction case in which the proceedings were officially recorded electronically in accordance with CRC 8.917, the original recording or a copy prepared by the court may be transmitted as the record of oral proceedings without being transcribed in lieu of a reporter's transcript or settled statement, pursuant to CRC 8.916(d)(6)(A). The trial judge will not order that a transcript be prepared as the record of the oral proceedings. (See CRC 8.916(d)(6)(B).)

C. Court Reporting Services Requested By Parties In Civil Trials And Hearings. A party in any type of civil case must file a statement ten (10) days before the trial or hearing date indicating whether the party requests the presence of an official court reporter. The clerk shall notify a party having filed such a statement no later than five (5) days before the trial or hearing date if the services of an official reporter will not be available. Pursuant to CRC 2.956, if the services of an official court reporter are not available for a trial or hearing, a party may arrange for the presence of a certified shorthand reporter to serve as an official pro tempore reporter. It is the requesting party's responsibility to pay the pro tempore reporter's fee directly to the reporter for attendance at the proceedings but the expense may be recoverable as part of the costs, as provided by law. Per diem fees for official court reporters are listed in the Court's Uniform Filing Fee Schedule and are to be paid by the parties in all matters other than criminal, juvenile or LPS. If the court makes available an official reporter for the trial or hearing lasting longer than one hour, the per diem fee shall be advanced to the courtroom clerk before the commencement of each day's proceedings.

D. Reporting Notes of Certified Reporters Hired to Serve as Official Pro Tempore Reporters. Reporting notes of all certified shorthand reporters employed to report in this Court are the official records of the Court and shall be secured by the Court in accordance with Gov. C. §69955. The notes may be lodged by email at reporter@marincourt.org or by submitting a CD to the Clerk of the Court within 30 days of reporting. The notes shall be labeled with the date recorded, the Court department, and the name of the reporter.

[Rule 7.18 adopted effective 7/1/10; amended 1/1/12]

7.19 PUBLIC ACCESS TO JUDICIAL ADMINISTRATIVE RECORDS

Any request for a copy of or to inspect a judicial administrative record pursuant to CRC 10.500 must be made in writing. Such request may be delivered to Room 116 (Administration) between the hours of 8:30 a.m. and 4:00 p.m., emailed to administration@marincourt.org, or mailed to Marin County Superior Court, Administration (Room 116), P.O. Box 4988, San Rafael, CA 94913-4988.

[Rule 7.19 adopted effective 7/1/11]

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APPENDIX A

LOCAL FORMS - NUMERICAL LISTING	FORM #	ADOPT/AMEND DATE
ADMINISTRATION		
VOLUNTEER CIVIL SETTLEMENT CONFERENCE PANELIST	ADM016	7/09
VOLUNTEER FAMILY LAW SETTLEMENT CONFERENCE PANELIST	ADM017	7/09
VOLUNTEER FAMILY LAW SETTLEMENT CONF PANELIST- MHP	ADM018	7/09
REQUEST FOR JUDICIAL ADMINISTRATIVE RECORDS	ADM022	3/10
CIVIL		
STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION	CV002	6/06
WORKPLACE VIOLENCE PACKET	CV003	1/12
ELDER OR DEPENDENT ADULT ABUSE PACKET	CV004	1/12
CHANGE OF NAME PACKET	CV005	10/10
CHANGE OF NAME & GENDER PACKET	CV005a	1/11
CIVIL TRIAL DELAY REDUCTION PROGRAM	CV006	7/11
HARASSMENT PACKET	CV014	1/12
BODY ATTACHMENT & WARRANT OF ARREST	CV016 *	8/09
JUDGMENT PURSUANT TO CCP § 1710.25	CV017	7/07
PETITION TO ESTABLISH FACT OF BIRTH	CV018	7/07
PETITION TO ESTABLISH FACT OF MARRIAGE	CV019	7/07
PETITION TO DECLARE CHILD FREE	CV022 *	7/07
PETITION TO DECLARE CHILD FREE - INSTRUCTIONS	CV022a	7/07
CITATION TO APPEAR	CV023 *	7/07
CITATION TO APPEAR - INSTRUCTIONS	CV023a	7/07
ORDER DECLARING CHILD FREE FROM PARENTAL CUSTODY	CV024 *	7/07
ORDER DECLARING CHILD FREE FROM PARENTAL CUSTODY - INSTR	CV024a	7/07
AMENDMENT TO COMPLAINT	CV025	7/07
BODY ATTACHMENT & WARRANT OF ARREST LETTER - INSTR	CV026	8/09
NOTICE OF ADMINISTRATIVE APPEAL - GENERAL	CV027	7/07
NOTICE OF ADMINISTRATIVE APPEAL - GENERAL - INSTRUCTIONS	CV027a	7/07
NOTICE OF ADMINISTRATIVE APPEAL - CDA	CV028	7/07
NOTICE OF ADMINISTRATIVE APPEAL - CDA - INSTRUCTIONS	CV028a	7/07
NOTICE OF APPEAL - PARKING	CV029	7/07
PARKING VIOLATION APPEAL PROCESS	CV029a	2/09
NOTICE OF DECISION - PARKING APPEAL	CV030	7/07
PROOF OF SERVICE - PARKING APPEAL	CV031	7/07
STIPULATION TO DISMISS ACTION & SUBMIT CAUSES	CV032	6/08
NOTICE OF ADMINISTRATIVE APPEAL - GENERAL - P.O.S.	CV033	7/07
NOTICE OF ADMINISTRATIVE APPEAL - CDA - PROOF OF SERVICE	CV034	7/07
APPLICATION FOR ORDER FOR PUBLICATION OF CITE	CV035 *	7/07
APPLICATION FOR ORDER FOR PUBLICATION OF CITE - INSTR	CV035a	7/07
ORDER FOR PUBLICATION OF CITE	CV036 *	7/07
ORDER FOR PUBLICATION OF CITE - INSTRUCTIONS	CV036a	7/07
PETITION FOR AN ORDER FOR TERMINATION OF PARENTAL RIGHTS	CV043	7/07
ATTORNEY'S FEE SCHEDULE	CV044	7/08
APPLICATION FOR JUDICIAL ARBITRATOR	CV058	9/09
DECLARATION RE: NOTICE OF EX PARTE APPLICATION - CIVIL	CV065	5/11

