



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

**January 1, 2020**

SUPERIOR COURT OF CALIFORNIA  
County of Marin



**ORDER 19-12**  
**REVISING AND ADOPTING**  
**JANUARY 2020 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 Judges of the Marin County Superior Court having reviewed and revised heretofore existing local rules governing the practice of civil, felony and misdemeanor, infraction, juvenile dependency court, probate, family law 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, *1.16, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 6.2, 6.3, 6.5, 6.6, 6.7, 6.8, 6.12, 6.13, 6.14, 6.17, 6.18, 6.19, 6.22, 6.24, 6.25, 6.27, 6.29, 6.30 and 8.18* have been reviewed and approved by the Judicial Council of California; and

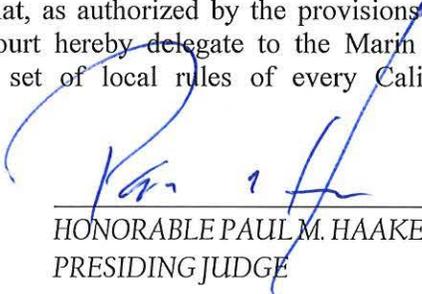
**IT IS HEREBY ORDERED** that the above referenced amendment to the *Uniform Local Rules of the Marin County Superior Court* is adopted for use and supersedes those relevant local rules previously governing; and

**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, 2020, 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.

11-14-19  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
HONORABLE PAUL M. HAAKENSON,  
PRESIDING JUDGE

**MARIN COUNTY SUPERIOR COURT**

**LOCAL RULE REVISION TABLE  
FOR JANUARY 2020**

**NEW / DELETED / REVISED / RENUMBERED / RENAMED**

REV. RULE	PREV. RULE	NEW RULE	PREVIOUS / CURRENT RULE TITLE	NEW RULE TITLE
<b>CIVIL RULES</b>				
1.16			APPROVAL OF COMPROMISE OF MINOR'S CLAIM	N/A
<b>JUVENILE RULES</b>				
	4.1		CITATION	JUVENILE COURT RULES - GENERALLY
	4.2		GENERAL COMPETENCY REQUIREMENT	ATTORNEYS IN JUVENILE COURT
	4.3		SCREENING FOR COMPETENCY	INFORMING THE COURT OF THE INTEREST OF THE CHILD; ACCESS TO MINOR; NOTICE OF CHANGE IN PLACEMENT
	4.4		MINIMUM STANDARDS OF EDUCATION AND TRAINING	REQUESTS TO MODIFY JUVENILE COURT CUSTODY ORDERS POST DISMISSAL
	4.5		STANDARDS OF REPRESENTATION	JUVENILE DEPENDENCY, JUVENILE DELINQUENCY, FAMILY AND PROBATE COURTS EXCHANGE OF INFORMATION
	4.6		GENERAL RULES FOR DEPENDENCY CASES (WELFARE & INSTITUTIONS CODE § 300 ET SEQ.)	ASSIGNMENT OF FAMILY, PROBATE OR DV MATTERS TO JUVENILE COURT
	4.7		DISCOVERY	DUAL STATUS
	4.8		PERIODIC JUVENILE DEPENDENCY MEETINGS	COMPETENCY PROTOCOL
	4.9		TRIAL	N/A
<b>FAMILY RULES</b>				
6.2			APPLICATION OF RULES	N/A
6.3			ASSIGNMENT TO JUDICIAL OFFICER	N/A
6.5			FAMILY CENTERED CASE RESOLUTION	N/A
6.6			EX PARTE MATTERS AND ORDERS	N/A
6.7			SPECIAL PROCEDURES FOR RESTRAINING ORDERS AND INJUNCTIVE RELIEF PERTAINING TO DOMESTIC VIOLENCE (FAMILY CODE § 6200-6389)	N/A
6.8			FORMAT OF SUPPORTING DOCUMENTS AND EXHIBITS	N/A
6.12			HEARINGS	N/A
6.13			FINANCIAL INFORMATION TO BE PROVIDED TO THE COURT	N/A
6.14			CHILD AND SPOUSAL SUPPORT PROCEEDINGS	N/A
6.17			PROCEDURES	N/A
6.18			COUNSEL FOR CHILD	N/A
6.19			CHILD CUSTODY EVALUATIONS	N/A

★ = DELETED

**MARIN COUNTY SUPERIOR COURT**

**LOCAL RULE REVISION TABLE**

**FOR JANUARY 2020**

**NEW / DELETED / REVISED / RENUMBERED / RENAMED**

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6.24			SETTLEMENT CONFERENCE AND TRIAL SETTING	N/A
6.25			FORM AND CONTENTS OF BENCH/BAR SETTLEMENT CONFERENCE STATEMENT	N/A
6.27			DEFAULT OR UNCONTESTED JUDGMENTS GENERALLY	N/A
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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). For the purposes of these rules, "parties" means actual parties, counsel for parties and self-represented parties.

*[Rule 1.1 adopted effective 5/1/98; amended 7/1/15]*

#### 1.2 APPLICATION OF RULES

All civil cases filed in Marin County 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 or probate cases. 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 7/1/15]*

### ADMINISTRATION OF CIVIL LITIGATION

#### 1.3 FORMS TO BE ISSUED BY CLERK UPON FILING OF COMPLAINT

Upon the filing of a complaint, the Clerk will provide to the plaintiff or cross-complainant the following three documents:

1. Alternative Dispute Resolution (ADR) Informational Notice (CV006);
2. Notice of Case Management Conference (CV008), indicating the assigned judge and the date of the First Case Management Conference; and
3. A file-stamped copy of the Summons and Complaint

From the Court's website at [www.marincourt.org](http://www.marincourt.org) under the Fees, Forms and Rules section, the plaintiff or cross-complainant shall obtain the following two documents:

4. A blank Case Management Statement (CM-110);
5. A blank Notice of Settlement of Entire Case (CM-200).

*[Rule 1.3 adopted effective 5/1/98; amended 7/1/15]*

#### 1.4 CASE MANAGEMENT CONFERENCES

The Court shall calendar and conduct Case Management Conferences. The Court may sanction parties who fail to attend or participate. The Court shall set The First Case Management Conference for a date not later than 180 calendar days after the filing of a complaint.

If a case is transferred from another jurisdiction after a responsive pleading has been filed, the Court shall set the First Case Management Conference for a date not later than forty-

five (45) calendar days from the filing of the action in this Court. If no responsive pleading has been filed, the Court shall set the First Case Management Conference for a date not later than ninety (90) calendar days from the filing of the action in this Court.

*[Rule 1.4 adopted effective 5/1/98; amended 7/1/15]*

## **1.5 SERVICE OF SUMMONS AND COMPLAINT**

**A. Forms With Summons and Complaint and Return of Proof of Service.** The plaintiff or cross-complainant shall serve the summons and complaint together with the five documents described in MCR Civ 1.3.

**B. Sanctions.** The plaintiff or cross-complainant shall serve the complaint or cross-complaint and file a proof of service within sixty (60) calendar days of filing the complaint or cross-complaint. Failure to do so will result in the issuance of an Order to Show Cause as to why the Court shall not sanction the plaintiff or cross-complainant for failure to comply with this rule. Responsive papers to the Order to Show Cause must be filed and served five (5) 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 five documents described in MCR Civ 1.3 on the new parties at the same time that the cross-complaint is served. The Court may impose sanctions for failure to comply with MCR Civ 1.5B.

*[Rule 1.5 adopted effective 5/1/98; amended 7/1/15]*

## **1.6 RESPONSIVE PLEADING**

**A. Service.** Each party that has been served with summons and complaint shall file and serve all necessary responsive pleadings according to the time frames set forth in the summons.

### **B. Entry of Default.**

1. If a responsive pleading is not filed, the plaintiff or cross-complainant must, within ten (10) calendar days after the statutory time for filing the responsive pleading has expired, request the entry of a default. Upon the plaintiff's or cross-complainant's failure to request entry of default, at the First Case Management Conference an Order to Show Cause will issue as to why the Court should not impose sanctions for the failure to request entry of default.

2. After a request for entry of default is filed, the Court will set and notice the case for default hearing. A default judgment by clerk in lieu of appearance may be submitted in cases where Code of Civil Procedure § 585 applies.

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 (10) days of the filing of the order.

*[Rule 1.6 adopted effective 5/1/98; amended 7/1/15]*

## **LAW AND MOTION MATTERS**

### **1.7 FORM AND FORMAT OF PAPERS PRESENTED FOR FILING**

**A. Documents 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.

**B. Discovery Motions.** All discovery motions presented for filing must state “Discovery Motion” on the caption page.

*[Rule 1.7 adopted effective 5/1/98; amended 7/1/15]*

### **1.8 MISCELLANEOUS GENERAL PROVISIONS**

**A. Copies for Filing.** A filing must include an original and one copy of each motion, petition for writ of mandate, attachment or possession, preliminary injunction, demurrer and all other papers filed in support or opposition. 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.

**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 Court 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) calendar days. If the envelope provided or the postage is insufficient to mail the conformed copy, it will be placed in the Will Call cabinet for a maximum of sixty (60) calendar days.

#### **C. Attachment of Previously Filed Documents.**

1. Parties shall not attach previously filed documents, other than certain motions as specified in MCR Civ 1.8C2, to a filed pleading.

2. For demurrers and motions for summary judgment/summary adjudication, parties shall attach the operative pleading as an exhibit.

**D. Filing Documents on Shortened Time.** All motions or other pleadings filed on an order shortening time shall state on the caption page that the matter was brought on an order shortening time, with the file date of the order.

**E. Court's Research Staff.** Parties shall not initiate communications with the Court's research attorneys.

*[Rule 1.8 adopted effective 5/1/98; amended 7/1/15]*

### **1.9 HEARINGS**

**A. Hearing Dates.** The Clerk’s Office will assign all motion hearing dates at the time a motion is filed unless otherwise ordered by the Court. Parties cannot reserve dates or obtain them over the telephone. This rule does not apply to motions brought pursuant to Code of Civil Procedure § 128.7. Parties bringing such a motion may obtain a hearing date at the Clerk’s Office and will establish the filing deadline with the Law & Motion Clerk at that time.

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**B. Continuances.** Requests to continue law and motion matters shall be granted upon filing of a stipulation signed by all parties no later than five (5) court days prior to a hearing. Requests to continue law and motion matters filed fewer than five (5) court days prior to a hearing will not be granted without written order of the Court.

**C. Removing Matters From Calendar.** The moving party shall immediately notify the law and motion clerk when a law and motion matter has been resolved so that the clerk can drop the hearing from calendar. The moving party shall drop an appearance at the earliest possible opportunity. If the moving party drops an appearance within five (5) court days of when the matter is on calendar, the moving party shall file a declaration explaining to the Court why the appearance could not have been dropped sooner.

*[Rule 1.9 adopted effective 5/1/98; amended 7/1/15]*

**1.10 TENTATIVE RULINGS**

**A. Obtaining Rulings.** Parties may obtain tentative rulings online at ([http://www.marincourt.org/tentative\\_landing.htm](http://www.marincourt.org/tentative_landing.htm)) or by calling (415) 444-7260 from 2:00 p.m. to 4:00 p.m. on the court day preceding the scheduled hearing.

**B. Oral Argument.** If a party wants to present oral argument, the party *must contact the court at (415) 444-7046 and all opposing parties by 4:00 p.m. of the court day preceding the scheduled hearing.* Notice may consist of a phone call or email to all other parties that argument is being requested (i.e., it is not necessary to speak with counsel or parties directly). Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court.

**C. Length of Hearings.** Non-evidentiary hearings on the Law and Motion calendar are limited to a maximum of 20 minutes.

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

*[Rule 1.10 adopted effective 5/1/98; amended 7/1/15]*

**1.11 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. Parties 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, a party may deliver an order reflecting that ruling to the Court at the end of the hearing without obtaining approval of other parties. Once an order is signed by the Court and filed, the party preparing the order shall mail conformed copies to all parties.

*[Rule 1.11 adopted effective 5/1/98; amended 7/1/15]*

**1.12 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, parties shall present applications for ex parte orders or provisional remedies as follows: Parties shall present 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 to the civil judge assigned to the action at the time of filing.

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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 parties shall present the application to the assigned judge's designated backup judge. Parties may obtain the time for presenting applications in each department online at [http://www.marincourt.org/judicial\\_dept\\_assign.htm](http://www.marincourt.org/judicial_dept_assign.htm).

Parties shall pay the ex parte application filing fee in the Clerk's Office prior to the hearing in a department.

*[Rule 1.12 adopted effective 5/1/98; amended 7/1/15]*

### **1.13 DISCOVERY FACILITATOR PROGRAM**

**A. Policy of the Marin County Superior Court.** Parties must reasonably and in good faith attempt informal resolution of each issue in any discovery dispute in a civil case prior to filing a discovery motion. Parties must submit a declaration setting forth this reasonable and good faith attempt at resolution with any discovery motion, pursuant to Code of Civil Procedure § 2016.040. Notwithstanding the outcome of a particular motion, the Court may impose a monetary sanction on any party who fails to meet and confer as required, for the reasonable expenses, including attorneys' fees, incurred by anyone as a result of that failure. (Code of Civil Procedure § 2023.020.)

For any discovery dispute in a civil case that the parties cannot resolve informally in the meet and confer process, it shall be the policy of the Marin County Superior Court to require use of the Discovery Facilitator Program ("the Program"). Reasonable and good faith participation in the Program before the filing of a discovery motion satisfies a party's meet and confer obligation for purposes of this rule.

**B. Participation in the Program.** Parties to a civil case discovery dispute shall be referred to the Program or participate in the Program in one of the following ways:

1. *Before the Filing of a Discovery Motion.* The parties may request referral to the Program, before the filing of a discovery motion, by submitting a stipulation to the ADR Coordinator for referral to the Program. Filing the stipulation will toll the time for filing the discovery motion until a party files a Declaration of Non-Resolution with the Court (see Rule 1.13H); or

2. *After the Filing of a Discovery Motion.* After the filing of a discovery motion, the Court shall refer the dispute to the Program. All discovery motions will be referred to the discovery facilitation process. The parties and the discovery facilitator shall promptly commence the resolution process upon the discovery facilitator's appointment. The court anticipates that the motion will not go forward on the assigned hearing date if the court has not received a notice of non-resolution of the motion at least five (5) court days prior to the scheduled hearing date.

**C. Discovery Facilitator Panel.** The Court shall maintain a list of qualified Discovery Facilitators. Each panelist on the list must be an active member of the State Bar licensed for at least 10 years or a retired judge.