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APPENDIX A

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CIVIL LIMITED APPEAL		
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ABANDONMENT OF APPEAL (Limited Jurisdiction)	CLA-010	1/08
NOTICE DESIGNATING REPORTER'S & CLERK'S TRANSCRIPT	CLA-022	1/08
FAMILY LAW		
CASE PROGRESS CONFERENCE QUESTIONNAIRE	FL003 *	1/12
ALTERNATIVE METHODS OF RESOLVING FAMILY LAW DISPUTES	FL004 & SP	3/07 & 10/07
FAMILY COURT SERVICES CCR** COUNSELING PROGRAM & SPANISH	FL005 & SP	5/11
DO YOU NEED HELP WITH YOUR FAMILY LAW CASE?	FL006 & SP	2/11
STIPULATION & ORDER TO CONTINUE CASE PROGRESS CONF.	FL007 *	1/12
NOTICE TO PARTIES IN FAMILY LAW CASES	FL008 & SP	2/10
SUMMARY DISSOLUTION PACKET	FL011	7/11
DOMESTIC VIOLENCE PACKET (with Children)	FL012	7/11
DOMESTIC VIOLENCE PACKET (without Children)	FL013	7/11
REGULAR DISSOLUTION PACKET	FL014	7/11
FAMILY LAW JUDGMENT CHECKLIST	FL015 *	5/11
FAMILY COURT SERVICES INTAKE SHEET & SPANISH	FL016 & SP	3/11
AT ISSUE MEMORANDUM	FL018 *	8/07
POLICY OF FAMILY COURT SERVICES	FL019	3/11
STATEMENT OF AGREEMENT/DISAGREEMENT WITH FCS	FL027	3/11
APPLICATION FOR PERMISSION TO MARRY	FL028	2/08
CONSENT OF PARENT TO ISSUE MARRIAGE LICENSE	FL029 *	2/08
DECLARATION OF PREMARITAL COUNSELING	FL030	2/08
PERMISSION TO MARRY	FL031 *	2/08
JUDICIAL CONSENT TO MARRY - INSTRUCTIONS TO COUPLE	FL032	2/08
STATUS CONFERENCE QUESTIONNAIRE	FL033 *	4/08
ANNUAL DECLARATION OF PROFESSIONAL/THERAPEUTIC SUPERVISED VISITATION PROVIDER	FL038 *	6/11
A GUIDE FOR THE SUPERVISED VISITATION PROVIDER	FL039 *	6/11
AGREEMENT OF NON-PROFESSIONAL SUPERVISED VISITATION PROVIDER	FL040 *	6/11
STIPULATION & ORDER RE: APPT OF PARENTING COORDINATOR	FL041 *	5/11
QUALIFIED PRIVATE CHILD CUSTODY EVALUATOR INFO SHEET	FL042 *	3/11
DECLARATION RE: NOTICE OF EX PARTE APPLICATION - FAMILY LAW	FL048	5/11
PROTECTED PARTY'S APPLICATION & SUPPORTING DECLARATION TO VACATE DOMESTIC VIOLENCE RESTRAINING ORDER	FL056	7/11
HOW TO COMPLETE YOUR PARENTAGE CASE - PETITIONER	FL059 & SP	1/12
YOU'VE BEEN SERVED, NOW WHAT (PARENTAGE)? - RESPONDENT	FL060 & SP	1/12
HOW TO COMPLETE YOUR FAMILY LAW CASE - PETITIONER	FL061 & SP	1/12
YOU'VE BEEN SERVED, NOW WHAT (FL CASE)? - RESPONDENT	FL062 & SP	1/12
RESOURCES	FL063 & SP	1/12
TRIAL READINESS CONFERENCE QUESTIONNAIRE	FL064 *	1/12
JURY SERVICES		
MEDICAL EXEMPTION REQUEST	JUR001 *	11/11
CAREPROVIDER EXEMPTION REQUEST	JUR004 *	11/11

MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

APPENDIX A

LOCAL FORMS - NUMERICAL LISTING	FORM #	ADOPT/AMEND DATE
PROBATE		
EX PARTE MOTION, DECLARATION	PR004	7/07
SUMMARY OF FIDUCIARY'S ACCOUNT	PR005	7/07
INFORMATION FORM ON CONSERVATORSHIPS/GUARDIANSHIPS	PR006	7/07
PROPOSED GUARDIAN INFORMATION FORM	PR007 *	12/09
JUDGMENT ESTABLISHING FACT OF DEATH	PR008	7/07
AFFIDAVIT UNDER CALIF PROBATE CODE §13101	PR009	7/07
ORDER APPOINTING REFEREE	PR010	7/07
NOTICE OF TRANSFER OF ESTATE PLANNING DOCUMENTS	PR014	1/10
PROBATE CONTACT INFORMATION	PR015 *	6/07
COURT INVESTIGATOR SCHEDULE OF FEES	PR019	4/08
STEPPARENT ADOPTION QUESTIONNAIRE	PR021	12/09
COURT REPORTING		
REQUEST FOR COURT REPORTING SERVICES	REP004*	8/10
SMALL CLAIMS		
LOCAL POLICY INFORMATION FOR THE SMALL CLAIMS PLAINTIFF	SC001	7/11
SMALL CLAIMS PLAINTIFF - CLAIM INSTRUCTIONS	SC002	7/11
NAMING PLAINTIFFS AND DEFENDANTS	SC004	9/10
REQUEST FOR DISMISSAL	SC005	10/06
DECLARATION OF JUDGMENT DEBTOR RE SATISFACTION OF JUDGMENT	SC012*	8/00
LOCAL FORMS - ALPHABETICAL LISTING		
A GUIDE FOR THE SUPERVISED VISITATION PROVIDER	FL039 *	6/11
ABANDONMENT OF APPEAL (Limited Jurisdiction)	CLA-010	1/08
AFFIDAVIT UNDER CALIF PROBATE CODE §13101	PR009	7/07
AGREEMENT OF NON-PROFESSIONAL SUPERVISED VISITATION PROVIDER	FL040 *	6/11
ALTERNATIVE METHODS OF RESOLVING FAMILY LAW DISPUTES	FL004/SP	3/07 & 10/07
AMENDMENT TO COMPLAINT	CV025	7/07
ANNUAL DECLARATION OF PROFESSIONAL/THERAPEUTIC SUPERVISED VISITATION PROVIDER	FL038 *	6/11
APPLICATION FOR JUDICIAL ARBITRATOR	CV058	9/09
APPLICATION FOR PERMISSION TO MARRY	FL028	2/08
AT ISSUE MEMORANDUM	FL018 *	8/07
APPLICATION FOR ORDER FOR PUBLICATION OF CITE	CV035 *	7/07
APPLICATION FOR ORDER FOR PUBLICATION OF CITE - INSTR	CV035a	7/07
ATTORNEY'S FEE SCHEDULE	CV044	7/08
BODY ATTACHMENT & WARRANT OF ARREST	CV016 *	8/09
BODY ATTACHMENT & WARRANT OF ARREST LETTER - INSTR	CV026	8/09
CAREPROVIDER EXEMPTION REQUEST	JUR004 *	11/11
CASE PROGRESS CONFERENCE QUESTIONNAIRE	FL003 *	1/12
CHANGE OF NAME PACKET	CV005	10/10
CHANGE OF NAME & GENDER PACKET	CV005a	1/11
CITATION TO APPEAR	CV023 *	7/07
CITATION TO APPEAR - INSTRUCTIONS	CV023a	7/07

MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

APPENDIX A

LOCAL FORMS - ALPHABETICAL LISTING	FORM #	ADOPT/AMEND DATE
CIVIL TRIAL DELAY REDUCTION PROGRAM	CV006	7/11
CONSENT OF PARENT TO ISSUE MARRIAGE LICENSE	FL029 *	2/08
COURT INVESTIGATOR SCHEDULE OF FEES	PR019	4/08
DECLARATION OF JUDGMENT DEBTOR RE SATISFACTION OF JUDGMENT	SC012*	8/00
DECLARATION OF PREMARITAL COUNSELING	FL030	2/08
DECLARATION RE: NOTICE OF EX PARTE APPLICATION - CIVIL	CV065	5/11
DECLARATION RE: NOTICE OF EX PARTE APPLICATION - FAMILY LAW	FL048	5/11
DOMESTIC VIOLENCE PACKET (with Children)	FL012	1/12
DOMESTIC VIOLENCE PACKET (without Children)	FL013	1/12
DO YOU NEED HELP WITH YOUR FAMILY LAW CASE?	FL006 & SP	2/11
ELDER OR DEPENDENT ADULT ABUSE PACKET	CV004	1/12
EX PARTE MOTION, DECLARATION	PR004	7/07
FAMILY COURT SERVICES INTAKE SHEET & SPANISH	FL016 & SP	3/11
FAMILY COURT SERVICES CCR** COUNSELING PROGRAM & SPANISH	FL005 & SP	5/11
FAMILY LAW JUDGMENT CHECKLIST	FL015 *	5/11
HARASSMENT PACKET	CV014	1/12
HOW TO COMPLETE YOUR FAMILY LAW CASE - PETITIONER	FL061 & SP	1/12
HOW TO COMPLETE YOUR PARENTAGE CASE - PETITIONER	FL059 & SP	1/12
INFORMATION FORM ON CONSERVATORSHIPS/GUARDIANSHIPS	PR006	7/07
JUDGMENT ESTABLISHING FACT OF DEATH	PR008	7/07
JUDGMENT PURSUANT TO CCP § 1710.25	CV017	7/07
JUDICIAL CONSENT TO MARRY - INSTRUCTIONS TO COUPLE	FL032	2/08
LOCAL POLICY INFORMATION FOR THE SMALL CLAIMS PLAINTIFF	SC001	7/11
MEDICAL EXEMPTION REQUEST	JUR001 *	11/11
NAMING PLAINTIFFS AND DEFENDANTS	SC004	9/10
NOTICE DESIGNATING REPORTER'S & CLERK'S TRANSCRIPT	CLA-022	1/08
NOTICE OF ADMINISTRATIVE APPEAL - GENERAL	CV027	7/07
NOTICE OF ADMINISTRATIVE APPEAL - GENERAL - INSTRUCTIONS	CV027a	7/07
NOTICE OF ADMINISTRATIVE APPEAL - GENERAL - P.O.S.	CV033	7/07
NOTICE OF ADMINISTRATIVE APPEAL - CDA	CV028	7/07
NOTICE OF ADMINISTRATIVE APPEAL - CDA - INSTRUCTIONS	CV028a	7/07
NOTICE OF ADMINISTRATIVE APPEAL - CDA - PROOF OF SERVICE	CV034	7/07
NOTICE OF APPEAL (Limited Jurisdiction)	CLA-002	1/08
NOTICE OF APPEAL - PARKING	CV029	7/07
NOTICE OF DECISION - PARKING APPEAL	CV030	7/07
NOTICE OF TRANSFER OF ESTATE PLANNING DOCUMENTS	PR014	1/10
NOTICE TO PARTIES IN FAMILY LAW CASES	FL008	2/10
ORDER APPOINTING REFEREE	PR010	7/07
ORDER DECLARING CHILD FREE FROM PARENTAL CUSTODY	CV024 *	7/07
ORDER DECLARING CHILD FREE FROM PARENTAL CUSTODY - INSTR	CV024a	7/07
ORDER FOR PUBLICATION OF CITE	CV036 *	7/07
ORDER FOR PUBLICATION OF CITE - INSTRUCTIONS	CV036a	7/07
PARKING VIOLATION APPEAL PROCESS	CV029a	2/09
PERMISSION TO MARRY	FL031 *	2/08
PETITION FOR AN ORDER FOR TERMINATION OF PARENTAL RIGHTS	CV043	7/07
PETITION TO DECLARE CHILD FREE	CV022 *	7/07
PETITION TO DECLARE CHILD FREE - INSTRUCTIONS	CV022a	7/07
PETITION TO ESTABLISH FACT OF BIRTH	CV018	7/07
PETITION TO ESTABLISH FACT OF MARRIAGE	CV019	7/07
POLICY OF FAMILY COURT SERVICES	FL019	3/11
PROBATE CONTACT INFORMATION	PR015 *	6/07

MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

APPENDIX A

LOCAL FORMS - ALPHABETICAL LISTING	FORM #	ADOPT/AMEND DATE
PROOF OF SERVICE - PARKING APPEAL	CV031	7/07
PROPOSED GUARDIAN INFORMATION FORM	PR007 *	12/09
PROTECTED PARTY'S APPLICATION & SUPPORTING DECLARATION TO VACATE DOMESTIC VIOLENCE RESTRAINING ORDER	FL056	7/11
QUALIFIED PRIVATE CHILD CUSTODY EVALUATOR INFO SHEET	FL042 *	3/11
REGULAR DISSOLUTION PACKET	FL014	1/12
REPORT ON GENERAL CONSERVATORSHIP	PR019	4/08
REQUEST FOR COURT REPORTING SERVICES	REP004*	8/10
REQUEST FOR DISMISSAL	SC005	10/06
REQUEST FOR JUDICIAL ADMINISTRATIVE RECORDS	ADM022	3/10
RESOURCES	FL063 & SP	1/12
SMALL CLAIMS PLAINTIFF - CLAIM INSTRUCTIONS	SC002	7/11
STATEMENT OF AGREEMENT/DISAGREEMENT WITH FCS	FL027	3/11
STATUS CONFERENCE QUESTIONNAIRE	FL033 *	4/08
STEPPARENT ADOPTION QUESTIONNAIRE	PR021	12/09
STIPULATION & ORDER RE: APPT OF PARENTING COORDINATOR	FL041 *	5/11
STIPULATION & ORDER TO CONTINUE CASE PROGRESS CONF.	FL007 *	1/12
STIPULATION TO DISMISS ACTION & SUBMIT CAUSES	CV032	6/08
STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION	CV002	6/06
SUMMARY DISSOLUTION PACKET	FL011	7/11
SUMMARY OF FIDUCIARY'S ACCOUNT	PR005	7/07
TRIAL READINESS CONFERENCE QUESTIONNAIRE	FL064 *	1/12
VOLUNTEER CIVIL SETTLEMENT CONFERENCE PANELIST	ADM016	7/09
VOLUNTEER FAMILY LAW SETTLEMENT CONFERENCE PANELIST	ADM017	7/09
VOLUNTEER FAMILY LAW SETTLEMENT CONF PANELIST- MHP	ADM018	7/09
WORKPLACE VIOLENCE PACKET	CV003	1/12
YOU'VE BEEN SERVED, NOW WHAT (FL CASE)? - RESPONDENT	FL062 & SP	1/12
YOU'VE BEEN SERVED, NOW WHAT (PARENTAGE)? - RESPONDENT	FL060 & SP	1/12

* Adopted for mandatory use.

** Child Custody Recommending Counseling

Rev. 12/19/11

APPENDIX B

NEWSPAPER ADJUDICATION FOR PROBATE PUBLICATION

Belvedere	Ark Newspaper, Marin Independent Journal, Pacific Sun
Corte Madera	Twin Cities Times
Greenbrae	Marin Independent Journal, Pacific Sun, Twin Cities Times
Kentfield	Marin Independent Journal, Pacific Sun, Twin Cities Times
Larkspur	Marin Independent Journal, Pacific Sun, Twin Cities Times
Mill Valley	Mill Valley Herald
Novato	Marin Independent Journal, Pacific Sun, Novato Advance
Ross	Ross Valley Reporter
San Anselmo	Ross Valley Reporter
San Rafael	Marin Independent Journal, Pacific Sun, San Rafael Newspointer
Sausalito	Marin Scope, Inc.
Tiburon	Ark Newspaper
West Marin	Marin Independent Journal, Pacific Sun, Pt. Reyes Light, West Marin Citizen
Other	Marin Independent Journal, Pacific Sun

MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

APPENDIX C

MARIN COUNTY SUPERIOR COURT

NAME _____ STATE BAR NUMBER _____
ADDRESS _____

NOTICE OF TRANSFER OF ESTATE PLANNING DOCUMENTS TO COURT EXECUTIVE OFFICER OF THE MARIN COUNTY SUPERIOR COURT

In accordance with the provisions of Probate Code § 732(c), the estate planning documents listed below are submitted for deposit with the Court Executive Officer (attach additional pages if necessary):

- 1. _____
2. _____
3. _____

I certify that under Probate Code § 735 that:

- 1) [] I am the attorney with whom these documents have been deposited.
[] I am the law partner, or shareholder, or employee of the business of the attorney with whom these documents have been deposited.
[] I am the conservator of the attorney, or acting under durable power of attorney, for the attorney with whom these documents have been deposited.
[] I am the personal representative for the estate of the attorney with whom these documents have been deposited.
2) I mailed notice of termination to (name of depositor) _____ at (last known address of depositor) _____ on ____/____/____.
3) The estate planning documents are transferred to the Court Executive Officer because (name of attorney) _____, State Bar Number _____, with whom the documents were previously on deposit:
[] died on ____/____/____
[] lacks legal capacity
[] is no longer an active member of the State Bar.
4) The above listed documents do not include any will or codicil for which the maker is known to be deceased.
5) More than 90 days have elapsed since the giving of said notice. As of this date, the owner has failed to claim the documents and it is now requested that the clerk accept the deposit of the estate planning documents.
6) I acknowledge that I am required to mail notice of the transfer of the above documents to the State Bar under Probate Code § 733.

DATE _____

SIGNATURE _____

ACKNOWLEDGMENT OF RECEIPT

The estate planning document(s) listed herein has(have) been transferred to the Court Executive Officer of the Marin County Superior Court, pursuant to Probate Code § 732(c).

KIM TURNER, Court Executive Officer

DATE _____

By _____ DEPUTY

APPENDIX C

MARIN COUNTY SUPERIOR COURT

P.O. Box 4988
San Rafael, CA 94913-4988



GUIDELINES FOR USE OF THIS FORM

Only estate planning documents held by an attorney for safekeeping may be transferred to the Court Executive Officer of the Marin County Superior Court under Probate Code § 732.

The Court Executive Officer will collect \$30.00 per document transferred under this section.

The estate planning documents must be presented to a clerk of the Marin County Superior Court of the county of the depositor's last known domicile.

The following are the only documents which can be transferred with the clerk:

- 1) Signed original Will
- 2) Declaration of Trust
- 3) Trust Amendment
- 4) Other document modifying a Will or Trust
- 5) Signed original Power of Attorney
- 6) Signed original Nomination of Conservator
- 7) Any other signed original instrument that the attorney and depositor agree in writing to make subject to this part submitted together with the written instrument.

Mail to: MARIN COUNTY SUPERIOR COURT
ATTN: PROBATE
P.O. BOX 4988
SAN RAFAEL, CA 94913-4988

APPENDIX D

**MARIN COUNTY SUPERIOR COURT
Court Investigator's Office**

PROPOSED GUARDIAN INFORMATION FORM

Important Information Regarding Your Filing - Please Read

Everyone requesting a guardianship must do the following:

- 1) Complete and sign the following forms:
 - a. *Petition for Appointment of Guardian of the Person* (Form GC-210(P)) or *Petition for Appointment of Guardian of Minor* (Form GC-210);
 - b. *Guardianship Petition – Child Information Attachment* (Form GC-210(CA));
 - c. *Declaration Under Uniform Child Custody, Jurisdiction and Enforcement Act* (UCCJEA)(Form FL-105/GC-120);
 - d. *Confidential Guardian Screening Form* (Form GC-212);
 - e. *Notice of Hearing - Guardianship or Conservatorship* (Form GC-020);
 - f. The attached questionnaire.

- 2) After you have completed and signed the above forms, make two copies of each of the forms listed in a. through e. above and file them with the Marin Superior Court Clerk's Office at 3501 Civic Center Drive, Room 113, San Rafael, CA 94903. You should make a copy of the attached questionnaire for your records, but you only need to bring the original to the Court Clerk's Office.

- 3) There are additional forms you will need to complete and bring to court before your hearing. They include:
 - a. *Order Appointing Guardian of Minor* (Form GC-240);
 - b. *Letters of Guardianship* (Form GC-250);
 - c. *Duties of Guardian* (Form GC-248)

- 4) The Court Clerk will set a court date and forward all of your paperwork to the agency that will conduct the investigation and prepare the report for the court. If you are related to the child the investigation is conducted by the Court Investigator and if you are not related to the child, the investigation is conducted by Marin County Children and Family Services. They are located at:

Marin County Superior Court
Court Investigator's Office
3501 Civic Center Drive, Room 116
San Rafael, CA 94903
(415) 444-7090
(415) 444-7091, Fax

Marin County Children & Family Services
Adoptions, Foster Care Licensing & Guardianship Unit
3250 Kerner Blvd.
San Rafael, CA 94903
(415) 473-2200

APPENDIX D

PROPOSED GUARDIAN INFORMATION FORM

INSTRUCTIONS

Please read these instructions carefully. If there is to be more than one guardian, each guardian must complete a separate copy of the questionnaire.

All proposed guardians are required to complete this questionnaire. The information you provide will be used to prepare the report to the judge on your suitability as a guardian. This form is also available on the court's website at: www.marincourt.org.

Each guardian is expected to answer all questions honestly. On the last page you are required to sign the form and declare, under penalty of perjury, that all the information you have provided is true and correct.

When completing this form please keep in mind that the term "proposed guardian" refers to the person who wants to become the guardian. The term "proposed ward" or "ward" refers to the child you are asking to become the guardian for. The term "petitioner" refers to the person who signed the petition asking the court to appoint a guardian.

If you are asking to be appointed **solely as guardian of the estate**, a telephone interview will be conducted by the court investigator. You only need to fill out Section I and V only. The cost of the investigation is \$150.00.

If you are asking to be appointed as guardian of the person (or person **and** estate), a home visit is required. **Everyone who lives in the home must be present during the home visit.** After this form is received, a court investigator or social worker will contact you to make an appointment. If the form is not received promptly, your court hearing may be delayed.

There is a fee for the Court Investigation. It is currently \$625.00 and can be paid from the estate of the ward, if there is one, or by the proposed guardian or the parents. The fee may be waived under certain circumstances based on financial inability to pay. To obtain this waiver, you must file an Application for Waiver of Court Fees and Costs (also known as an IFP waiver) through the Clerk's Office. In some cases you may make arrangements for monthly payments through Marin Court Accounting Department, (415) 444-7020.

Please keep in mind:

1. ALL QUESTIONS MUST BE ANSWERED.
2. IF YOU NEED ASSISTANCE IN FILLING OUT THE FORMS OR HAVE QUESTIONS ABOUT THE LEGAL REQUIREMENTS, PLEASE VISIT THE COURT'S LEGAL SELF-HELP SERVICES WEBPAGE AT: http://www.marincourt.org/legal_self_help_services.htm

APPENDIX D

YOU MUST ANSWER ALL QUESTIONS. (Write in "n/a" if a question does not apply to your situation.)

CASE NO. _____ **HEARING DATE:** _____

CHILD(REN) NEEDING GUARDIAN ("proposed ward"):

Name	Date of Birth
Name	Date of Birth

More children listed on back

NAME(S) OF PROPOSED GUARDIAN(S):

Name
Name

How are you related to the proposed ward?: _____

Will you or anyone else in the home require an interpreter?

Yes No Language: _____

SECTION I

SOCIAL HISTORY OF PROPOSED GUARDIAN (Probate Code § 1513(a)(1)): This information is about the person who wants to be guardian. Please complete a separate questionnaire for each proposed guardian.

Name			
Address	City	State	Zip Code
Home No.	Work No.	Cell No.	
Date of Birth	Place of Birth		

Marital Status:

Married Widowed Single Separated Divorced Domestic Partnership

If married or separated, what is the name of your spouse? _____

Were you previously married or living with someone in a long-term, live-in relationship? Yes No

If yes, provide name(s) and date(s) of event (divorce, separation or death) that ended the relationship:

Name	Date of Event
Name	Date of Event

MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

APPENDIX D

Provide the names of **your** children (even if they are adults and not living with you):

Name	D.O.B.	Address	Arrested?	
			<input type="checkbox"/> Yes	<input type="checkbox"/> No
Name	D.O.B.	Address	Arrested?	
			<input type="checkbox"/> Yes	<input type="checkbox"/> No

More children listed on back

YOUR HEALTH CONDITION: Please describe any current physical or mental health problems.

Are you being treated by a doctor or other health care practitioner? Yes No

If yes, why? _____

Please list any medications you are currently taking and what they are for:

Name of Medication	Reason
Name of Medication	Reason
Name of Medication	Reason

Have you ever been in counseling? Yes No

If yes, what was the reason for counseling?

Drugs Alcohol Grief Domestic Violence Other: _____

Please explain: _____

EDUCATIONAL HISTORY:

Last School Attended	Where	When
Degree(s) Earned	Where	When
Other Courses Taken		

MILITARY HISTORY:

Branch of Service	Date Entered	Date Discharged
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Type of Discharge: Honorable General Good of Service Dishonorable

APPENDIX D

EMPLOYMENT:

Are you employed? Yes No

Name of Employer			
Address	City	State	Zip Code
Job Title		Length of Employment	
Job Responsibilities/Duties			

Are you retired, or have you been at your current employment for less than five years? Yes No

If yes, please list your work history for the past five years:

Name of Employer	Dates Employed		
	From:		To:
Name of Employer	Dates Employed		
	From:		To:
Name of Employer	Dates Employed		
	From:		To:
Name of Employer	Dates Employed		
	From:		To:

PROPOSED GUARDIAN'S FINANCIAL INFORMATION:

INCOME:

Monthly take-home pay: \$ _____
 Other monthly income:
 Welfare \$ _____
 SSI \$ _____
 Unemployment \$ _____
 Spousal/Child Support \$ _____
 Investments \$ _____
Total Monthly Income: \$ _____

FINANCIAL RESOURCES:

Checking Account Balance: \$ _____
 Savings Account Balance: \$ _____
 Value of Other Investments: \$ _____

Does anyone else contribute money to the household? Yes No

If yes, who? _____ How much? \$ _____

Does anyone else contribute money for the support of the child(ren) needing the guardianship? Yes No

If yes, who? _____ How much? \$ _____

APPENDIX D

EXPENSES:

Names of the persons you support: _____

Rent \$ _____
 Mortgage \$ _____
 Credit Card \$ _____
 Car Payment \$ _____
 Other: _____ \$ _____
Total Monthly Expenses: \$ _____

Are you financially able to support the child(ren)? Yes No

If no, what assistance will you receive? _____

Have you applied for, or are you already receiving financial assistance for this child?