**D. Selection of a Discovery Facilitator.** The Discovery Facilitator shall be selected for a discovery motion as follows:

1. The ADR Coordinator shall select, at random, a number of names from the panel of qualified Discovery Facilitators equal to the number of sides plus one, and

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shall prepare a list of the names of the randomly selected Discovery Facilitators. The ADR Coordinator shall provide this list to the parties upon the filing of a discovery motion or referral stipulation. For purposes of this rule, a “side” shall consist of all parties represented by the same counsel (e.g., where one counsel represents more than one plaintiff or cross-complainant or more than one defendant or cross-defendant).

2. If the parties agree on the selection of a Discovery Facilitator from the list provided, they shall notify the ADR Coordinator within ten (10) calendar days following the filing date of the discovery motion or referral stipulation. If the parties cannot agree on a Facilitator, then within the 10 calendar day period, each side shall submit to the ADR Coordinator a written rejection identifying no more than one name on the list of potential Facilitators that it does not accept.

3. Promptly upon expiration of the 10 calendar day period, the ADR Coordinator shall appoint one of the persons on the list who was either agreed upon or whose name was not rejected to serve as Discovery Facilitator.

4. The ADR Coordinator shall promptly assign the case to the Discovery Facilitator and shall serve the “Notice of Appointment of Discovery Facilitator” on all parties and on the Discovery Facilitator. Upon receipt of the “Notice of Appointment of Discovery Facilitator,” the parties shall promptly deliver to the Discovery Facilitator copies of the pleadings and discovery necessary to facilitate resolution of the dispute.

**E. Facilitator Process.** The Discovery Facilitator shall establish the procedures in each case to be utilized by the parties, through telephone conferences, exchange(s) of letters or emails and/or in-person conferences, for discussion and attempted resolution of the discovery dispute.

**F. Compensation.** Beginning from the time the Discovery Facilitator receives notice from the parties or the Court of an appointment, the Discovery Facilitator shall devote up to two (2) hours, without charge to any of the parties, in an attempt to facilitate resolution of the discovery dispute. If the matter has not resolved after the two hours, the parties may continue working with the Discovery Facilitator if the parties and the Discovery Facilitator agree regarding the Discovery Facilitator’s compensation.

**G. Resolution.** If a pending discovery motion is resolved, then no later than five (5) calendar days before the scheduled law and motion hearing date the moving party shall withdraw the motion and drop it from the calendar. If the motion is not dropped at least five (5) days prior to the date it is on calendar, the moving party shall file a declaration explaining to the Court why the motion could not have been dropped sooner.

### **H. Declaration of Non-Resolution.**

1. If a discovery dispute is not resolved with the assistance of the Discovery Facilitator, each party shall file and serve a pleading entitled “Declaration of Non-Resolution.” The Declaration shall not exceed three pages and shall briefly summarize the remaining disputed issues and each party’s contentions. If the parties entered the Program after filing a discovery motion, then the Declaration caption shall include the name of the motion and the date of the hearing and the parties shall file and serve it no later than five court days prior to the hearing.

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2. If the Declaration of Non-Resolution is filed less than five (5) court days prior to the date the motion is on calendar, the Court shall issue a tentative ruling, dropping the hearing from calendar.

3. The Discovery Facilitator may at his or her option, serve on all parties or their counsel of record and file with the Court, a report containing a brief summary of the dispute and the parties' contentions, and any legal or factual analysis made by the Discovery Facilitator regarding the dispute.

*[Rule 1.13 adopted effective 7/1/12; amended 7/1/17]*

### **SETTLEMENT AND ISSUE CONFERENCES**

#### **1.14 SETTLEMENT CONFERENCE**

**A. Mandatory Settlement Conference.** The Court shall hold a mandatory settlement conference in all cases where a jury trial has been demanded or in the Court's discretion.

**B. Settlement Conference Statement.** At least ten (10) court days before the settlement conference, parties shall lodge an original and two copies of a settlement conference statement with the Court. Parties shall provide two envelopes of sufficient size, and with sufficient postage, to accommodate mailing the statements to the settlement panelists. The Court may impose sanctions of \$99 per calendar day for statements lodged late. The parties shall note the date and time of the settlement conference and trial on the face sheet of the statement. The settlement conference statement shall comply with all requirements of CRC 3.1380(c) and shall also include the following, where applicable:

1. Pertinent excerpts of medical reports, depositions, photographs, and records with material portions highlighted on all copies submitted;
2. The highest previous offer and lowest previous demand;
3. The date of the last face-to-face settlement discussion;
4. Presentation of any special barriers to settlement.

**C. Required Attendance.** The Court requires personal attendance at all settlement conferences by lead trial counsel, a client representative with full settlement authority and, in cases involving third-party payors, a representative with full settlement authority from each third-party. Exceptions to this rule require advance written approval from the Court.

**D. Sanctions.** An attorney's or party's failure to prepare for, appear at, or participate in a settlement conference, absent good cause shown, may result in the imposition of sanctions.

*[Rule 1.14 adopted effective 5/1/98; amended 7/1/19]*

#### **1.15 ISSUE CONFERENCE**

**A. Attendance.** An Issue Conference will be held before the trial judge. The conference will be set on the day of trial unless otherwise ordered. Trial counsel for each party must attend such conference. The trial judge may also require all parties and claims representatives to attend.

**B. Documents to be Filed for Issue Conference.** Not later than five (5) court days before an Issue Conference, each party shall file and serve the following:

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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 and consecutively numbered. Parties shall provide Courtesy copies of all *in limine* motions directly to the trial department. If a party submits more than five *in limine* motions, the party shall submit the courtesy copies in an indexed binder. Parties shall separately tab each motion with tabs meeting the requirements set forth in CRC 3.1110(f).

**C. Issue Conference Statements.** Parties shall include the following in the Issue Conference Statement for consideration at the Issue Conference:

1. A statement of the facts, law, and respective contentions of the parties regarding liability, damages and (if applicable) the 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;
5. A list of all exhibits to be introduced;
6. A trial length estimate.

Other than as relates to impeachment or rebuttal, or for good cause shown, witnesses and exhibits not identified in the Issue Conference Statement will be excluded at trial.

*[Rule 1.15 adopted effective 5/1/98; amended 7/1/15]*

## **RULES FOR CERTAIN CIVIL CASE TYPES**

### **1.16 APPROVAL OF COMPROMISE OF MINOR'S CLAIM**

**A. Application.** All applications for Court approval of a compromise of minor's claim, pursuant to 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 the minor's 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 proceeds of any settlement (the gross less reimbursable medical-legal costs), without substantial justification for a higher fee.

**C. Forms to Deposit Money.** All applications filed to request an order to deposit money belonging to a minor shall be accompanied by completed Judicial Council forms MC-350, MC-351, and MC-355.

**D. Hearing Assignment.** Applications shall be assigned for hearing by the Court on the default calendar of a civil or probate department.

*[Rule 1.16 adopted effective 5/1/98; amended 1/1/20]*

### 1.17 UNLAWFUL DETAINERS

**A. Settlement Conferences.** Settlement conference statements are not required for unlawful detainer cases. Even when no trial date has been scheduled, a party in an unlawful detainer action may request a settlement conference by filing a request with the Court. The Court will set the requested settlement conference on the same date and time as it schedules other unlawful detainer settlement conferences.

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

*[Rule 1.17 adopted effective 5/1/98; amended 7/1/15]*

### 1.18 UNINSURED MOTORIST CASES

**A. Required Declaration.** Plaintiff's or cross-complainant's counsel shall file a declaration captioned "Request for Temporary Exemption - Uninsured Motorist Case" at the time of filing of the complaint or cross-complaint, or within ten (10) calendar days of learning that an action will proceed as an uninsured motorist case. The declaration shall set forth the following information:

1. A statement that coverage likely exists under an uninsured motorist's insurance policy;
2. The name of the carrier and limits of coverage; and
3. Whether counsel believes that the limits of coverage are adequate to compensate for known loss or damage, that plaintiff(s) or cross-complainant(s) will promptly pursue such remedy, and whether counsel intends 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 rules will be suspended for not more than 180 calendar days from the date the complaint or cross-complaint was filed or the date the case was designated an uninsured motorist case, whichever is earlier. The Court shall set a case management conference to be held at the end of the suspension period. If a dismissal has not been filed, plaintiff's or cross-complainant's counsel shall file a declaration five (5) court days prior to the case management conference. The declaration shall describe the status of the arbitration.

*[Rule 1.18 adopted effective 5/1/98; amended 7/1/15]*

### 1.19 SMALL CLAIMS CONTINUANCES

Any party may submit a written request to postpone a hearing for good cause. The Court will only consider requests to continue small claims proceedings if the Court receives the request in writing at least ten (10) calendar days before the hearing date, unless the Court determines that the requesting party has good cause to file the request at a later date. The requesting party shall mail or personally deliver a copy of the continuance request to each of the other parties to the action. If the Court finds that the interests of justice would be served by postponing the hearing, the Court will postpone the hearing and will notify all parties by mail of the new hearing date.

*[Rule 1.19 adopted effective 5/1/98; amended 7/1/15]*

**1.20 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 of it, or enter a judgment by default against a party, or impose other penalties of a lesser nature as otherwise provided by Law. The Court also may order a party or a party's counsel to pay the moving party's reasonable expenses in making the motion for sanctions, including reasonable attorney fees.

*[Rule 1.20 adopted effective 5/1/98; amended 7/1/15]*

**1.21 DOCUMENTS NOT FILED OR ADMITTED AT HEARING OR TRIAL**

Documents not filed or admitted at a hearing or trial and left at the courthouse will be discarded immediately following the hearing or trial without notice to the parties. This includes binders and boxes containing the documents.

*[Rule 1.21 adopted effective 1/1/15; amended 7/1/15]*

**1.22 PROCEDURES FOR HANDLING MEDIATOR COMPLAINTS**

A complaint about conduct of a mediator on the mediation panel will be directed to the presiding judge. The Court will maintain a file of 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 1.22 adopted effective 1/1/04; amended 7/1/15]*

## 2. FELONY AND MISDEMEANOR RULES

### 2.1 CITATION

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

*[Rule 2.1 adopted effective 5/1/98; amended 1/1/13]*

### 2.2 ASSIGNMENT OF CRIMINAL MATTERS

**A. New Out of Custody Misdemeanor Complaints.** Each new out of custody misdemeanor complaint shall be assigned to Department N at 8:30 a.m. for arraignment.

Following arraignment, a defendant may elect to:

1. Plead guilty on the day of arraignment. In these instances, a defendant shall be referred to Department M to appear immediately following arraignment for entry of plea and pronouncement of judgment.
2. Plead guilty, following an opportunity to confer with counsel. In these instances, defendant shall be referred to the Public Defender's Office and shall be assigned to Department M and scheduled to appear within thirty (30) days for entry of plea and pronouncement of judgment.

If a defendant does not wish to plead guilty, defendant may choose from the following options:

1. If represented by counsel, counsel shall complete the Court's Arraignment Plea and Counsel Form (CR016), waiving time and entering a plea of not guilty. The Court shall calendar the case to Department M for a change of plea or to set for trial in thirty (30) days.
2. If not represented by counsel, the Court shall advise defendant of the option to obtain counsel. The Court shall calendar the case in Department M for appearance of counsel and entry of plea within thirty (30) days.
3. If defendant pleads not guilty and time is not waived, the Court shall calendar the case in Department M the following court day for appearance of counsel.

**B. New Felony Complaints - no other criminal matters pending.** Each new felony complaint shall be assigned at random to a felony department. New felony complaints shall be assigned randomly unless a defendant already has a pending or active post-judgment felony case in a department.

**C. New In-Custody Misdemeanor Complaints – no other criminal matters pending.** Each new in-custody misdemeanor complaint shall be calendared in Department M at 1:30 p.m. for arraignment. If there are other active or post judgment felony matters in other departments, the new in-custody misdemeanor arraignment shall be assigned to the department presiding over the felony matters.

**D. Post Release Community Supervision Petitions.** Post release community supervision petitions shall be assigned in the same manner as in MCR Crim 2.2B.

**E. Petitions to Revoke or Modify Probation or Terminate Diversion.**

1. A petition to revoke or modify probation or terminate diversion, or any post-judgment matter in a felony case, shall remain in the department to which it is presently assigned.

2. A petition to revoke or modify probation or terminate diversion, or any post-judgment matter in a misdemeanor case, shall be assigned to Department M, unless there are other active criminal cases for that defendant. If there are other active cases, the petition or post-judgment matter will go to the department assigned to hear the other active criminal cases.

**F. New Criminal Complaints - other felony matters pending.** If a defendant in a new criminal complaint has pending felony matters or felonies on active probation, the new complaint shall be assigned to the same judge to whom the pending and active post-judgment felony matters have previously been assigned or are to be assigned pursuant to MCR Crim 2.2A or 2.2B hereof.

**G. New Criminal Complaints With Multiple Defendants - other felony matters pending.** If any co-defendant in a new criminal 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 active post-judgment felony matters have previously been assigned or are to be assigned pursuant to MCR Crim 2.2B hereof.

Generally, if more than one co-defendant in a new criminal complaint has pending or active post-judgment felony matters in a particular department, the new complaint and all pending and active post-judgment matters of all co-defendants shall be assigned to the judge to whom the oldest pending or active post-judgment felony matter has been assigned. In certain instances, such reassignment of criminal matters may not be efficient. In these instances, it shall be at the discretion of the assigned judges to determine whether or not to reassign the case.

**H. Assignment of Cases from Department M.** Department M shall be a master calendar court when the judge presiding makes an assignment to any other department.

*[Rule 2.2 adopted effective 5/1/98; amended 1/1/16]*

**2.3 SETTING OF ARRAIGNMENT DATES AND FILING OF CRIMINAL COMPLAINTS**

**A. Misdemeanor and Felony Out-Of-Custody Arraignment Dates.** A defendant who is arrested and booked for any of the following charges shall have an arraignment date set no later than five (5) calendar days from the date of booking or original citation:

- Penal Code § 243(e)(1)
- Penal Code § 273a
- Penal Code § 273.5
- Penal Code § 245
- Penal Code § 261
- Penal Code § 261.5
- Penal Code § 266h
- Penal Code § 266i
- Penal Code § 266j
- Penal Code § 269
- Penal Code § 286
- Penal Code § 288
- Penal Code § 288.5
- Penal Code § 288.7
- Penal Code § 288.a
- Penal Code § 289
- Penal Code § 422

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**B. Misdemeanor In-Custody Complaints.** A misdemeanor complaint charging an in-custody defendant shall be filed in the Clerk’s Office, Room C-10, according to the following schedule:

<b>Day and Time Defendant is Booked in the County Jail</b>	<b>Deadline to File Complaint</b>	<b>Arraignment Hearing</b>
Saturday - 12:01 a.m. through Monday 1:30 p.m.	Tuesday at noon	Tuesday at 1:30 p.m.
Monday - 1:31 p.m. through Tuesday 1:30 p.m.	Wednesday at noon	Wednesday at 1:30 p.m.
Tuesday - 1:31 p.m. through Wednesday 1:30 p.m.	Thursday at noon	Thursday at 1:30 p.m.
Wednesday - 1:31 p.m. through Thursday 1:30 p.m.	Friday at noon	Friday at 1:30 p.m.
Thursday - 1:31 p.m. through Friday 5:00 a.m.	Friday at noon	Friday at 1:30 p.m.
Friday - 5:01 a.m. through Friday at midnight	Monday at noon	Monday at 1:30 p.m.