Welfare Yes No Amount \$ _____
 Social Security Yes No Amount \$ _____
 Medi-Cal Yes No Amount \$ _____
 Child Support Yes No Amount \$ _____

Is someone else, such as a parent, receiving the above benefits for the child(ren)? Yes No Unknown
 Who? _____

REFERENCES:

Please list **three** references who have known you **at least five years and who are friends, not relatives.**
Please let them know that we will be contacting them by mail or telephone.

Name		Daytime Phone No.	
Address	City	State	Zip Code
Name		Daytime Phone No.	
Address	City	State	Zip Code
Name		Daytime Phone No.	
Address	City	State	Zip Code

If you cannot provide three non-relative references, please explain: _____

APPENDIX D

SECTION II

APPROPRIATENESS OF THE HOME ENVIRONMENT:

Single family home Apartment/condominium Length of time at current address: _____

of Bedrooms: _____ # of Bathrooms: _____ Will the proposed ward have own room? Yes No

If shared, with whom? Name: _____ Age: _____

Do you have any guns or other weapons stored on the property? Yes No

If yes, what type of weapon(s)? _____

Where and how stored? _____

Is there a swimming pool and/or hot tub ? Yes No If yes, where? _____

List any pets in the home: _____

OTHER CHILDREN IN THE HOME (under 18 years of age):

Name	D.O.B.	School Attending	Relation to Guardian
Name	D.O.B.	School Attending	Relation to Guardian
Name	D.O.B.	School Attending	Relation to Guardian
Name	D.O.B.	School Attending	Relation to Guardian

OTHER ADULTS IN THE HOME (18 years and over):

Name	D.O.B	Soc. Sec. #	Employer/School	Relation to Guardian
Name	D.O.B	Soc. Sec. #	Employer/School	Relation to Guardian
Name	D.O.B	Soc. Sec. #	Employer/School	Relation to Guardian
Name	D.O.B	Soc. Sec. #	Employer/School	Relation to Guardian

APPENDIX D

SECTION III

SOCIAL HISTORY OF THE PROPOSED WARD(S):

Please complete the following about the child(ren) needing a guardian:

Name of Proposed Ward	Sex	D.O.B	Place of Birth	Soc. Sec. #
Does the child have any brothers and/or sisters? <i>(if yes, please list them below)</i>				<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the child visit his/her brothers and/or sisters?		<input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, how often?	
Name of Brother or Sister		Age	Person with whom they live	
Name of Brother or Sister		Age	Person with whom they live	

Name of Proposed Ward	Sex	D.O.B	Place of Birth	Soc. Sec. #
Does the child have any brothers and/or sisters? <i>(if yes, please list them below)</i>				<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the child visit his/her brothers and/or sisters?		<input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, how often?	
Name of Brother or Sister		Age	Person with whom they live	
Name of Brother or Sister		Age	Person with whom they live	

Name of Proposed Ward	Sex	D.O.B	Place of Birth	Soc. Sec. #
Does the child have any brothers and/or sisters? <i>(if yes, please list them below)</i>				<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the child visit his/her brothers and/or sisters?		<input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, how often?	
Name of Brother or Sister		Age	Person with whom they live	
Name of Brother or Sister		Age	Person with whom they live	

More children listed on back

Are there any specific religious or cultural heritage, such as Native American ancestry, that would be a factor in future plans?

Yes No

Are or were the child's parents, grandparents, or great-grandparents members of a tribe, band, or Alaska Native Village?

Yes No

Are or were the child's parents, grandparents, or great-grandparents members of, or hold shares in, an Alaska Native corporation?

Yes No

APPENDIX D

Has the child or any members of the child's family or extended family ever lived on an Indian reservation, Rancheria, federal trust property, Alaska Native village or other type of predominantly Indian community?

Yes No

Has the child or any members of the child's family or extended family ever attended an Indian school or other facility primarily intended for Native Americans, Indians, or Alaska Natives?

Yes No

Has the child or any members of the child's family or extended family ever received services or participated in programs primarily directed toward Native American, Indian or Alaska Native people, such as health or dental services from an Indian health service or Tribal Temporary Assistance to Needy Families?

Yes No

SCHOOL AND/OR DAY CARE:

Please attach a copy of the child's most recent report card to this questionnaire. ***Also, please contact the school or day care and let them know we will be contacting them by mail or telephone.***

Name of School or Day Care		Grade Level	Is Day Care Licensed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Address		City	State	Zip Code	
Director/Principal's Name	Teacher's Name	Telephone No.	Fax No.		

How is the child doing in school? _____

Does the child have any problems with teachers or other children in school? _____

What school and non-school activities does the child participate in? _____

Does the child have any special educational needs? Yes No

If yes, please explain: _____

How do you plan to provide for these needs? _____

Is the child receiving Special Education/Resource Services? Yes No

If yes, please explain: _____

Is the child receiving services through the Regional Center? Yes No

Case Manager: _____ Telephone No. _____

APPENDIX D

MEDICAL/HEALTH CARE:

Please contact the doctor or clinic to let them know we will be contacting them by mail or telephone.

Doctor's Name				
Address		City	State	Zip Code
Medical Insurance	Medical Insurance No.	Telephone No.	Fax No.	

Date of last appointment: _____ For what reason: _____

Are all required immunizations current? Yes No

Does the child have any medical problems, physical or developmental disabilities, etc.? Yes No

If yes, please explain: _____

How do you plan to provide for these needs? _____

Does the child take any prescribed medications? Yes No

If yes, please list them: _____

Does the child have any behavioral, emotional or psychological problems? Yes No

If yes, please explain: _____

Has the child ever been hospitalized? Yes No

If yes, please explain: _____

Has the child received counseling in the past? Yes No

If yes, for what reason? _____

Is the child still receiving counseling? Yes No

If yes, how often? _____

Counselor's Name				
Address		City	State	Zip Code
Telephone No.		Fax No.		

Please let the counselor know we will be contacting him/her by mail or telephone.

APPENDIX D

SECTION IV

INFORMATION ABOUT THE NATURAL PARENTS OF PROPOSED WARD(S):

The Court Investigator may need to contact the parents so current information is needed.

The parents are: Married Separated Divorced Living together

Mother's Name		Soc. Sec. #
Date of Birth	If Deceased, Date of Death	Telephone No.
Employer's Name		Monthly Income

Is the mother paying child support? Yes No Unknown
 If yes, amount \$ _____

Does proposed ward(s) see the mother? Yes No
 If yes, how often? _____
 If no, please explain _____

Does the mother agree with the guardianship? Yes No Unknown

Does the mother have Native American Ancestry? Yes No Unknown

Father's Name		Soc. Sec. #
Date of Birth	If Deceased, Date of Death	Telephone No.
Employer's Name		Monthly Income

Is the father paying child support? Yes No Unknown
 If yes, amount \$ _____

Does proposed ward(s) see the father? Yes No
 If yes, how often? _____
 If no, please explain _____

Does the father agree with the guardianship? Yes No Unknown

Does the father have Native American Ancestry? Yes No Unknown

To your knowledge, are the natural parents:

Involved in drugs? Yes No Unknown If yes, Mother Father Both

In jail or prison? Yes No Unknown If yes, Mother Father Both

If yes, where? _____

APPENDIX D

In the military? Yes No Unknown If yes, Mother Father Both
If yes, where? _____

SECTION V

Complete this section if you want to be appointed guardian of the estate. If not, skip to Section VI.