**C. Felony In-Custody Complaints.** A felony complaint charging an in-custody defendant shall be filed in the Clerk’s Office, Room C-10 no later than noon of the day preceding arraignment. All in-custody felony arraignments shall be heard at the beginning of the morning calendar, depending on the start time of the assigned department.

**D. Out-Of-Custody Criminal Complaints.** A criminal complaint charging an out-of-custody defendant shall be filed in the Clerk’s Office, Room C-10 no later than 4:00 p.m. two (2) court days prior to the defendant’s appearance.

**E. Search Warrants.** At the time the District Attorney files a criminal complaint in a case where a search warrant was previously executed, the District Attorney shall notify the Court to place the search warrant in the criminal file. If the search warrant was sealed by order of the Court, it shall be placed in an envelope marked “sealed.” If the search warrant is not sealed, it shall be open for public inspection in the case file.

*[Rule 2.3 adopted effective 5/1/98; amended 7/1/19]*

**2.4 BENCH WARRANTS**

In any case in which a bench warrant has been issued, the defendant may place the matter on calendar by telephone or by personally appearing at the Clerk's Office. No written notice is required. The deadline for counsel intending to make a general appearance for an out-of-custody defendant to request placement of a case on calendar to recall a bench warrant will be noon the day prior to the requested appearance date. Pending court appearance, a bench warrant shall remain outstanding and defendant is still subject to arrest on the outstanding bench warrant.

*[Rule 2.4 adopted effective 5/1/98; amended 7/1/19]*

**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 after a misdemeanor case has been filed. The letter plea may set a date for next appearance by the defendant not to exceed thirty (30) calendar days from the date that the plea is entered. Attorneys and parties shall not modify the Arraignment Plea and Counsel Form.

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The letter plea process may only be used by counsel who has authority from the defendant to waive the defendant's statutory right to a speedy trial, pursuant to Penal Code § 1382.

*[Rule 2.5 adopted effective 5/1/98; amended 1/1/17]*

### **2.6 MOTIONS**

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 affected 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 transmission by facsimile or electronic transmission is permitted if the parties agree. Counsel shall file all papers with the Court no later than 4:00 p.m. on the designated date to submit pleadings. Motions shall be filed in Room C-10 and calendared on a date already set for hearing or on a date to be determined by the Court.

*[Rule 2.6 adopted effective 5/1/98; amended 1/1/18]*

### **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 oldest case sought to be consolidated.

*[Rule 2.8 adopted effective 5/1/98; amended 1/1/13]*

### **2.9 APPLICATION OF OVERPAYMENTS**

Whenever the Court receives an overpayment for a criminal case and the Court determines that the defendant is delinquent on another felony, misdemeanor or infraction case, the Court will apply the overpayment to that case.

*[Rule 2.9 adopted effective 1/1/13]*

### **2.10 TRIAL READINESS CONFERENCE**

The Court shall conduct a trial readiness conference in all cases prior to the date the cases are set for trial. Trial counsel must attend all such conferences and resolution of cases shall be encouraged at these conferences.

**A. Felonies.** Motions in limine, proposed witness lists that include a short summary of each proposed witnesses testimony, proposed fully drafted jury instructions and proposed verdict forms shall be submitted to the Clerk's Office, Room C-10, at least five (5) court days before the date set for a hearing regarding the motions in limine. Absent a showing of good cause, untimely submissions shall not be considered by the Court. The Court may make an order necessary to enforce the provisions of this rule, including, but not limited to, contempt

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proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, granting or denying a continuance of the matter, or any other lawful order.

**B. Misdemeanors.** All misdemeanor trials shall be assigned to criminal departments from Department M on Mondays, or Tuesdays if Monday is a holiday. All misdemeanor cases set for trial shall be set for a trial readiness conference within ten (10) days preceding the trial date. Motions in limine, proposed witness lists that include a short summary of each proposed witness's testimony, proposed fully drafted jury instructions, and proposed verdict forms shall be submitted to the Clerk's Office, Room C-10, on a date to be set by the presiding judge of Department M at the time the case is set for trial. Absent a showing of good cause, untimely submissions shall not be considered by the Court. The Court may make an order necessary to enforce the provisions of this rule, including, but not limited to, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, granting or denying a continuance of the matter, or any other lawful order.

**C. Requests to Continue Felony or Misdemeanor Trials.** It is the intent of the Court to strictly enforce the provision of Penal Code § 1050 when ruling on any motion made to continue a misdemeanor or felony trial.

**D. Time for Submission.** Notwithstanding the time for submission of proposed jury instructions set forth in Penal Code § 1093.5, counsel shall submit proposed jury instructions with motions in limine before trial commences.

**E. 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 emphasized 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, emphasis or symbols on the page.

*[Rule 2.10 adopted effective 5/1/98; amended 1/1/16]*

### **2.11 ADDING CASES TO CALENDAR**

Except as provided in MCR Crim 2.4, a case may be added to the calendar no later than 4:00 p.m. two (2) court days prior to the defendant's appearance.

*[Rule 2.11 adopted effective 1/1/04; amended 7/1/15]*

### **2.12 GUARDIANS AD LITEM**

In any case in which a prosecution is initiated under the Penal Code alleging neglect or abuse of a child, the Court may appoint a guardian ad litem for the child. 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 Welfare & Institutions Code § 326.5.

*[Rule 2.12 adopted effective 1/1/04; amended 1/1/13]*

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

A Petition for Dismissal of a criminal conviction (Judicial Council form CR-180) may be submitted with a Request to Waive Court Fees (Judicial Council form FW-001) and Order on Court Fee Waiver (Judicial Council form FW-003) or a check payable to the Marin County Superior Court in the sum of \$150.00. The petitioner shall serve a filed copy of the petition to the District Attorney's Office and file proof of service with the Court. If the District Attorney objects to the petition, opposition to the petition shall be filed within forty-five (45) court days, and the matter shall thereafter be set for hearing within twenty-one (21) court days. The hearing shall be set 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 an assigned judge for approval. The Court cannot charge a fee to file the petition, but the Court may order the petitioner to reimburse the Court, the City, and the County up to \$150.00 each after adjudicating the petition, whether or not the petition was granted. The Court will not order a petitioner to pay unless it finds that the petitioner is able to pay all or part of the costs of the petition without undue hardship.

*[Rule 2.13 adopted effective 7/1/07; amended 7/1/17]*

**2.14 PETITIONS TO SEAL ARREST AND RELATED RECORDS (PENAL CODE § 851.91) AND MOTION TO VACATE CONVICTION OR SENTENCE (PENAL CODE §§ 1016.5, 1473.7)**

A petition to Seal Arrest and Related Records (Penal Code § 851.92) may be submitted on or in conjunction with form CR-409. A Motion to Vacate Conviction or Sentence (Penal Code §§ 1016.5, 1473.7) may be submitted on or in conjunction with Judicial Council form CR-187 and Order on Motion to Vacate Conviction or Sentence form CR-188. The petitioner shall serve a filed copy of the motion or petition to the District Attorney's Office and file proof of service with the Court. If the District Attorney objects to the motion or petition, opposition shall be filed within forty-five (45) court days, and the matter shall thereafter be set for hearing within twenty-one (21) court days. The hearing shall be set 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 motion or the petition, it will be submitted to an assigned judge for approval.

*[Rule 2.14 adopted effective 1/1/19]*

**2.15 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.

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**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.

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

*[Rule 2.15 adopted effective 7/1/08]*

### **2.16 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 shall add a \$300.00 civil assessment and refer the delinquent case to the Enhanced Court Collections Program (ECC). If a defendant is delinquent in completing and submitting proof of completion of community service work, the Court shall automatically convert the uncompleted community service work hours to a fine at the prevailing conversion rate, add a \$300.00 civil assessment and refer the case to the ECC. Upon such referral, ECC shall contact the defendant to determine how the unpaid court ordered debt will be paid. ECC shall 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. Once a case has been transferred to ECC, it shall not be referred to a judicial officer to request an order to remove it from collections and vacate a civil assessment imposed on the unpaid balance.

*[Rule 2.16 adopted effective 1/1/10; amended 1/1/13]*

### **2.17 CLERK'S OFFICE - FINANCIAL SCREENING AND COMMUNITY SERVICE WORK UNIT**

**A. Authority for Clerk's Office to Establish Payment Terms for Court Ordered Fines, Fees, Penalty Assessments and Surcharges.** The Court has conferred authority to court staff in the Criminal Clerk's Office's Financial Screening and Community Service Work Unit to review defendants' financial information to establish payment plans and/or determine whether defendants meet the financial qualifications to perform community service work (CSW) in lieu of payment of the court ordered fines. Defendants who cannot afford to pay fines at the time of sentencing shall be referred to the Financial Screening and Community Service Work Unit to establish monthly installment plans or determine their eligibility to convert fines to CSW. Only those defendants who demonstrate an inability to pay court ordered fines shall be eligible to perform CSW. All other defendants shall have an opportunity to pay the total amount due or establish monthly installment payment plans to ensure that all court ordered fines, fees and assessments are paid in full prior to the termination date of probation. Defendants may pay their court ordered obligations in full in the Clerk's Office in cash, or by check, cashier's check, or credit or debit card. Defendants may also request to be evaluated for CSW or may elect to set up an installment payment plan.

**B. Requests to Perform Community Service Work.** A defendant who requests CSW shall complete a Financial Qualification for Community Service Work (Local Form CR080). Court staff shall review this form and make a determination as to whether the defendant qualifies for the program, based on income guidelines established by the Court.

If a defendant meets eligibility criteria, the defendant shall pay a \$50.00 non-refundable CSW administrative fee, prior to commencing the CSW program. Upon receipt of

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the fee, court staff shall provide the defendant with the following documents pertaining to the Court's CSW program:

1. Timesheets for the defendant to record CSW hours and obtain the signature of an authorized representative, verifying that the hours have been performed; and

2. An Agreement to Perform Community Service Work (Local Form CR083) that will include the defendant's fine conversion calculation as well as an acknowledgement of the due date for completion of the CSW. The Agreement will also make clear that failure to complete CSW by the due date will result in automatic conversion of the CSW hours back to fine, plus the imposition of a \$300.00 civil assessment and referral of the outstanding balance to the Court's Enhanced Collections Program.

If a defendant is not eligible for CSW, court staff shall process the defendant's payment in full or set up an installment payment plan.

**C. Requests for Installment Payment Plan.** When a defendant requests an installment payment plan, court staff shall review the term of probation and the total amount of fines, fees and assessments. Court staff shall add a \$35.00 non-refundable accounts receivable fee to this total, pursuant to Penal Code § 1205. The revised total amount due will be divided by the number of months in the term of probation to determine the minimum monthly payment amount or \$50.00, whichever amount is greater. Once an installment payment plan has been determined, the defendant shall sign an Agreement To Set Up Payment Plan - Criminal Case (Local Form CR082). The defendant shall agree to make at least the minimum monthly installment payments by the due date each month and shall acknowledge that failure to do so will result in automatic imposition of a \$300.00 civil assessment and referral of the outstanding balance to the Court's Enhanced Court Collections Program.

Defendants are encouraged to pay more than the minimum monthly amount if they have the financial ability to do so, but they must make at least the minimum payment each month. Defendants may also pay the entire balance of the obligation at any time during the term of probation.

*[Rule 2.17 adopted effective 1/1/14]*

### **2.18 MODIFICATION OF TERMS AND CONDITIONS OF MISDEMEANOR PROBATION**

**A. Authority of Clerk's Office to Modify Terms and Conditions of Misdemeanor Probation.** In misdemeanor cases, judicial orders may include probation terms and conditions which defendants are required to complete by dates established in the orders. Conditional probation terms are monitored by the Court for compliance. Following pronouncement of judgment, defendants may have reason to request that the Court modify the terms, conditions or due dates contained in judicial orders. Requests to modify previously ordered terms and conditions of probation in misdemeanor cases must be initiated by defendants or their counsel. Depending on the nature of the requested modifications, some requests must be reviewed and granted or denied by a judicial officer and may be submitted ex-parte for such review on the Court's approved form, Request to Modify Judicial Orders – Judicial Review (CR085). Other modification requests shall be addressed by court staff in the Criminal Clerk's Office in Room C-10, using the Court's approved form, Request to Modify Judicial Orders – Clerk's Review (CR084).

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The District Attorney or Probation Department may calendar for a hearing any post-judgment misdemeanor case in which probation was granted by filing a petition to revoke probation, as described in MCR Crim 2.3 if defendant is in custody or MCR Crim 2.11 if defendant is out of custody. In addition, motions filed by defendants or their counsel for probation modification shall be placed on calendar, even if the requested modification could be performed by court staff. All other requests for post-judgment relief shall be submitted to the Court using the process described in MCR Crim 2.17B and 2.17C.

### **B. Requests for Modifications That Must Be Submitted to the Clerk's Office.**

Defendants may request modifications of certain probation terms and conditions without appearing before a judicial officer. These requests are reviewed in the Criminal Clerk's Office, Room C-10, by submitting a Request to Modify Judicial Orders – Clerk's Review (Local Form CR084). A maximum of two such modification requests per misdemeanor case shall be eligible for review in the Criminal Clerk's Office without requiring a defendant to appear before a judicial officer. Third and subsequent requests for modifications of probation shall be referred to a judicial officer for review, as described in MCR Crim 2.17C3.