GUARDIANSHIP OF THE ESTATE:

Where is the money or property coming from that the child is receiving:

INHERITANCE: Attach a copy of the will **or** provide:

Name of deceased person: _____ Date of death: _____

Probate Case No.: _____ Estate administered in (County): _____ (State): _____

Child will be inheriting:

Real Property - address: _____

Value of minor(s) interest: \$ _____

Cash: \$ _____ Location: _____

Stocks/Bonds: \$ _____ Location: _____

Other: _____

INSURANCE BENEFIT:

Name of Insured: _____

Relation to Child: _____ Value \$ _____

GIFT:

Name of Giftor: _____ Relation to Child: _____

Nature of Asset (cash, real property, etc.): _____ Value \$ _____

PERSONAL INJURY SETTLEMENT:

Case No.: _____ Value \$ _____

Case was settled in (County): _____ (State): _____

OTHER SOURCE:

Describe: _____ Value \$ _____

What are your plans for managing the estate? (Money to be placed in a blocked bank account, investments, rental of real property, etc.): _____

Does the minor **already** have money in an individual or joint account? Yes No Unknown

Location: _____ Balance \$ _____

Name(s) on individual and/or joint accounts: _____

APPENDIX D

Does the minor **already** have any other investments or property? Yes No Unknown

Describe: _____ Value \$ _____

Do you expect to request to use the minor's estate for any purpose (taxes, tax preparation, bond premiums, court costs/fees and other expenses)?

Yes No

If yes, what expenses will you request the court to approve? _____

Please provide the name, address and phone number of one person who will always know how to get in contact with you.

Name		Telephone No.	
Address	City	State	Zip Code

Name of attorney or person who helped you complete this form:

Name		Telephone No.	
Address	City	State	Zip Code
State Bar No.	Telephone No.	Fax No.	

VERIFICATION

I/We the undersigned declare under the penalty of perjury that the foregoing is true and correct.

Executed in (City) _____, California on (Date) _____

PRINT NAME

SIGNATURE

PRINT NAME

SIGNATURE

APPENDIX E

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

NOTICE

To Parties in Family Law Cases

Whether you have filed a motion or are opposing a motion, you are expected to comply with all applicable *Uniform Local Rules of the Marin County Superior Court* which are available for review at the Clerk's Office in room 113 (Marin County Civic Center) or on-line at the Court's website (www.marincourt.org). A printed version of the local rules may be purchased at the Clerk's Office at a cost of \$40.00 per copy.

If you are served with a *Notice of Motion* or *Order to Show Cause*, the Court will make a **tentative ruling** based on information submitted by each party.

1. You must fill out a *Responsive Declaration* (Judicial Council form FL320) and provide the information you want the Court to know about your case. A blank *Responsive Declaration* should be included with the papers served on you.
2. You must make 2 copies of your *Responsive Declaration* and file them in the Clerk's Office (room 113).
3. You must have a filed copy of your *Responsive Declaration* served on the attorney for the other party or on the other party, if he or she has no attorney. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least 9 court days before the hearing, and shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with the provisions of Sections 1010, 1011, 1012 and 1013 of the Code of Civil Procedures, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing or reply papers, as applicable, are filed. The server must fill out and file a *Proof of Service* (Judicial Council form FL330 - Personal Service or FL335 - Service by Mail) at the Clerk's Office (room 113) at least 2 court days before the hearing.

If a *Responsive Declaration* is not filed, the Court may grant the relief sought in the other party's motion without a hearing.

Whether you are the moving or responding party, the following rules apply to you:

1. Tentative rulings are available online by 2:00 p.m. on the business day before your court date at http://www.marincourt.org/familylaw_tenta_rulings.htm.
2. If you disagree with the **tentative ruling** and wish to appear in court to oppose the decision, you must call the Court at (415) 444-7046 and the other party's attorney, or, if unrepresented, the other party, before 4:00 p.m. to notify him/her that you will appear at the scheduled hearing the next day.

Both the Court and the other party must be notified of your intention to argue the **tentative ruling** or it will become the formal order of the Court without a hearing.

APPENDIX E

TRIBUNAL SUPERIOR DEL CONDADO DE MARIN

AVISO

A Las Partes Involucradas en Casos de Derecho Familiar

Igualmente que haya presentado una petición o se oponga a una petición, se requiere que usted cumpla con todas las normas pertinentes de las *Reglas Uniformes Locales del Tribunal Superior del Condado de Marin* que están disponibles para repaso en la Oficina del Actuario Condadal, en el cuarto 113 (Centro Cívico de Marin). También se pueden consultar en la página electrónica de la corte (www.marincourt.org). Se puede comprar la versión impresa en la Oficina del Actuario Condadal a razón de \$40.00 el ejemplar.

Si se le presenta con un *Aviso de Petición* o *Mandato de Presentar Razón*, el Juez dará un **fallo provisional** basándose sobre la información presentada por cada parte.

1. Usted tiene que llenar la *Declaración de Respuesta* (Consejo Jurídico formulario FL320) y proveer la información sobre el caso que usted quiere que el Juez sepa de su caso. Una *Declaración de Respuesta* en blanco acompañará los documentos que se le presenten.
2. Tiene que hacer 2 copias de su *Declaración de Respuesta* y archivarlas en la Oficina del Actuario Condadal (cuarto 113).
3. Es obligatorio archivar una copia de su *Declaración de Respuesta* que presentó al abogado de la contraparte o a la contraparte misma si él o ella no tiene abogado. Todos los documentos en oposición a una petición ya reconocida se archivarán con la corte y una copia se presentará a cada parte por lo menos 9 tribunal días antes de la fecha de la corte y se presentará en persona, por transmisión de facsímil, correo urgente u otros medios consecuentes según las disposiciones de los Capítulos 1010, 1011, 1012 y 1013 de el Código de Procedimientos Civiles y con tiempo razonablemente deliberado como para asegurar su entrega a la otra parte o partes a más tardar a fines del día laborable después del momento en que los documentos en oposición o de respuesta, cual categoría sea pertinente, se hayan archivado. La parte que presenta tiene que llenar y archivar un *Comprobante de Haber Presentado* (Consejo Jurídico formulario FL330 o FL335) en la Oficina del Actuario Condadal (cuarto 113) por lo menos dos días laborables antes de la audiencia.

Si no se tramita la Declaración de Respuesta, el Juez puede conceder el alivio peticionado por la parte contraria sin celebrar una audiencia.

Que sea usted la parte interesada o la parte demandada, las pautas siguientes se le aplican:

3. Los Fallos provisionales están disponibles después de las dos de la tarde el día hábil antes de su audiencia en el juzgado en la siguiente página de el Internet http://www.marincourt.org/familylaw_tenta_rulings.htm.
2. Si está en desacuerdo con el **fallo provisional** y desea comparecer en el tribunal para oponerse a la decisión, tiene que llamar a la corte al 415-444-7046 y al abogado de la contraparte, o, si no le representa un abogado, a la parte misma, antes de las 4:00 p.m. para avisarle que usted comparecerá en la audiencia programada para el día siguiente.

Se le avisará tanto a la corte como a la contraparte de su intención de disputar el **fallo provisional**, si no, dicho fallo se convertirá en mandato jurídico formal del Juez, sin audiencia.