The Court confers authority to court staff to make modifications of certain probation terms and conditions, within the parameters enumerated below. Defendants or their counsel must make requests for modifications timely, meaning on or before the court ordered due date, in order to be eligible for review in the Clerk's Office. Requests eligible to be submitted to the Clerk's Office are as follows:

1. Re-referral to Drinking Driver Program (DDP) or Driving While Intoxicated school (DWI) within the probation period, both in county and out of county.
2. Up to a 60-day extension of time to complete DDP or DWI school but under no circumstances later than the termination date of probation.
3. Up to a 60-day extension of time to complete other programs and classes (e.g. anger management, theft awareness, Alcoholics Anonymous, parenting, drug education, etc.) but under no circumstances later than the termination date of probation. The clerk may not grant an extension of time to complete a 52-week batterer's intervention program, as required by Penal Code § 1203.097.
4. Financially eligible defendants' fines may be converted to community service work (CSW) at the prevailing fine conversion rate. Defendants shall pay a \$50.00 non-refundable CSW fee at the time their fines are converted to community service work. Eligibility for CSW shall be determined based on a review of a defendant's income on a Financial Qualification for Community Service Work – Criminal Case (Local Form CR080). Completion date for CSW shall be determined by the number of converted hours but under no circumstances later than the termination date of probation. Failure to complete CSW by the due date shall result in automatic conversion of CSW hours back to fine, addition of a \$300.00 civil assessment and referral to the Court's Enhanced Court Collections Program.
5. Up to a 60-day extension of time to complete CSW, if request is made on or before the original due date of the CSW and the new due date is before the termination of probation.
6. Conversion of CSW to fine at the prevailing fine conversion rate, to be paid in full at the time of conversion or to be paid in installments. If fine is to be paid in

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installments, Court shall add a \$35.00 non-refundable accounts receivable fee to the total balance due at the time the installment plan is established. Under no circumstances shall any portion of the fine be due and payable beyond the termination date of probation.

7. Up to a 60-day extension of time to pay fine, if request is made on or before the original due date of the fine and the new due date is before the termination of probation.

8. Conversion of total fine with one due date to fine installment payment plan if request is made prior to the original due date of the fine. Monthly payments shall be determined by adding the non-refundable accounts receivable fee of \$35.00 to the total balance due and dividing this balance due by the remaining number of months in the probation term (e.g. if the defendant owes \$1,000.00 and has 18 months remaining on probation, Court shall add \$35.00 and divide \$1,035.00 by 18 months for a monthly payment of \$58.00.) Under no circumstances shall the monthly payment amount be established at less than \$50.00.

9. Advance defendant's date to be remanded to serve jail time to an earlier date.

**C. Requests for Modifications That Must Be Submitted to the Judicial Officer Who Pronounced Judgment.** Defendants must request modifications to certain probation terms and conditions by submitting such requests to the judicial officer who pronounced judgment on a Request to Modify Judicial Orders – Judicial Review (Local Form CR085). Such requests shall be submitted to the judicial officer and either granted or denied and returned to the defendant by mail. The judicial officer may also order that cases be placed on calendar for hearings on the requests for modification. Modifications that will require judicial review are enumerated below:

1. Requests to extend jail remand/surrender to a later date. These must be submitted no later than ten (10) calendar days prior to the court ordered surrender date or they will be automatically denied as not timely. If granted, the Court shall send a copy of these modified orders immediately to the jail and Probation Department.

2. Requests to extend the due date to complete terms and conditions of court ordered deferred entry of judgment or diversion.

3. Any request for modification that exceeds the number of requests that the Court has authorized court staff to review in the Criminal Clerk's Office. In this instance, defendants shall complete both the Request to Modify Judicial Orders – Clerk's Review (CR084) and the Request to Modify Judicial Orders – Judicial Review (CR085). The judicial officer will decide whether to grant or deny the requested relief, as stated on the Clerk's Review form.

4. Any request for modification that is not made timely, meaning on or before the due date of the court order. In this instance, defendants shall complete both the Request to Modify Judicial Orders – Clerk's Review (CR084) and the Request to Modify Judicial Orders – Judicial Review (CR085). The judicial officer will decide whether to grant or deny the requested relief, as stated on the Clerk's Review form.

*[Rule 2.18 adopted effective 1/1/14]*

### 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 or by phone or over the internet using the Court's automated systems. 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 1/1/14]*

#### 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 thirty (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 ten (10) calendar days prior to the assigned date of trial.

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

#### 3.7 ALTERNATE PROCEDURES FOR JUDICIAL REVIEW OF INFRACTION MATTERS

**A. Ex Parte Judicial Review by Written Declaration or Request.** Defendants who plead guilty or no contest on certain infraction matters may seek judicial review to obtain specific relief from the Court as follows:

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### 1. On Good Cause Declaration (Form TR021) and/or Can't Afford to Pay Fine: Traffic or Other Infractions (Form TR-320).

a. Request that civil assessment be vacated, case be recalled from court collections, and fine be reduced to original bail amount.

b. Request to accept proof of completion of community service work or traffic violator school after civil assessment has been added and case has been transferred to court collections.

c. Request for extension of time to correct mechanical violations or obtain out-of-state registration or to provide proof of valid driver's license.

d. Request to reinstate community service work when community service work has been previously terminated.

### 2. On Request for Sentence Modification (Form TR022) and/or Can't Afford to Pay Fine: Traffic or Other Infractions (Form TR-320):

a. Request for sentence modification to convert fines to community service work, upon approval of Financial Qualification for Community Service Work (Form TR024) and payment of \$50 non-refundable community service work administrative fee.

b. Request for sentence modification to convert community service work to fine.

c. Request for sentence modification to allow traffic violator school when not initially ordered, upon payment of a non-refundable administrative fee of \$52 for such conversion.

d. Request for sentence modification to a payment plan upon approval and payment of \$35 non-refundable account receivable fee.

e. Request for sentence modification to extend time to pay or to complete community service work or traffic violator school.

### 3. On Declaration and Request for Community Service Work (Form TR023) and Financial Qualification for Community Service Work (Form TR024): and/or Can't Afford to Pay Fine: Traffic and Other Infractions (Form TR-320):

a. Request for approval of community service work when defendant does not meet the qualifications for financial hardship. If approved, defendant will be required to pay a \$50 non-refundable community service work administrative fee.

Following review, the reviewing judicial officer shall determine whether good cause exists and may grant specific relief. The judicial officer shall make such findings and issue such orders as are appropriate to address requests for relief. The Clerk's Office shall communicate such judicial orders to the defendant in writing within thirty (30) days from the date the request was received by the Court.

**B. Monthly Calendar for Personal Appearance.** The Court has established a monthly calendar for personal appearance by defendants in the following infraction matters:

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1. To adjudicate infraction charges for which the Court has determined that a defendant must appear in court.
2. To hear various motions, other than motions pursuant to Penal Code § 1538.5.
3. To review and adjudicate disposition of bail and/or bonds held by the Court, where a defendant posted bail on a promise to appear but the District Attorney filed the case with only infraction charges in the Traffic Clerk's Office.
4. To arraign a defendant who requests to make such personal appearance before a judicial officer.

**C. Appearance at Contested Court Trial.** The Court shall compel defendants who request certain specific relief or Court findings to appear at a contested Court trial as follows:

1. To plead not guilty and request dismissal because defendant claims that he or she was not the citee (e.g., defendant alleges identity theft) and the Clerk's Office is otherwise unable to ascertain whether defendant was the citee.
2. To argue motions filed on behalf of defendant pursuant to Penal Code § 1538.5.
3. To plead not guilty and request to amend violation from non-correctable to correctable, where authorized by law.

*[Rule 3.7 adopted effective 7/1/12; amended 1/1/19]*

### **3.8 ADJUDICATION OF MISCELLANEOUS INFRACTION MATTERS**

#### **A. Clerks' Authority in Infraction Cases Not Transferred to Court Collections.**

For cases that have not been transferred to court collections, deputy clerks are granted the authority to take the following actions at the request of defendants charged with infraction violations:

1. Grant bail waivers to defendants who plead not guilty and schedule appearances in contested traffic court.
2. Accept the posting and forfeiting of bail on infraction cases.
3. Upon approval of defendant's written request on Financial Qualification for Community Service Work (Form TR024), signed under penalty of perjury, and payment of a \$50 non-refundable community service work administrative fee, approve requests to perform community service work in lieu of paying bail at the prevailing fine conversion rate for each hour worked at a non-profit organization, as defined by Internal Revenue Code § 501(c)(3), found on the Court's approved list of such agencies.
4. Allow defendants to convert community service work to bail one time only.
5. Accept requests to stay execution of court orders pending outcome of infraction appeal.
6. In limited circumstances and if defendant lives within California but outside of Marin County, upon payment of a \$50 non-refundable fee, authorize a defendant to perform community service work with a non-profit organization, as defined by Internal Revenue Code § 501(c)(3), that is not on the Court's approved list of community

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service work providers but that is overseen by a community service work agency in the county in which the work is to be performed.

7. In limited circumstances for California residents only, following signature verification, confirmation of non-profit status and upon payment of \$50 non-refundable court costs, accept proof of completion of community service work from an organization not on the Court's approved list and not overseen by a community service work agency in the county in which the work was performed.

8. Grant initial 30-day extension of time to pay or provide proof of completion of community service work or traffic violator school or to provide proof of correction of correctable offense(s).

9. Grant payment plan of up to 12 months, following defendant's payment of \$35 non-refundable accounts receivable fee, by dividing the outstanding balance by the number of months of the requested payment plan to determine monthly installments of equal amounts. The minimum monthly payment shall not be less than \$50. No payment plan may exceed 12 months from the date it is established.

10. Grant acceptance of proof of correction, following payment of full bail on underlying correctable charge(s), and delete Vehicle Code § 40616 from defendant's case.

11. For defendants who previously signed up for traffic violator school and upon payment of \$50 non-refundable court costs, accept late completion of traffic violator school within sixty (60) days of the date a conviction abstract was sent to the Department of Motor Vehicles.

12. For defendants who did not previously sign up for traffic violator school and upon payment of \$52 non-refundable traffic violator school fee and \$50 non-refundable court costs, accept late completion of traffic violator school within sixty (60) days of the date a conviction abstract was sent to the Department of Motor Vehicles.

13. Before the due date on the courtesy notice and upon completion of written Request to Elevate Infraction Charge to Misdemeanor (Form TR027), re-file infraction charges as misdemeanors and set matters on calendar for arraignment [e.g. Business & Professions Code § 25662; Penal Code § 555; Vehicle Code §§ 12500(a), 23109(a), (b) and (c), 14601.1(a), pursuant to Penal Code § 17(d)].

14. Upon request of defendants or their counsel, calendar defendants' matters on the next court day for arraignment.

15. Provide a verified complaint if the notice to appear is not prepared on a form approved by the Judicial Council and is not verified under penalty of perjury by the citing officer.

**B. Requests Neither the Court nor Clerks Will Grant.** The Court will not grant, or authorize deputy clerks to grant, any of the following requests from defendants or their counsel:

1. For reset of contested court trial within ten (10) calendar days of the scheduled court hearing date.

2. For reset of second or subsequent date for court trial.

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3. For dismissal of charges following a period of “no further violations.”
4. For remand to county jail in lieu of payment of bail or fines and fees.
5. To accept proof of correction and give refund following bail forfeiture or payment in full of fines and fees.
6. To grant subsequent extension, following an initial 30-day extension, of time to pay or to provide proof of completion of community service work or traffic violator school or to provide proof of correction of correctable offense(s).
7. To grant subsequent extension, following an extension granted by a judicial officer, of time to pay or to provide proof of completion of community service work or traffic violator school or to provide proof of correction of correctable offense(s).
8. To re-abstract the Department of Motor Vehicles upon submission of a late traffic violator school certificate, if submission is sixty-one (61) days or greater from the date a conviction abstract was sent to the Department of Motor Vehicles.
9. To grant traffic violator school or community service work following defendant’s failure to appear for a contested traffic trial, where the case has been sentenced in absentia.
10. To provide a verified complaint unless the citation is not completed on a mandatory form authorized by the Judicial Council and is not verified.
11. To grant out of state community service work.

*[Rule 3.8 adopted effective 7/1/12; amended 1/1/19]*

### **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]*

### **3.10 APPLICATION OF OVERPAYMENTS**

Whenever the Court receives an overpayment for an infraction case and the Court determines that the defendant is delinquent on another felony, misdemeanor or infraction case, the Court will apply the overpayment to that case.

*[Rule 3.10 adopted effective 1/1/13]*

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## 4. JUVENILE RULES

### 4.1 JUVENILE COURT RULES - GENERALLY

#### A. Judicial Administration

The Juvenile Court hears both Juvenile Dependency and Juvenile Delinquency actions. All cases in Juvenile Court shall be subject to assignment to a judicial officer for all purposes at the time of filing of the action who shall thereafter handle all proceedings involving the matter, including trial, except as otherwise provided or required by law.

#### B. Filing Requirements

1. No noticed motion shall be accepted by the Court Clerk unless it is accompanied by a proof of service.

2. Pre-hearing motions must be filed in accordance with CRC 5.544.

3. Represented parties in juvenile cases who are entitled to service are not required to receive documents electronically, but may agree to receive electronic service by filing with the Clerk of the Court and serving all parties, a Consent to Electronic Service and Notice of Electronic Service Address, local form (JUV022).

4. Any proposed order submitted to the Court for signature must contain a footer with the title of the order on every page. The signature and date lines must not be on a page by themselves; the signature page must contain some text of the order.

#### C. Discovery

1. Pre-hearing discovery shall be conducted informally in accordance with CRC 5.546.

2. Only after informal means have been exhausted may a party petition the Court for discovery. Any noticed motion shall state the relevancy and materiality of the information sought and the reasons why informal discovery was not adequate to secure that information. The motion shall be served on all parties at least five (5) judicial days before the hearing date. The date for the hearing shall be obtained from the Court Clerk, Juvenile Division. A copy shall be served on the Court before whom the matter is scheduled to be heard at least five (5) judicial days before the hearing date.

3. There shall be no depositions, requests for production of documents, interrogatories, requests for admissions or other similar types of civil discovery without approval of the Judge of the Juvenile Court upon noticed motion. See *Joe Z. v. Superior Court* 3 Cal.3d 807.

#### D. Ex Parte Orders

1. Before submitting ex parte orders to a judge for approval, the applicant must give notice of, and a copy of the application for ex parte orders, to all counsel, social workers, probation officers, parents and/or legal guardians who are not represented by counsel by 10:00 a.m. one (1) court day prior to presentation to the Court. If a hearing

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is requested, then notice shall include the date, time and department of the ex parte hearing.

2. The party requesting ex parte orders must inform the judge that notice has been given either on the application form (JV-180) or by declaration.

3. An opposing party may present any written opposition to the request for ex parte orders upon receipt of notice or may have their opposition noticed on the application form. The Court may render its decision on the ex parte application or set the matter for hearing. The applicant is responsible for serving all noticed parties with copies of the Court's decision or notice that the Court has calendared the matter, and the applicant shall notify all persons entitled to notice of any hearing date and time set by the Court.

4. Notice may be excused for good cause or if the giving of such notice would frustrate the purpose of the order.

5. Notice may also be excused, if following a good faith attempt, the giving of notice is not possible.

### **E. Attendance at Hearings (CRC 5.530)**

1. In Juvenile Dependency matters, any minor over ten (10) years of age must be notified of their right to be present at hearings but are not required to be present. If the child is present, the judicial officer may speak with the child.