APPENDIX F

MARIN COUNTY SUPERIOR COURT
FAMILY COURT SERVICES INTAKE SHEET

DATE: _____ CASE NO. _____

Name of person completing this form: _____

Have you been to child custody recommending counseling in Marin before? _____

If yes, name of child custody recommending counselor _____

THIS COURT ACTION IS BEING BROUGHT BY: FATHER [] MOTHER []

FATHER

Father Ethnicity: _____

Name _____

Street _____

City/Zip _____

Phone _____

(bus) _____ (cell) _____

Interpreter needed: [] Language: _____

MOTHER

Mother Ethnicity: _____

Name _____

Street _____

City/Zip _____

Phone _____

(bus) _____ (cell) _____

Interpreter needed: [] Language: _____

FATHER'S ATTORNEY

Pro Per []

Name _____

Street _____

City/Zip _____

Phone _____

Email _____

MOTHER'S ATTORNEY

Pro Per []

Name _____

Street _____

City/Zip _____

Phone _____

Email _____

Does your child(ren) have an Attorney:

Name _____

Street _____

City/Zip _____

Phone _____

CHILD(REN) AT ISSUE:

Name: _____ D.O.B.: _____ Living With: _____

Name: _____ D.O.B.: _____ Living With: _____

Name: _____ D.O.B.: _____ Living With: _____

FAMILY ISSUES:

- [] Child Neglect [] Child Sexual Abuse [] Move Away [] Other
[] Child Physical Abuse [] Substance or Alcohol [] Mental Health of Parents
[] CPS Investigation [] Violence Between Parents [] Restraining Order/Status

APPENDIX F

**TRIBUNAL SUPERIOR CONDADO DE MARIN
FAMILY COURT SERVICES INTAKE SHEET**

FECHA: _____ NO. DE CASO _____

Nombre de la persona que llena este formulario: _____

Ha estado en mediación en Marin anteriormente? _____

Si ha estado, quien fué su mediador? _____

ESTA DEMANDA FUÉ INICIADA POR: **PADRE** **MADRE**

PADRE

Origen étnico del padre: _____

Nombre _____

Número y calle _____

Ciudad/Código Postal _____

Teléfono _____

(Trabajo) _____ (celular) _____

Necesita Intérprete : Si **No**

MADRE

Origen étnico de la madre: _____

Nombre _____

Número y calle _____

Ciudad/Código Postal _____

Teléfono _____

(Trabajo) _____ (celular) _____

Necesita Intérprete: Si **No**

ABOGADO DEL PADRE En propia persona

Nombre _____

Número y calle _____

Ciudad/Código postal _____

Teléfono _____

Dirección Electronica _____

Tienen sus Niños abogado?:

Nombre _____

Número y calle _____

Ciudad/Código Postal _____

Teléfono _____

ABOGADO DE LA MADRE En propia persona

Nombre _____

Número y calle _____

Ciudad/Código Postal _____

Teléfono _____

Dirección Electronica _____

NIÑOS EN ESTE CASO:

Nombre: _____ Nació: _____ Con quien vive: _____

Nombre: _____ Nació: _____ Con quien vive: _____

Nombre: _____ Nació: _____ Con quien vive: _____

PROBLEMAS FAMILIARES:

- | | | | |
|--|---|--|-------------------------------|
| <input type="checkbox"/> Descuido Infantil | <input type="checkbox"/> Abuso Sexual de Niños | <input type="checkbox"/> Se movió lejos | <input type="checkbox"/> Otro |
| <input type="checkbox"/> Abuso físico de niños | <input type="checkbox"/> Drogas o Alcohol | <input type="checkbox"/> Salud Mental de los padres | |
| <input type="checkbox"/> CPS Investigación | <input type="checkbox"/> Violencia entre los padres | <input type="checkbox"/> Orden de Restricción/estado | |

APPENDIX G

A Guide for the Supervised Visitation Provider

The California Rules of Court, Standards of Judicial Administration, Standard 5.20, provide for these uniform standards of practice for child visitation supervisors. The requirements for Standard 5.20 can be found at the following web link:

<http://www.courts.ca.gov/rules/index.cfm?title=standards>

Why Has The Court Ordered Supervised Visitation?

The California Judicial Branch and the Marin County Superior Court are committed to promoting the best interests of children whose parents have a custody or visitation matter in family court. The child must have contact with each of the parents and be ensured a safe and protected environment during the visit. Depending on the circumstances, a judicial officer may decide that it is better for all concerned that another person be present to supervise the visitation.

What Am I Being Asked To Do?

You have agreed to supervise visits between a visiting parent and his or her child, because it has been ordered by the court, and because the parents feel they can trust you with the welfare of their child. Please read this guide carefully to help you perform the tasks of a visitation supervisor effectively and in accordance with Standards of Judicial Administration, Standard 5.20.

What Are My Responsibilities?

Read the court order. You must read the parts of the court order that refer to supervised visitation so that you know what is being asked of you. Even though one of the parents may be close to you, insist that you see the court order before you supervise a visit. Ask one of the parents or their attorney to provide you with a copy, or you can get a copy from the Court Clerk's office. It's very important that you understand the times, places, restrictions and conditions of the visits because the judicial officer has considered how to best protect the child. Even if you do not agree with the order, do all that you can to make sure the visits occur as they are written in the court order.

If the parents want to change the visitation schedule or the conditions of the visit, they will need to get a new court order. Explain the rules for the visits to both parents before you supervise any visits. You should also explain, in an age appropriate manner, the rules to the child.

Tell the parents before the supervised visitation begins that no confidentiality in communication exists. Any communication including conversations, letters, cards, etc. is not confidential. Although it does not happen often, you may be asked about the visits by a judicial officer. You may be required to report anything that you see, hear, read or are told.

Remain neutral. The judicial officer understands that you may have feelings and emotions about the child, parents, and circumstances in the case. While you are supervising the visits, it is very important that you avoid taking sides with either parent and that you keep your opinions about any aspect of the case to yourself.

Make sure that you can see and hear all contact and conversations between the child and visiting parent. During the time you are supervising the visits with the child, you are responsible for ensuring that the environment is free from anger and unkind remarks.

Allow no discussion of the case, possible outcomes, or derogatory comments about the other parent, the child, or their family. There is to be no discussion regarding allegations that have been made in the custody case or about significant future plans, such as living together or taking trips together.

Because you cannot leave the location of the visitation, it would be helpful for you to make arrangements regarding who will answer the phone or the door, and who will attend to other activities. Remember, this is the time for the supervised parent to build a positive relationship with his or her child.

Advise the parents that your judgment as supervised visitation provider should not be questioned in front of the child. Tell them to direct complaints about your decisions to the court at a later time.

MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

Keep notes about each visit. If you interrupt or end a visit, write down what specific behavior, action, words or conversation you observed that caused you to interrupt or end the visit. Try to be objective and report to the court what you saw and heard rather than what you feel or think about the situation. If the visit seems strained between the visiting parent and child, especially if they have not seen each other for some time, you may want to suggest activities that they might do together. Sometimes it is helpful to talk to the child about their interests, friends, sports or other activities.

You must approve any gifts to be given to the child in advance.

Do not allow yourself or the child to be used to obtain information about the other parent or transmit information, personal possessions or papers.

Allow no visits to occur when the visiting parent appears to be under the influence of alcohol or drugs. Visitation should end immediately.

Allow no emotional, physical or sexual abuse. Inform the parents prior to the first visit that you have to report any suspected child abuse. If you notice unexplained marks or bruises on a child, if a child tells you that he or she is being hit or has been hit, or that someone was touching them inappropriately, you are required by law to report it to Children and Family Services (CFS) as soon as possible. The 24-hour hotline for CFS in Marin County is (415) 473-7153. A written report must be submitted to CFS within 36 hours. The form may be downloaded or completed online at: http://caag.state.ca.us/childabuse/pdf/ss_8572.pdf. Also, notify Family Court Services at (415) 444-7090 as quickly as possible after making the initial report to CFS.

If you are supervising visitation in another county, you should know the telephone number for CFS located in that county prior to the first date of visitation. You do not have to witness child abuse to report it, and your confidentiality is protected by law.

Spanking, hitting and threats are prohibited. The visit between the visiting parent and the child should be free from emotional and verbal abuse. This includes such behavior as yelling and screaming; calling the child names such as “sissy”, “stupid”, or “dumb”; blaming and accusing the child; making fun of the child; threatening the child with physical abuse or harm to his or her loved ones and animals; or threats of frightening situations for the child like abandonment or loss of a home and friends.

Sexual abuse includes inappropriate touching of the child’s body and inappropriate or suggestive language. Pay close attention to the child’s responses during the visit. In sexual abuse cases, it is important to understand that something in the child’s experience may cause him or her to be particularly scared or sensitive to a person, place, animal, TV show, etc. If the child begins to seem afraid or upset, even if you don’t know what has caused it, you must determine whether to end the visit.

Can I Interrupt Or End A Visit If Necessary?