2. In Juvenile Delinquency matters, minors shall attend all hearings unless specifically excused by the Court or Probation. If a minor is in foster care out of county or out of state, the physical presence of the minor can be excused and the minor may appear telephonically.

3. The Juvenile Court may require the personal appearance of a non-minor dependent for good cause.

**F. Continuances** shall be requested and granted in accordance with W&I Code § 352. The Court recognizes that practical realities sometimes require continuances and may be granted where good cause exists and the continuance is not contrary to the child's welfare.

**G. Adding Matters to Calendar.** Any party wishing to add a matter to calendar shall file a calendar request at least two (2) court days before the calendar in question (absent exigent circumstances) setting forth the reason the matter is sought to be calendared and showing that the attorneys for all other parties, all self-represented parties, and CASA have been contacted. Attorneys are responsible for notifying their clients of such calendaring.

**H. Safety Issues** shall be communicated to the Courtroom Clerk as soon as they become known to allow for additional security measures.

**I. Interpreters.** If and when a party or attorney becomes aware of the need for an interpreter, said need shall be promptly communicated to the Courtroom Clerk. Please specify the language (and dialect where applicable) along with the date, time and place where the interpreter's services will be required. While Spanish language interpreters can be arranged on short notice, interpreters for other languages must be specially retained and are in high demand, requiring advance notice.

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**J. In Custody Parents.** Counsel for an in custody parent who has made known his or her desire to attend a dependency proceeding are responsible for notifying the Courtroom Clerk 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 notify the Courtroom Clerk at the earliest possible time, but no later than twenty-four (24) hours prior to the scheduled court appearance, to arrange for the parent's presence in court. This local rule does not confer any rights to be present in excess of those described by Penal Code § 2625.

**K. Settlement Conferences.** The Court encourages settlement conferences. Attorneys and parties shall be present at the settlement conference unless expressly excused by the Court. Counsel shall notify the clerk of the presiding department at least five (5) days prior to the settlement conference if there is a need for an interpreter or if a parent is in custody in Marin County and wishes to participate.

**L. Access to Courtroom by Non Parties.** Access to Courtroom is limited as set forth in W&I Code §§ 345, 346, 347 and CRC 5.530. The Court encourages trainees, interns and appropriate students to attend juvenile proceedings in order to better understand the working of the Juvenile Court. The Court retains the discretion to determine in each case whether any such interested party shall remain in the courtroom being respectful of objections raised by any minor or party.

### **M. Discovery of Juvenile Documents or Records.**

1. Except as indicated in W&I Code §§ 827 and 828 and CRC 5.552, in all cases in which a person or agency seeks access to Juvenile Court documents or records, including documents or records maintained by the Juvenile Court Clerk, the Probation Department or the Department of Family and Children Services, the person or agency shall file a Request for Disclosure of Juvenile Case File (JV-570) with the Juvenile Clerk in Room 113.

2. This Rule applies even if no action has been commenced in Juvenile Court under W&I Code §§ 300, 601 or 602. The person or agency seeking the documents or records shall give notice to all necessary parties (See W&I Code § 827 and Judicial Council Form JV-570).

3. The Petition shall set forth with specificity the materials and information sought and the relevance of the materials to the underlying action and any related action. The Petition shall be supported by a declaration of counsel and /or a Petitioner, and if necessary a memorandum of points and authorities.

4. Exceptions are as follows:

a. Persons or Agencies specified in W&I Code § 827(a)(1) (A)-(R). Generally, the minor, court personnel and select governmental agency personnel, or intervening tribal representatives do not require prior court approval for inspection.

b. Persons or Agencies specified in W&I Code §827(a)(1)(A) (B) (C) (D) (E) (F) (H) (I) and (J) may copy documents or records without Court authorization.

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c. Persons or Agencies specified in W&I Code § 827(a)(1)(L) (M) (N) and (O) may inspect documents or records but may not copy said documents or records without submission and approval of a Request for Disclosure of Juvenile Case File (JV-570) pursuant to W&I Code § 827.

d. Any records obtained per above may not be disseminated or used absent an application to the Court and an order from the Court. Dissemination or use of documents or records shall be in compliance with the Court's order on the W & I Code § 827 Petition.

e. The director of Juvenile Hall or his/her designee shall be provided a copy of all medical/mental health evaluations of minors housed in Juvenile Hall. Such information shall be used exclusively by the medical/mental health personnel in Juvenile Hall and shall not be released to any third parties without Court approval.

5. The Court may appoint a Court Appointed Special Advocate for dependents or wards. Said *CASA* shall have the same legal right to records relating to the child or youth he/she is appointed to represent as any case manager, social worker or probation officer with regard to records pertaining to the youth held by any agency, school, organization, division or department of the State, physician, surgeon, nurse or other health care provider, psychologist, psychiatrist, mental health provider or law enforcement agency. The advocate shall present his or her identification as a Court appointed advocate to any such record holder in support of his/her request for access to specific records. No consent from the parent or guardian is necessary for the advocate to have access to any records relating to the child or youth.

6. Access to Non-Minor Dependent files may only be accessed as set forth in Welfare and Institution (currently W&I Code §362.5).

*[Rule 4.1 adopted effective 1/1/20]*

### **4.2 ATTORNEYS IN JUVENILE COURT**

**A. Minimum Training Dependency.** Each court appointed attorney appearing in a dependency matter before the Juvenile Dependency Court shall complete the following minimum training and educational requirements. The attorney shall have either:

1. Participated in at least eight (8) hours of training and education in juvenile dependency law and practice before seeking appointment and must complete twenty (20) hours of training within the first year of practice, which training shall have included comprehensive information on W&I Code § 202, 213.5, 214, 241.1, 281.5, 300 et seq.; Family Code §§ 7900 et seq. (Interstate Compact), and §§ 7600 et seq. (Uniform Parentage Act); Education Code §§ 5000 et seq. (Special Education Programs); 8 United States Code (USC) § 1101 (Special Immigrant Status for Undocumented Dependent Children), 25 USC §§ 1901 et seq. (Indian Child Welfare Act), 28 USC § 1738 (Parental Kidnapping Prevention Act), and 42 USC §§ 620 et seq. and 670 et seq. (Adoption and Safe Families Act); CSEC issues, mental health, the California Rules of Court, Local Rules of Court, the rules of evidence as set forth in the California Evidence Code, and the applicable case law as well as practical training on

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Judicial Council forms, motions, writs and mediation, family group conferencing, team decision making, child development, child abuse and neglect, family reunification and preservation, restraining order, rights of de facto parents, reasonable efforts,

Or

-At least six (6) months of experience within the last twelve (12) months in dependency proceedings in another county in which the attorney has had primary responsibility for representation for his or her clients in said proceedings. In determining whether the attorney has demonstrated competence, the Court shall consider whether the attorney's performance has substantially complied with the requirements of these rules. (W&I Code §§ 317, 317.6, CRC 5.660)

2. Each court appointed attorney who practices before the Juvenile Dependency Court shall complete within every one (1) year period at least twelve (12) hours of continuing education related to dependency proceedings. Evidence of completion of the required number of hours of training or education shall be retained by the attorney and may include a copy of a certificate of attendance issued by a California MCLE provider or a certificate of attendance issued by a professional organization which provides training and/or education for its members, whether or not it is a MCLE provider. Attendance at a Court sponsored or approved program will also fulfill this requirement. The attorney's continuing training or education shall be in the areas set forth in above.

**B. Minimum Training Delinquency.** Each court appointed attorney who practices before the Juvenile Delinquency Court must meet the educational requirements of CRC 5.664. Note, the Court may require counsel to complete and submit a Declaration of Eligibility for Appointment (JV-700). Once appointed, counsel continues to represent the minor unless relieved by the Court or on the substitution of another counsel. CRC 5.663(c).

**C. Notwithstanding compliance** with the standards enunciated above, the Court may refuse to allow an attorney to practice before the Juvenile Court if, in the opinion of the presiding judicial officer, the attorney has demonstrated actual incompetence or lack of minimum competency in handling juvenile cases.

**D. Costs for Appointed Counsel in Dependency Proceedings.** Pursuant to W&I Code § 903.1, a parent/guardian or person responsible for support of a minor is liable for the costs of appointed counsel for a parent//guardian and minor in Dependency Court. At a financial hearing, the judge shall assess the repayment amount after a review of the Declaration for Financial Evaluation, Local Form (JUV011). An Order for Repayment of Costs and Legal Services, Local Form (JUV013) shall be prepared and served on the responsible party and appointed counsel at the conclusion of a financial hearing.

**E. 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 in a dependency matter 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. 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

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attorney to respond in writing. The Court shall consider the complaint and the response, if any, and issue such orders as it deems appropriate, on a case by case basis. Upon determination that an attorney has acted incompetently, the Court shall order that the attorney be discharged and that competent counsel be substituted. Notice of the substitution of counsel shall be served on counsel for all parties or record.

*[Rule 4.2 adopted effective 1/1/20]*

### **4.3 INFORMING THE COURT OF THE INTEREST OF THE CHILD; ACCESS TO MINOR; NOTICE OF CHANGE IN PLACEMENT**

**A. Interest of Child.** At any time during the pendency of a dependency proceeding, any interested person may notify the Court that the minor who is the subject of the proceeding may have an interest or right that needs to be protected or pursued. This may be done by filing a petition to modify a previous order, under W&I Code § 388 (Judicial Council form JV-180). The petition or affidavit shall set forth the nature of the interest or right to be protected and the action on the child's behalf that is being requested. The person filing the W&I Code § 388 petition, shall serve a copy of the notice on each of the parties or their attorneys, the child advocate and others as prescribed by law. Notice may be dispensed with upon Order of the Court.

**B. Notification by Minor's Counsel.** If counsel for the child becomes aware that the child may have a right or interest that needs to be protected or pursued in another judicial or administrative forum, counsel for the child shall notify the Court in the manner indicated above as soon as it is reasonably possible to do so.

**C. Response by Court.** The Court upon receiving such notification may make any orders that are appropriate to protect the rights of the child, including, but not limited to:

1. Determining if the child's attorney is willing and able to pursue the matter on the child's behalf. If the court finds that the child's attorney is willing and qualified to initiate and pursue appropriate action, it may make any orders necessary to facilitate this representation;
2. Appoint counsel for the child specializing in the practice before the agency or Court in which the proceeding will occur;
3. Appoint a guardian ad litem for the child to initiate or pursue the proposed action;
4. Join an administrative agency to the Juvenile Court proceedings pursuant to W&I Code § 362;
5. Take any other action to protect the interest and right of the child.

**D. Access to Minors Petitioned Pursuant to W&I Code § 300.** No party or attorney (other than the social worker) in a dependency proceeding shall interview the minor about the events relating to the allegations in the petition on file without permission of the minor's attorney or Court order. No party or attorney in a dependency proceeding shall cause the minor to undergo a physical, medical or mental health examination or evaluation except as authorized by law.

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**E. Notice Regarding Change in Placement.** Any changes in placement shall be communicated to minor's counsel within three (3) business days.

*[Rule 4.3 adopted effective 1/1/20]*

### **4.4 REQUESTS TO MODIFY JUVENILE COURT CUSTODY ORDERS POST DISMISSAL**

Requests to modify juvenile custody orders within one (1) year of dismissal of the juvenile petition and the issuance of the custodial order shall be assigned to the issuing juvenile judge for hearing to ensure there is a significant change in circumstances to warrant modification of juvenile orders as set forth in W&I Code §302(d). The juvenile judge shall sit as a family judge for purposes of hearing the motions regarding modification of custody and/or visitation. Thereafter, any future litigation relating to the custody, visitation and control of the child shall be heard in Family Court.

*[Rule 4.4 adopted effective 1/1/20]*

### **4.5 JUVENILE DEPENDENCY, JUVENILE DELINQUENCY, FAMILY AND PROBATE COURTS EXCHANGE OF INFORMATION**

This rule addresses the exchange of information between Family Court Services (FCS), Juvenile Probation (JP), the Department of Family and Children's Services (DFCS), the Adult Probation Department (APD) and the Probate Court Investigator's staff (PCI). The Court finds that the best interest of children and victims appearing before Juvenile, Family, Criminal and Probate Courts, the public interest of avoiding duplication of effort by the Courts and the investigative and supervisory agencies serving the Juvenile Court or Court-serving agency outweighs the confidentiality interest reflected in Penal Code Section 11167 and 11167.5, W&I Code §§ 827 and 10850, Family Code §1818 and Probate Code §1513, and therefore good cause exists for the following rule:

**A. Sharing of Information.** FCS, PCI, APD, DFCS and JP staff may orally disclose to staff of those entities that are investigating or supervising a child abuse, neglect, or delinquency case the following information:

1. Whether the child, parents, guardians, or caretakers are or have been the subject of a custody, juvenile, criminal or probate investigation, the findings and status of that investigation, the recommendations made or anticipated to be made, the progress while under Court supervision including compliance with Court orders, and a copy of any Court orders in existence with respect to the child, parents, guardians, or caretakers.
2. Any statement made by the child or the child's parents, guardians or caretakers which might bear upon the issue of the child's best interest in the pending case.
3. DFCS and JP may include this information in Court reports and keep such information in their case files.
4. JP, PCI, APD, FCS and DFCS may provide written documents to each other. However, child abuse and neglect reports described by Penal Code § 11167.5 information disclosing the identity of a reporting party, or Court ordered psychological

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evaluations, will not be exchanged between the agencies absent a court order. Copies of exchanged documents are not available to the public without a court order.

**B. Restraining/Protective Orders.** Subject to available resources, the Family, Juvenile and Probate Courts shall examine appropriate available databases for existing restraining or protective orders involving the same restrained and protected parties.

*[Rule 4.5 adopted effective 1/1/20]*

### **4.6 ASSIGNMENT OF FAMILY, PROBATE OR DOMESTIC VIOLENCE MATTERS TO JUVENILE COURT**

In keeping with the idea of unifying information and handling of cases involving children and minors, any pending family law or related probate matter involving a dependent under W&I Code § 300, shall be assigned to the Juvenile Court for handling. Any Requests for Domestic Violence Restraining Orders involving a 300 dependent, a 600 ward, parents or guardians of said dependent/ward shall be assigned to the Juvenile Court for handling. The judges of the Unified Family court are encouraged to discuss problems relating to the coordination of cases involving child abuse allegations.

*[Rule 4.6 adopted effective 1/1/20]*

**4.7 DUAL STATUS** – At this time Marin is not a Dual Status Jurisdiction.

*[Rule 4.7 adopted effective 1/1/20]*

### **4.8 COMPETENCY PROTOCOL**

Juvenile Court will follow local protocol attached as Appendix B. This protocol is consistent with and supplements the requirements of W&I Code § 709 and CRC 5.645. In the event of modifications to W&I Code § 709 and CRC 5.645 the Statute and Rule of Court shall control.

*[Rule 4.8 adopted effective 1/1/20]*

## 5. PROBATE RULES

### 5.1 INTRODUCTION

**A. General.** The Probate Rules for Marin County Superior Court set forth local policies and procedures of the Probate Department. These rules do not attempt to restate or summarize statutory or case law or estate administration in general.

**B. Contact Information.** For current contact information, tentative rulings, and the online probate calendars parties should refer to the court's website at [www.marincourt.org](http://www.marincourt.org).

Clerk of the Probate Court can be contacted by:

Mail: P.O. Box 4988, San Rafael, CA 94913-4988

Email: [probate@marin.courts.ca.gov](mailto:probate@marin.courts.ca.gov)

Phone: (415) 444-7040; press 5; press 4

Probate Court Examiner can be contacted by:

Mail: P.O. Box 4988, San Rafael, CA 94913-4988

Email: [Trudy.Verzosa@marin.courts.ca.gov](mailto:Trudy.Verzosa@marin.courts.ca.gov)

Phone: (415) 444-7315

Probate Court Investigator can be contacted by:

Mail: P.O. Box 4988, San Rafael, CA 94913-4988

Email: [probate@marin.courts.ca.gov](mailto:probate@marin.courts.ca.gov)

Phone: (415) 444-7090

*[Rule 5.1 adopted effective 7/1/19]*

### 5.2 CALENDAR AND PROCEDURAL MATTERS

#### **A. General Guidelines.**

1. *General Probate Matters.* One department of the Superior Court shall be designated by the Presiding Judge of the Superior Court to hear general probate matters. Except as otherwise indicated in these rules, all probate petitions concerning the following are to be calendared for hearing on the Regular Probate Calendar:

- a. Decedent's Estates
- b. Trusts
- c. Conservatorships of the person and of the estate (except for matters involving the Lanterman-Petris-Short Act which shall be calendared on the LPS Calendar).
- d. Guardianships
- e. Special Needs Trusts
- f. Fact of Birth/Death/Marriage

#### **B. Filing, Hearing, and Continuance Procedures.**

1. *Petitions.* All Petitions and supporting documents must be filed with the Probate Clerk at least twenty-one (21) court days prior to the hearing. All referenced exhibits must be properly tabbed for easy reference by the court. A courtesy copy of

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each petition and supporting documents must be submitted upon filing. A hearing date will be assigned by the Probate Clerk at the time of filing.

2. *Opposition Papers.* Unless ordered otherwise, all opposition papers and supplemental documents must be filed at least five (5) court days before the hearing. All referenced exhibits must be properly tabbed for easy reference by the court. A courtesy copy of all opposition papers must be submitted upon filing. Pursuant to Probate Code § 1043, if an interested party appears in court to contest a Petition without submitting written opposition, the court may (in the interests of justice and efficiency) either hear the objections/opposition at the time of the hearing or continue the matter to allow the interested party to file written objections.

3. *Sanctions for Failing to Timely File.* If a party presents a document/documents to the Probate Clerk for filing that is untimely, the Probate Clerk will accept the documents and place a stamp on the document stating "LATE FILING." At the Court's discretion, a late filing may result in:

- a. The Court's refusal to consider the late filed documents.
- b. A continuance of the hearing.
- c. A sanction of \$99 per day for each day that the filing is late (see Code of Civil Procedure § 177.5).

4. *Procedure for Obtaining a Continuance.* Continuance requests in advance of hearing:

- a. For matters not yet scheduled for an evidentiary hearing/trial, stipulated continuances will be allowed a maximum of two (2) times and not for more than a total of six (6) months. Thereafter, a court appearance is required to request a further continuance. After two continuances have been granted, the party requesting a further continuance shall be required to show good cause to continue the matter further. All stipulated continuance requests must be filed at least three (3) court days prior to the scheduled hearing date.
- b. Matters scheduled for evidentiary hearing/trial cannot be continued by stipulation. Any continuance requests for matters scheduled for evidentiary hearing/trial must be filed at least ten (10) court days prior to the scheduled hearing date. The Probate Examiner will provide a court date and time for the continuance request to be heard by the Probate Judge. All parties must appear.

### **C. Submission of Proposed Orders and Other Pleadings Before Hearing Date.**

1. *Orders.* Proposed orders shall be submitted to the Probate Clerk at the time of filing the petition. If a self-addressed, pre-paid envelope is provided when the order is submitted, the clerk will return a file endorsed copy by mail. If a conformed copy is desired, additional copies must be submitted. 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 postage or the envelope provided is insufficient to mail the entire conformed copy, only the face copy of the pleading will

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be mailed and the conformed copy will be placed in the Will Call cabinet for a maximum of sixty (60) days.

### **D. Hearings and Tentative Rulings.**

1. *Tentative Rulings.* At 12:00 p.m., on the court day preceding each weekly Probate Calendar, the Court will issue a tentative ruling for each matter noticed on such calendar. The tentative ruling may be obtained online on the Court's website at [http://www.marincourt.org/tentative\\_landing.htm](http://www.marincourt.org/tentative_landing.htm).

a. Parties who do not object to the tentative ruling need not appear at the hearing, unless the ruling requires appearances or another party has requested a hearing pursuant to the procedure in subdivision (b) below.

b. Any interested party who wishes to be heard in relation to the tentative ruling must call the Probate Examiner and leave a brief message that includes the name and telephone number of the party calling and the case name and number. The party must also notify the attorneys for all represented parties as well as all unrepresented parties of their intent to appear. Notifications to the Court and all attorneys and unrepresented parties must be completed no later than 4:00 p.m. on the court day immediately preceding the day of the hearing.

c. Absent proper notice to all parties as indicated in (b) above, the tentative rulings shall become the rulings of the Court. Signed orders on approved matters are generally available at the Probate Clerk's office after 2:00 p.m. on the day of the hearing.

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; if no appearance is made, the order will be signed in the form recommended by the judicial officer.

3. *Matters Ordered Off Calendar.* 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.

### **E. Contested Matters.**

1. *Written Objections.* Before the Court will conduct a formal hearing in any contested proceeding, written objections specifying the grounds for such objection or opposition must be filed. If oral objections are made at a hearing, the Court may continue the matter in order to have the objections submitted in writing. (Probate Code § 1043)

2. *Meet and Confer Requirement.* Prior to the setting of a contested evidentiary hearing, a party or his or her respective attorneys shall make a reasonable and good faith attempt to informally resolve the controversy at a face-to-face conference, if possible, otherwise by telephone conference. If resolution is not possible, and an evidentiary hearing is scheduled, then each party shall file a Statement of Issues as provided below.

3. *Statement of Issues or Settlement.* At least five (5) court days before the scheduled hearing, each party shall notify the Probate Examiner either that the

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controversy has been resolved or file and serve a Statement of Issues. Each Statement of Issues must:

- a. indicate that the party or his or her respective attorney has met face-to-face or, if that is not possible, have participated in a telephone conference to discuss the issues in dispute;
- b. identify the substantial issues in the controversy, with references to any supporting evidence and/or legal authority;
- c. include each party's opinion of any barriers to settlement; and
- d. provide an estimate of the time requirement for the hearing or resolution.

4. *Trial Scheduling.* If the hearing on a contested matter is estimated to exceed twenty (20) minutes or a trial is demanded, the matter may be specially set for an extended hearing by the assigned probate Judge.

*[Rule 5.2 adopted effective 7/1/19]*

### 5.3 EX PARTE MATTERS

**A. Presentation of Emergency Probate Applications.** If a party has reason to believe that emergency orders are needed to prevent irreparable harm to person or property, an ex parte application may be filed. The application must be accompanied by a declaration setting forth the facts upon which the petitioner is basing the allegation. The application must be accompanied by a declaration identifying the persons entitled to notice under the applicable sections of the Probate Code, and either an explanation of notice provided or the facts on which the petitioner requests an order dispensing with notice. All persons entitled to notice must be provided notice no later than 10:00 a.m. the court day before the hearing. A proposed order must be submitted with the moving papers.

**B. Contents of Application.** An application for an ex parte order must be verified and must contain sufficient evidentiary facts to justify issuing the order. Conclusions or statements of ultimate facts are not sufficient, and a foundation should be shown for the petitioner's personal knowledge.

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

**D. Notice.** Subject to the following exceptions, notice shall be provided in accordance with the California Rules of Court (CRC) applicable to civil ex parte matters. Notice to the Probate Court Investigator shall be given in all conservatorship and guardianship matters. Due to the pro forma nature of the following matters, no notice or appearance is required for the following:

1. Ex Parte Order to Increase Bond (CRC 7.204 and 7.207)
2. Order Appointing Court Investigator (Government Code § 330)
3. Ex Parte Order Regarding Completion of Capacity Declaration (Government Code § 335)
4. Exceptions stated in CRC 3.1207

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**E. Ex Parte Hearings.** Ex parte applications will be scheduled in the Probate Department. They will be heard at the conclusion of the Judge's previously scheduled cases. The ex parte application filing fee shall be paid in the Probate Clerk's Office prior to the hearing. Except where a Judicial Council form is used, an application for ex parte order must be accompanied by a separate order complete in itself. In order to schedule an ex parte matter, parties are to contact the Probate Examiner to receive a hearing date/time.

*[Rule 5.3 adopted effective 7/1/19]*

### **5.4 SETTLEMENT CONFERENCES**

**A. Mandatory Settlement Conference.** A mandatory settlement conference pursuant to CRC 3.1380 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 plus two (2) copies of a settlement conference statement in the Calendar Department (Room 113) ten (10) court days before the settlement conference so that the statements can be distributed to the settlement panelists. The court will impose sanctions of \$99 per day for statements lodged less than ten (10) 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:

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 date when the last face-to-face settlement discussion was held.

**C. Required Attendance.** Attendance at settlement conferences by all counsel (with settlement authority and complete familiarity 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. Continuances.** Matters scheduled for a settlement conference cannot be continued by stipulation. All continuance requests (whether stipulated to or not) must be filed at least ten (10) court days prior to the scheduled hearing date. Once filed, a date to hear the continuance request will be set by the Probate Examiner after discussion with the Probate Judge. All parties must appear.

**E. Sanctions.** Failure of an attorney and/or party to prepare for, appear, 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 monetary sanctions.

*[Rule 5.4 adopted effective 7/1/19]*

## **SPOUSAL PROPERTY PETITION AND ELECTION**

### **5.5 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 5.5 adopted effective 5/1/98; amended 1/1/04]*

## 5.6 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 5.6 adopted effective 5/1/98; amended 7/1/00]*

## 5.7 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 Probate Code § 13503), the surviving spouse's one-half shall not be included in the basis for statutory compensation.

*[Rule 5.7 adopted effective 5/1/98]*

## **APPOINTMENT OF EXECUTORS AND ADMINISTRATORS: PROOF OF WILLS**

### 5.8 SPECIAL LETTERS OF ADMINISTRATION

The verified petition for a special administrator must be personally presented to the Judge. 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, 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.

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

*[Rule 5.8 adopted effective 1/1/14]*

### **5.9 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 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 \$150,000, the petition must be accompanied by a declaration showing why the estate is being probated, rather than passing by summary proceedings.

*[Rule 5.9 adopted effective 5/1/98; amended 7/1/13]*

### **5.10 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 Notice.** 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.

Publication must take place in one of the newspapers adjudicated for publication in Marin County which are: Ark Newspaper; Marin Independent Journal; Marin Scope (Mill Valley Herald; Novato Advance; Ross Valley Reporter; San Rafael News Pointer; Sausalito Marin Scope; Twin Cities Times); Pacific Sun; The Point Reyes Light.

Publication must conform to law. Currently, the law requires publication fifteen (15) days in advance of the hearing date. Three publications in a newspaper published once a week or more often with at least five (5) 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 5.10 adopted effective 5/1/98; amended 1/1/19]*

**5.11 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 5.11 adopted effective 5/1/98]*

**5.12 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 5.12 adopted effective 5/1/98; amended 1/1/04]*

**5.13 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 interlined 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 5.13 adopted effective 5/1/98]*

## **BOND**

### **5.14 APPLICATION OF BOND SECTION**

These guidelines (MCR Prob 5.15 to 5.19) apply to guardians, conservators and trustees, as well as to personal representatives.

*[Rule 5.14 adopted effective 5/1/98]*

### **5.15 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 5.15 adopted effective 5/1/98; amended 1/1/04]*

### **5.16 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

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named depository and further direct the depository, on receiving such assets, to issue its receipt and agreement to the fiduciary. (Financial Code § 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 5.16 adopted effective 5/1/98]*

### **5.17 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 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 5.17 adopted effective 5/1/98]*

### **5.18 NONRESIDENT EXECUTORS**

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

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

### **5.19 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 5.19 adopted effective 5/1/98]*

## **INVENTORY AND APPRAISAL**

### **5.20 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.

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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 5.20 adopted effective 5/1/98; amended 1/1/04]*

### **5.21 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 5.21 adopted effective 5/1/98]*

### **5.22 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 5.22 adopted effective 5/1/98]*

### **5.23 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 5.23 adopted effective 5/1/98; amended 7/1/10]*

## **CLAIMS**

### **5.24 CLAIMS PROCEDURES**

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

*[Rule 5.24 adopted effective 5/1/98]*

**5.25 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 5.25 adopted effective 5/1/98]*

**SALES OF ESTATE PROPERTY**

**5.26 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 5.26 adopted effective 5/1/98; amended 7/1/08]*

**5.27 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. (Civil Code § 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 5.27 adopted effective 5/1/98; amended 7/1/08]*

## **5.28 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 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 5.28 adopted effective 5/1/98]*

## **5.29 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 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 5.29 adopted effective 5/1/98; amended 7/1/08]*

### **5.30 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.

**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 brokers 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 5.30 adopted effective 5/1/98; amended 7/1/09]*

## **ACCOUNTS**

### **5.31 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 5.31 adopted effective 5/1/98; amended 7/1/10]*

**5.32 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 5.32 adopted effective 5/1/98]*

**5.33 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 5.33 adopted effective 5/1/98]*

**5.34 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 CRC 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 5.34 adopted effective 5/1/98]*

**DISTRIBUTION OF PROBATE ESTATE**

**5.35 NOTICE REQUIREMENTS ON PETITIONS FOR DISTRIBUTION**

**A. Basic Notice Requirements.** Unless the Court has ordered that notice be dispensed with, at least fifteen (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.

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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.
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 5.35 adopted effective 5/1/98]*

### **5.36 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 5.36 adopted effective 5/1/98]*

**5.37 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 5.37 adopted effective 5/1/98]*

**5.38 ADDITIONAL REQUIREMENTS RE: PETITION FOR FINAL DISTRIBUTION**

**A. Allegations Relating to 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 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 Relating to 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 reserve shall generally not exceed 10% of the assets on hand. 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.