Yes. If it becomes necessary for you to interrupt or end a visit, take the visiting parent aside and quietly and calmly explain why you interrupted the visit. Do not get into an argument or discussion with parents about the problem -- just state the problem and tell them what they should do if they want the visit to continue.

If the rules of the visit have been broken, the child becomes very distressed, or your safety or the safety of the child is at risk, you must take action. If you decide to either interrupt or end the visit, you must tell both parents why you decided to do so.

You must advise the court in writing if either parent violates any of the rules in these guidelines, and the court may request an oral or written summary of the visits.

Are You The Person For The Job?

As you can see from reading this guide, supervising visitations is a very important responsibility that can be difficult at times. If you do not think you can put your personal feelings aside, do not have the time to supervise properly, or do not feel comfortable for any reason, then you should not agree to do this.

If you decide to supervise visits, it can be rewarding. Watching a relationship between a parent and child mend and grow can be very satisfying. There is no more important work than contributing to the welfare of children. We thank you for taking the time to read this guide and for carefully considering your decision.

APPENDIX H

RESERVED

APPENDIX I

RESERVED

APPENDIX J

RESERVED

APPENDIX K

RESERVED

MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

APPENDIX L

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, address and telephone #):</i> STATE BAR NO: ATTORNEY FOR <i>(Name):</i>	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN 3501 Civic Center Drive P.O. Box 4988 San Rafael, CA 94913-4988	
PETITIONER: RESPONDENT: OTHER CLAIMANT:	
STATEMENT OF AGREEMENT/DISAGREEMENT WITH FAMILY COURT SERVICES RECOMMENDATIONS <input type="checkbox"/> Petitioner's <input type="checkbox"/> Respondent's	CASE NUMBER:

THIS FORM MUST BE SERVED ON THE OPPOSING PARTY AND/OR HIS/HER ATTORNEY OF RECORD WHEN IT IS FILED WITH THE COURT.

1. Stage of the Case

- a) Initial Custody and Visitation Recommendation
- b) Custody and Visitation Recommendation following motion to modify previous order

2. Custody, Visitation and Timeshare

a) Legal Custody:

- We have an agreement regarding legal custody. My understanding of the agreement is set forth in attachment A hereto.
- We do not have an agreement regarding legal custody. My position regarding these issues is set forth below.

b) Physical Custody:

- We have an agreement regarding physical custody. My understanding of the agreement is set forth in attachment A hereto.
- We do not have an agreement regarding physical custody. My position regarding these issues is set forth below.

c) Visitation:

- We have an agreement regarding visitation. My understanding of the agreement is set forth in attachment A hereto.
- We do not have an agreement regarding visitation. My position regarding these issues is set forth below.

APPENDIX L

3. Family Court Services Recommendations (Please list by paragraph the recommendations and whether you agree or disagree with them. Explain why you disagree with the recommendations.)

4. Resolution of Items in Dispute

- I would like a settlement conference to resolve the issues that are in dispute.
- I would like a private child custody evaluation to resolve the issues in dispute.
- I would like to attend private mediation to resolve the issues in dispute.
- I would like a trial date to resolve the issues that are in dispute.

DATE

 ATTORNEY FOR PETITIONER RESPONDENT OTHER

APPENDIX M

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN
QUALIFIED PRIVATE CHILD CUSTODY EVALUATOR INFORMATION SHEET**

The information provided in this document may be used to help parties find a private child custody evaluator who is qualified under the law to be appointed by the Marin Family Court. A child custody evaluator appointed by the court assists the court in determining the health, safety, welfare, and best interest of children with regard to disputed custody and visitation issues. The court does not maintain a list of qualified private evaluators nor does it endorse, evaluate, supervise, or monitor any particular child custody evaluator. While the court has tried to provide as much information in this document as possible, it is not exhaustive.

A private child custody evaluator can be one of four types of mental health professionals. These mental health professionals may be located by searching the Internet or telephone book, or by getting a referral from family, friends, or a family law attorney.

Several Internet sites¹ that may be useful are www.medbd.ca.gov (The Medical Board of California); www.psychboard.ca.gov (California Board of Psychology); www.bbs.ca.gov (California Board of Behavioral Sciences); www.marincountypsych.org (Marin County Psychological Association); www.apa.org (American Psychological Association); www.psych.org (American Psychiatric Association); www.aamft.org (American Association for Marriage and Family Therapy); and www.camft.org (California Association of Marriage and Family Therapists). Keep in mind that belonging to or being certified or licensed by a professional organization does not necessarily mean the individual is qualified under California law to act as a child custody evaluator in the family court.

The legal qualifications and responsibilities for a private child custody evaluator are extensive and are primarily set forth in the Family Code, sections 3110.5, 3111, 3118, 1815, and 1816; Evidence Code, section 730; and the California Rules of Court, rules 5.220, 5.225, and 5.230. The full text of these laws may be found at the public law library, on some Internet sites, or through an attorney. The law should be reviewed in conjunction with all other information. **It is the responsibility of the parties to ensure that a private child custody evaluator meets or exceeds all the legal qualifications for a court appointment and to verify his or her credentials. The court does not endorse, evaluate, supervise, or monitor private child custody evaluators nor does the court verify their legal qualifications or credentials.**

The court does, however, require that all private child custody evaluators appointed by the court sign a *Declaration of Private Child Custody Evaluator Regarding Qualifications* (Judicial Council Form #FL-326) under penalty of perjury and file it with the court within 10 days of the appointment, attesting to the fact that they meet all the licensing, education, training, and experience requirements mandated by California law. This form is available at the court and may be found at www.courts.ca.gov/forms.

The following is a summary of the legal requirements for an individual to be appointed by the court as a private child custody evaluator:

Licensing Requirements

A qualified private child custody evaluator must be licensed as a: (1) physician and is either a board certified psychiatrist or has completed a residency in psychiatry; (2) psychologist; (3) marriage and family therapist; (4) clinical social worker; or (5) there are no licensed or certified evaluators who are willing and available, within a reasonable period of time, to perform a child custody evaluation and the parties stipulate to the person and the court approves the person.

1. The Marin Superior Court does not control or maintain the websites in this document and cannot be responsible for the accuracy of the information or content they contain. In addition, the content of a website may change, and the court would not necessarily be aware of the change. When you access one of these websites, you are subject to the terms of use and privacy policies of that website.

APPENDIX M

Education and Training Requirements

A private child custody evaluator must have completed 40 hours of education and training in 21 specific topics set forth in California Rules of Court, rule 5.225(d). This education and training must be completed after January 1, 2000, through an eligible provider by either (a) attending and participating in an approved course, or (b) serving as an instructor in an approved course. A child custody evaluator must also complete eight hours of annual update training under rule 5.225(h). All education and training must be completed through an eligible provider as described in rule 5.225(m).

Domestic Violence Training

In addition to the requirements described in rule 5.225(d), child custody evaluators must comply with the basic and advanced domestic violence training requirements described in California Rules of Court, rule 5.230 and Family Code, section 1816. This includes 16 hours of advanced training within a 12 month period, which must include 12 hours of instruction in 16 categories described in the rule. Evaluators must also complete four hours of update training annually in specified areas of domestic violence described in the rule. All domestic violence training must be through eligible providers as set forth in rule 5.230(e) and Family Code, section 1816.

Experience Requirements

Persons appointed as child custody evaluators must have participated in the completion of at least four partial or full court appointed child custody evaluations within the preceding three years, as described in rule 5.225(g). Each of the four child custody evaluations must have resulted in a written or an oral report. There are specific experience requirements for pre-2009 evaluators and new requirements effective January 1, 2010, set forth in rule 5.225(g).

Complaint Procedure

All complaints regarding an evaluator's performance shall be made in writing and addressed to the Supervising Judge of the Family Court. Complaints shall 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.

The full text of the California Rules of Court, rules 5.220, 5.225 and 5.230, as referred to in this document, may be found at: www.courts.ca.gov/rules

The full text of all law, including Family Code sections 3110.5, 3111, 3118, 1815 and 1816; and Evidence Code section 730, as referred to in this document, may be found at: www.leginfo.ca.gov:

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