*[Rule 5.38 adopted effective 5/1/98; amended 7/1/15]*

### **5.39 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 5.39 adopted effective 5/1/98]*

### **5.40 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 5.40 adopted effective 5/1/98]*

**5.41 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 5.41 adopted effective 5/1/98]*

**5.42 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 5.42 adopted effective 5/1/98]*

**5.43 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 5.43 adopted effective 5/1/98]*

**5.44 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 5.44 adopted effective 5/1/98]*

**5.45 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. (Probate Code § 11603(c))

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

**5.46 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 5.46 adopted effective 5/1/98]*

## **MISCELLANEOUS PETITIONS AND ORDERS**

### **5.47 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 5.47 adopted effective 5/1/98; amended 7/1/08]*

### **5.48 STATUS REPORTS**

The statutory requirements for filing of status reports annually in lieu of accountings are 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 5.48 adopted effective 5/1/98; amended 7/1/15]*

### **5.49 OBTAINING FINAL DISCHARGE**

An Ex Parte Petition for Final Discharge and Order shall include a copy of the Judgment for Final Distribution and a receipt or other satisfactory evidence from each distributee. The receipt of distribution should match the distribution found on the Judgment for Final Distribution. The distribution of any reserve may be included on the primary receipt or may be filed as a separate receipt. 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 5.49 adopted effective 5/1/98; amended 7/1/15]*

## **5.50 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 5.50 adopted effective 5/1/98]*

## **5.51 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 5.51 adopted effective 5/1/98]*

## **5.52 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. Guidelines and the form to be presented to the Clerk (local form PR014) are available in the Clerk's Office and online at [www.marincourt.org](http://www.marincourt.org).

*[Rule 5.52 adopted effective 1/1/14]*

## **GUARDIANSHIPS AND CONSERVATORSHIPS**

### **5.53 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.

**B. Hearings on Temporary Guardianship and Conservatorship Cases.** All temporary guardianship and conservatorship cases will be calendared by the probate clerk three (3) weeks out. If the case is urgent (i.e. irreparable harm to person or property), a party may appear in court on an ex parte application to request an order shortening time for the temporary 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 (7) days after a petition is filed. (Probate Code § 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 "willfully" removes a temporary conservatee from the state without a court order is guilty of a felony. (Probate Code § 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 (2) days before the hearing. The contents of the report must mirror the determinations above. (See Probate Code § 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 5.53 adopted effective 5/1/98; amended 7/1/19]*

#### **5.54 GUARDIANSHIP AND CONSERVATORSHIP ACCOUNTING STATEMENTS**

Original financial accounting, billing and/or escrow statements lodged with the Court shall also be accompanied by a self-addressed envelope of sufficient size and with sufficient postage for the return of the statements after the determination of the account becomes final.

*[Rule 5.54 adopted effective 1/1/19]*

#### **5.55 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.

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 (local form PR007) 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 five (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 and Family 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.

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 Film.* Before Letters of Guardianship are issued, each proposed guardian of the person or estate must sign and file the Duties of Guardian form (Judicial Council Form GC-248). The proposed guardian must also view the guardianship film, available on the Court's website at [www.marincourt.org](http://www.marincourt.org) or shown in Room 116 and file the Declaration of Proposed Guardian's Viewing of Film (Local Form FL033/PR033).

**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.

**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 5.55 adopted effective 5/1/98; amended 7/1/15]*

## **5.56 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 5.56 adopted effective 5/1/98; amended 1/1/10]*

### **5.57 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. 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 5.57 adopted effective 5/1/98]*

### **5.58 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.

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-314).

4. *Handbook For Conservators and Viewing Of Film.* 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 film, available on the Court's website or shown in Room 116 and file the Court's form PR034 entitled "Acknowledgment of Proposed Conservator's Viewing of Film."

**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 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.

**I. General Plan and Determination of Conservatee's Appropriate Level of Care.**

A General Plan for the care, custody and control of the conservatee must be filed within sixty (60) days of appointment of a conservator. The local General Plan form is available in the Clerk's Office or online at [www.marincourt.org](http://www.marincourt.org). The requirement of a General Plan is in addition to the requirement to prepare and file Judicial Council Form GC-355 *Determination of Conservatee's Appropriate Level of Care*.

*[Rule 5.58 adopted effective 5/1/98; amended 7/1/15]*

**5.59 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 5.59 adopted effective 5/1/98]*

**5.60 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. (Probate Code § 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

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

### **5.61 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 ninety (90) days from appointment.

**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). The account shall be filed within sixty (60) days of the conclusion of the accounting period.

**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 (Judicial

Council Form FW-001) requesting deferral of fees and serve a copy of the petition on the investigator.

*[Rule 5.61 adopted effective 5/1/98; amended 7/1/13]*

## **5.62 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 5.62 adopted effective 5/1/98]*

## **5.63 TERMINATION OF CONSERVATORSHIP**

**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 5.63 adopted effective 5/1/98]*

## **5.64 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 Judge 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.

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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.

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 5.64 adopted effective 5/1/98; amended 1/1/14]*

## **TRUSTS**

### **5.65 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 5.65 adopted effective 5/1/98]*

### **5.66 NOTICE REQUIREMENTS CONCERNING TRUSTS**

**A. Notice Generally.** Trust matters brought under sections of the Probate Code applicable to trust (Probate Code §§ 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 5.66 adopted effective 5/1/98]*

### **5.67 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 5.67 adopted effective 7/1/10]*

### **5.68 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 5.68 adopted effective 5/1/98]*

### **5.69 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 5.69 adopted effective 5/1/98]*

### **5.70 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 5.70 adopted effective 5/1/98]*

#### **5.71 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 5.71 adopted effective 5/1/98]*

### **COMPENSATION**

#### **5.72 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).

**C. Expenses of Tax Related Services, Accounting and Bookkeeping.** The personal representative 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.

**D. 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.

#### **E. Reimbursement of Costs.**

1. *Allowed Reimbursements.* Allowable reimbursement costs include:
  - a. Court Clerk's fees;
  - b. Newspaper publication fees;
  - c. Surety bond premium;
  - d. Appraisal fees.
2. *Absorbed as Part of Fee.* The following costs are absorbed as part of the fee:
  - a. Photocopies and postage;

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- b. Secretarial and word processing time;
- c. Paralegal time for ordinary services;
- d. Computer time;
- e. Local telephone calls;
- f. Local travel, mileage and parking.

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

- a. Substitutes for U.S. Postal Service (Federal Express, UPS, etc.);
- b. Long distance telephone;
- c. Long distance travel.

*[Rule 5.72 adopted effective 5/1/98; amended 1/1/14]*

**5.73 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 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.

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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.

**F. 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 5.73 adopted effective 5/1/98; amended 1/1/14]*

### 5.74 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 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 5.74 adopted effective 5/1/98]*

### 5.75 COMPENSATION FOR TRUSTEES AND THEIR ATTORNEYS

**A. Criteria.** All requests for compensation for trustees and their attorneys shall be supported by a declaration that addresses the criteria set forth in *Estate of Nazro* (1971) 15 Cal.App.3d 218 [93 Cal.Rptr. 116] and CRC 7.776. Each request will be considered on its individual merits. The petitioner has the burden to show the fee requested is reasonable and timesheets alone are not sufficient to show this. Local forms, *Attorney Fee Declaration* (PR035) and *Fiduciary Fee Declaration* (PR036), are available in the Clerk's Office or online at [www.marincourt.org](http://www.marincourt.org).

**B. Compensation of Trustees.**

1. *Corporate Trustee - Percentage Guideline.* Where a corporate trustee 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 carry 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 carry value of the corpus attributable to the real property will normally be considered reasonable. Good cause must be shown to depart from the standard fee. [Corporate trustee includes **only** banks and financial institutions. All professional trustees must request fees under other sections of these rules.]

2. *Noncorporate Trustee - Percentage Guidelines Normally Inapplicable.* The noncorporate or individual trustee shall ordinarily be compensated on a quantum meruit basis according to work actually performed under the principles described above. The noncorporate trustee must submit an itemized fee declaration. If the compensation requested is at or above the level of a corporate trustee, 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.

**C. 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.

**D. Attorneys' Compensation.** Attorneys' compensation is allowed according to the work actually performed and must be supported by a declaration under penalty of perjury. The declaration must include the average hourly rate, results accomplished, and benefit to the estate. Fees requested for time billed by a paralegal must be supported by the attorney's declaration regarding the paralegal's compliance with Business & Professions Code § 6450. A local form, *Attorney Fee Declaration* (PR035), is available in the Clerk's Office or online at [www.marincourt.org](http://www.marincourt.org).

The attorney may not charge for making entries on timesheets. The attorney may not charge the estate if required to clarify or explain billing entries to the Court.

*[Rule 5.75 adopted effective 5/1/98; amended 1/1/14]*

**5.76 COMPENSATION TO CONSERVATORS AND GUARDIANS AND THEIR ATTORNEYS**

**A. Criteria.** All requests for compensation shall be supported by a declaration that includes a discussion of the factors in CRC 7.756. Each request will be considered on its individual merits. The petitioner has the burden to show the fee requested is reasonable and timesheets alone are not sufficient to show this. Local forms, *Attorney Fee Declaration* (PR035) and *Fiduciary Fee Declaration* (PR036), are available in the Clerk's Office or online at [www.marincourt.org](http://www.marincourt.org).

**B. Expenses That May Not Be Reimbursed.** Absent extraordinary circumstances, the fee request may not include expenses that are part of overhead such as clerical support, postage, photocopies, local mileage and parking, local telephone calls, or facsimile transmissions.

**C. Professional Licensed Fiduciary.** Professional fiduciaries must submit requests for compensation in a manner that allows the Court to evaluate whether the fee requested is reasonable. The fiduciary must distinguish “routine, non-professional services” from those that require professional skill, experience, risk and responsibility. “Routine, non-professional services” rendered by the fiduciary and his or her staff include filing, opening mail, paying routine bills, picking up medications, banking, shopping and accompanying conservatees to routine, non-medical appointments.

Professional fiduciaries must disclose whether their fee request includes travel time.

The fiduciary may not charge the estate for making entries on timesheets. The fiduciary may not charge the estate if required to clarify or explain billing entries to the Court.

**D. Corporate Conservator/Guardian – Percentage Guideline.** Where a corporate conservator or guardian actively managing an income-producing estate asset seeks fees premised upon a fee schedule, the fiduciary must submit for court approval a declaration that sets forth the institution’s published fee schedule at the close of the accounting period, the compensation paid to the fiduciary, and the dates of such payment. The fair market value of the principal of the trust shall be the basis used to determine the fee request. [Corporate conservator or guardian includes **only** banks and financial institutions. All professional conservators and guardians and other conservators and guardians must request fees as outlined in rule 5.86.]

**E. Non-Professional Conservators/Guardians.** Non-professional conservators and guardians must provide the basis for calculating the hourly rate requested. If the hourly rate is based on their employment and similar experience they must clarify whether their duties required them to take time away from work or how their skills benefited the conservatee.

If a non-professional conservator or guardian employs someone to assist with their duties, such employment and the fee arrangement must be disclosed.

**F. Attorneys’ Compensation.** Attorneys’ compensation is allowed according to the work actually performed and must be supported by a declaration under penalty of perjury. The declaration must include the average hourly rate, results accomplished, and benefit to the conservatee or child under guardianship. Fees requested for time billed by a paralegal must be supported by the attorney’s declaration regarding the paralegal’s compliance with Business & Professions Code § 6450. A local form, *Attorney Fee Declaration* (PR035), is available in the Clerk’s Office or online at [www.marincourt.org](http://www.marincourt.org).

The attorney may not charge the estate for making entries on timesheets. The attorney may not charge the estate if required to clarify or explain billing entries to the Court.

**G. Compensation of Conservator or Conservator’s Attorney From Trust or Other Source.** When a conservator is petitioning for fees, any compensation received or available from any collateral source, including a trust, must be disclosed.

*[Rule 5.76 adopted effective 1/1/17]*

**5.77 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." Compensation should be requested for work performed and costs incurred during the period of the accounting.

**B. 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.

**C. 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:

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.

*[Rule 5.77 adopted effective 1/1/14; amended 1/1/17]*

**LANTERMAN-PETRIS-SHORT (LPS) CONSERVATORSHIPS**

**5.78 NOTICE OF EX PARTE APPLICATION FOR TEMPORARY CONSERVATORSHIP**

Unless the Court for good cause otherwise orders, not less than five (5) days before the appointment of a temporary conservator, the Public Guardian shall personally serve notice of the proposed ex parte application for appointment on the Public Defender.

*[Rule 5.78 adopted effective 1/1/13]*

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## **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). For the purposes of these rules, "parties" means actual parties, counsel for parties and self-represented litigants.

*[Rule 6.1 adopted effective 5/1/98; amended 7/1/15]*

#### **6.2 APPLICATION OF RULES**

These rules are intended to supplement California law and Rules of Court, and to cover family law programs specific to Marin County. In the event of any inconsistency between these rules and any California statute or any of the rules in the California Rules of Court, the statewide statute and/or rule shall control.

Family Law matters include all matters governed by 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 1/1/20]*

#### **6.3 ASSIGNMENT TO JUDICIAL OFFICER**

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 a Family Law Judge. In the absence of the assigned judge, the case is temporarily reassigned by the Presiding Judge to the other judge hearing such family law cases. If a disqualification pursuant to Code of Civil Procedure § 170 et seq. is filed, the case may be temporarily reassigned by the Presiding Judge until the issue of disqualification is resolved. Matters in which DCSS appears will be assigned to the Child Support Commissioner for all appearances concerning child support so long as DCSS is appearing. Assignment of matters will be made at the time the petition or initial pleading or motion to modify is filed.

*[Rule 6.3 adopted effective 5/1/98; amended 1/1/20]*

#### **6.4 CONFORMED COPIES OF FILINGS**

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 Court 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) calendar days. If the envelope provided or the postage is insufficient to mail the conformed copy, it will be placed in the Will Call cabinet for a maximum of sixty (60) calendar days.

*[Rule 6.4 adopted effective 5/1/98; amended 7/1/15]*

## 6.5 FAMILY CENTERED CASE RESOLUTION

**A. Policy and Effective Date.** It is the Court's policy 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 (except summary 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 Case Assignment and First Case Progress Conference;
2. Petitioner's Guide and Resource List (Local Form FL061);
3. Respondent's Guide and Resource List (Local Form FL060).

**C. 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;
5. Respondent's Guide and Resource List.

### **D. 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. Effect of submission of judgment packet on pending Case Progress Conference. A pending Case Progress Conference shall be dropped from the calendar if a judgment resolving all issues has been submitted before the date of the Case Progress Conference. The Court may set a subsequent Case Progress Conference, with notice to the parties, if the judgment contains deficiencies or defects.

3. *Service of Case Progress Questionnaire.* Each party must file and serve a Case Progress Conference Questionnaire at least five (5) court days prior to each Case Progress Conference. The Case Progress Conference Questionnaire is a local form (FL003) available in the Clerk's Office, at Legal Self Help Services, or online at [www.marincourt.org](http://www.marincourt.org).

4. *Continuances of Case Progress Conference.* The Court allows the parties one stipulated continuance of the first Case Progress Conference up to 150 days at no charge. Prior to the court date, the parties shall file a Stipulation & Order to Continue Case Progress Conference, which is a local form (FL007) available in the Clerk's

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Office, at Legal Self Help Services, or online at [www.marincourt.org](http://www.marincourt.org). The Court will require parties to pay the applicable filing fees for any further stipulations to continue Case Progress Conferences.

5. *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 Family Code § 2104, and discuss discovery plans, settlement options, alternative dispute resolution, and unresolved issues. The Court may make orders as authorized by Family Code §§ 2450 and 2451.

6. *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. (Code of Civil Procedure § 575.2(a).)

*[Rule 6.5 adopted effective 1/1/06; amended 1/1/20]*

### **6.6 EX PARTE MATTERS AND ORDERS**

**A. Ex Parte Applications.** All ex parte applications shall be made to the assigned judicial officer unless that judicial officer is unavailable. All applications for ex parte relief will be heard in the assigned family law department at that department's calendar start time, Monday through Friday. Ex parte matters involving the Department of Child Support Services (DCSS) will be heard at the beginning of the regularly scheduled DCSS calendar. The ex parte procedure shall be used only in emergencies. At the time of the hearing parties should be prepared to make a showing justifying their emergency to proceed ex parte.

The ex parte application filing fee shall be paid in the Clerk's Office prior to the hearing in a department.

**B. Conditions for Issuance of Ex Parte Orders.** Before submitting ex parte applications, parties shall comply where applicable with, Family Code §§ 2045, 3060-3064, and CRC 5.151 et seq., 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, complete and file Judicial Council form FL-303, which is available at Legal Self Help Services or online at [www.courts.ca.gov](http://www.courts.ca.gov). 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. Orders Shortening Time.** If an order shortening time for the hearing and/or service is requested, the supporting declaration shall state whether the responding party has been contacted and has agreed to the date and time proposed for the hearing and/or service. If the responding party has not been contacted or has not agreed to the proposed setting, the supporting declaration shall clearly demonstrate why the hearing and/or service should be set on the proposed date without the consent of the responding party. Provision for immediate delivery of the pleading to responding party 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 6.6 adopted effective 5/1/98; amended 1/1/20]*

**6.7 SPECIAL PROCEDURES FOR RESTRAINING ORDERS AND INJUNCTIVE RELIEF PERTAINING TO DOMESTIC VIOLENCE (FAMILY CODE §§ 6200-6389)**

Applicants for protective orders under Family Code § 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. There is no filing fee for domestic violence restraining orders.

A party 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 or at Legal Self Help Services. The Clerk's Office and Legal Self Help Services also have instruction pamphlets and referrals to agencies that may assist with filling out the forms.

An applicant for a domestic violence restraining order must submit a Request for Order (DV-100), Temporary Restraining Order (DV-110), Notice of Court Hearing (DV-109), , and blank Restraining Order After Hearing (DV-130) and give it to the clerk in room 113 before 10:30 a.m., Monday through Friday. (An applicant may need additional forms if he or she has children with the proposed restrained party or seeks an order to transfer a wireless telephone account.) The clerk will give the completed forms to a judge to review. The applicant may pick up the temporary restraining order documents at the Clerk's Office after 2:00 p.m. The clerk will set a date for the hearing.

If the applicant for a domestic violence restraining order seeks to modify an existing order regarding custody and/or visitation, in the supporting declaration the applicant should explain why *ex parte* notice of the request was not given to the proposed restrained party.

*[Rule 6.7 adopted effective 5/1/98; amended 1/1/20]*

**LAW AND MOTION AND REQUEST FOR ORDER PROCEEDINGS**

**6.8 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 or Request for Order proceedings. 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, in compliance with CRC 3.110(f).

**B. Discovery Motions.** All motions or requests for order pursuant to The Civil Discovery Act (Code of Civil Procedure §§ 2016.010-2036.050) presented for filing must state "Discovery Motion" on the caption page.

**C. Discovery Exhibits.** A party relying on discovery materials 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 included. The original page numbers of the deposition must be clearly visible, and the material portions of the deposition testimony shall be highlighted.

**D. 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).

**E. Attachment of Previously Filed Documents.** Parties are strongly discouraged from attaching previously filed documents to a pleading, pending motion or request for order. If a litigant wants to ensure that the court was able to locate a previously filed document, that person may deliver a courtesy copy of that document to the judge hearing the matter.

**F. Address Verification in Post-Judgment Proceedings.** In all post-judgment proceedings, parties must submit an Address Verification Declaration for Post-Judgment Request for Order. The Address Verification Declaration to be used for matters other than those related to minor children is a Local Form (FL070) available in the Clerk's Office, at Legal Self Help Services, or online at [www.marincourt.org](http://www.marincourt.org).

*[Rule 6.8 adopted effective 5/1/98; amended 1/1/20]*

## **6.9 HEARING DATES**

The Clerk's Office will assign all motion and request for order hearing dates at the time the motion or request for order is filed unless otherwise ordered by the Court. Parties cannot reserve dates or obtain them over the telephone.

*[Rule 6.9 adopted effective 7/1/14; amended 7/1/15]*

## **6.10 CONTINUANCES**

After service, three continuances, by agreement, may be obtained by telephoning the Clerk's Office at (415) 444-7040 no later than 4:00 p.m., three (3) 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 (3) 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 6.10 adopted effective 5/1/98; amended 7/1/15]*

## **6.11 REMOVING MATTERS FROM CALENDAR**

A matter with opposition on file may be taken off calendar only by agreement. An unopposed matter may be taken off calendar unilaterally by the moving party. The parties, their attorneys, or their authorized representatives 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 6.11 adopted effective 5/1/98; amended 7/1/15]*

## **6.12 HEARINGS**

**A. Tentative Rulings.** Marin County utilizes a tentative ruling system pursuant to CRC 3.1308 for family law cases set for hearing on the Law and Motion and Request for Order Calendar. The moving party in any family law matter shall attach to any Order to Show Cause or Request for Order the Notice to Parties in Family Law Matters, a Local Form (FL008) available in the Clerk's Office, at Legal Self Help Services, or online at

[www.marincourt.org](http://www.marincourt.org), concerning the availability of tentative rulings by telephone. The moving party's proof of service shall indicate that this notice 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.

**B. Obtaining Tentative Rulings.** Parties may obtain tentative rulings online ([http://www.marincourt.org/tentative\\_landing.htm](http://www.marincourt.org/tentative_landing.htm)) or by calling (415) 444-7260 from 2:00 to 4:00 p.m. on the court day preceding the scheduled hearing. Family law cases that are designated as confidential by California law will not be posted online. Tentative rulings in those matters may be obtained by telephone from the judicial secretary at (415) 444-7260. Confidential cases include matters involving unmarried parents.

**C. Oral Argument.** If a party wants to present oral argument, the party must contact the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. the court day preceding the scheduled hearing. Notice may be by telephone or in person to all other parties that argument is being requested (i.e. it is not necessary to speak with counsel or parties directly.) Unless the Court and all parties have been notified of a request to present oral argument, no oral argument will be permitted except by order of the Court. If oral argument is not requested, the tentative ruling shall become the order of the Court.

**D. Length of Hearings.** Non-evidentiary hearings on the Law and Motion and Request for Order Calendar are limited to a maximum of 20 minutes.

*[Rule 6.12 adopted effective 5/1/98; amended 1/1/20]*

### **6.13 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, attorney's 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.
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, attorney's fees, or Family Code §271 sanctions are 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:

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.

The Family Law Facilitator is available to assist self-represented parties in preparing child and/or spousal support calculations.

*[Rule 6.13 adopted effective 5/1/98; amended 1/1/20]*

## **6.14 CHILD AND SPOUSAL SUPPORT PROCEEDINGS**

**A. Computer Software Use.** All family law departments except DCSS use the Dissomaster program to calculate guideline child support and temporary spousal support. DCSS uses the California Guideline Child Support Calculator.

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**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 may 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.

5. Summer = Ten (10) weeks = Seventy (70) days.

6. Holidays:

a. Christmas school vacation = Fourteen (14) days.

b. Thanksgiving = Seven (7) days.

c. **Mid-Winter**, Spring or Easter break = Seven (7) days.

d. Other holidays: Normally includes Martin Luther King, Jr. Day, President's Day, Memorial Day, Mother's Day, Father's Day, Independence Day, Labor Day, Veteran's Day. Each equals one (1) day.

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.

*[Rule 6.14 adopted effective 5/1/98; amended 1/1/20]*

## **DISCOVERY MATTERS**

### **6.15 GENERAL DISCOVERY PROVISIONS**

**A. Policy Regarding One Deposition Rule.** The Court construes the one deposition rule of Code of Civil Procedure § 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. Parties 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 6.15 adopted effective 5/1/98; amended 7/1/15]*

### **6.16 DISCOVERY FACILITATOR PROGRAM**

**A. Participation in the Discovery Facilitator Program.** Parties to a dispute regarding discovery in a family law case may participate in the Program by stipulation or may be referred to the Program by order of the Court.

1. *Before the Filing of a Discovery Motion.* The parties may request referral to the Program, before the filing of a discovery motion, by submitting a stipulation for such a referral to the ADR Coordinator. The filing of such stipulation will toll the time for filing a motion to compel discovery of the disputed issues until notice of resolution of the discovery dispute is filed with the Court.

2. *Upon the Filing of a Discovery Motion.* Upon the filing of any Request for Order (RFO) or Motion to Compel Discovery, the RFO or Motion will be immediately referred to the Discovery Facilitator Program.

**B. Discovery Motions.** All discovery motions shall be clearly labeled as such in the caption of the pleading.

**C. Discovery Facilitator Panel.** A list of qualified Discovery Facilitators shall be maintained in the Court. Each panelist on the list must be an active member of the State Bar licensed for at least 10 years or a retired judge.

**D. Selection of a Discovery Facilitator.** The Discovery Facilitator shall be selected as follows:

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1. The ADR Coordinator shall select, at random, a number of names from the panel of qualified Discovery Facilitators equal to the number of sides plus one, and shall prepare a list of the names of the randomly selected Discovery Facilitators.

2. Upon agreement on the selection of a Discovery Facilitator the ADR Coordinator shall be notified of such agreement within ten (10) calendar days following the date of the stipulation or order. If the parties cannot agree on a Facilitator, then within such 10 calendar day period, each side shall submit a written rejection to the ADR Coordinator identifying no more than one name on the list of potential Facilitators that is not accepted.

3. Promptly on the expiration of the 10 calendar day period, the ADR Coordinator shall appoint one of the persons on the list who was either agreed upon or whose name was not rejected to serve as Discovery Facilitator.

4. The ADR Coordinator shall promptly assign the case to the Discovery Facilitator and shall serve the “Notice of Appointment of Discovery Facilitator” on all parties and on the Discovery Facilitator. Upon receipt of the “Notice of Appointment of Discovery Facilitator,” the parties shall promptly deliver to the Discovery Facilitator copies of such pleadings and discovery as is necessary to facilitate resolution of the dispute.

**E. Facilitator Process.** The Discovery Facilitator shall establish the procedures in each case to be utilized by the parties, through telephone conferences, exchange(s) of letters or emails and/or in-person conferences, for discussion and attempted resolution of the discovery dispute.

**F. Compensation.** Beginning from the time the Discovery Facilitator receives notice from the parties or the Court of his or her appointment, the Discovery Facilitator shall devote up to two (2) hours, without charge to any of the parties, in an attempt to facilitate resolution of the discovery dispute. In the event a resolution cannot be achieved within that period of time, the parties may agree to continue to confer with the Discovery Facilitator provided that agreement is reached between and among the parties and the Discovery Facilitator as to compensation of the Discovery Facilitator.

**G. Resolution.** If a discovery motion or request for order is pending and resolution of the discovery dispute is achieved, no later than five (5) calendar days before the scheduled law and motion hearing date the motion shall be withdrawn by the moving party and dropped from calendar.

**H. Declaration of Non-Resolution.** If a pending motion or request for order is not resolved with the assistance of the Discovery Facilitator, each party shall file and serve five (5) court days prior to the hearing a pleading entitled “Declaration of Non-Resolution” no longer than three pages briefly summarizing the remaining disputed issues and each party’s contentions. The caption of the Declaration of Non-Resolution shall include the name of the motion and the date of the hearing. If the Declaration of Non-Resolution is not filed prior to the hearing date, the Court will presume the discovery issues are resolved and drop the hearing from calendar.

*[Rule 6.16 adopted effective 7/1/15; amended 7/1/17]*

## **CHILD CUSTODY/VISITATION**

### **6.17 PROCEDURES**

**A. Initial Child Custody Recommending Counseling.** Any Request for Order will be 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. Both Parents will receive a certified letter, with return receipt requested, advising them of the date, time and location of their appointment. If a parent prefers to receive the appointment letter via email or regular first class mail, they may fill out and deliver Local Form FL079 to Family Court Services.

**B. Existence of Criminal Protective Order.** When issuing child custody or visitation orders, the family court will make reasonable efforts to determine whether there exists a criminal protective order and/or domestic violence restraining order that involves any party to the action.

**C. Documents Provided to the CCR Counselor.** Parties shall not submit original documents (e.g. school records, medical records, etc.) to the CCR Counselor. If parties wish to provide documents to the CCR Counselor to be considered in the CCR Counselor's report and recommendations to the Court, the parties shall provide copies of these documents to the CCR Counselor. The CCR Counselor will not return any such documents to the parties following submittal of the report and recommendations or at any later time. Any documents provided to the CCR Counselor must also be provided to the opposing party at the time they are submitted to the CCR Counselor.

**D. Contact With Family Court Services.** Ex parte communication in child custody proceedings is governed by Family Code § 216 and CRC 5.235. Parties who submit written communications to Family Court Services regarding issues raised in the Request for Order must provide a copy to the other party at the same time it is provided to Family Court Services.

**E. Statement of Agreement/Disagreement with FCS Recommendations.** Both parties may file and serve a Statement of Agreement/Disagreement with Family Court Services Recommendations (FL027), which is a Local Form available in the Clerk's Office, at Legal Self Help Services, or online at [www.marincourt.org](http://www.marincourt.org), at any time before the custody/visitation hearing.

**F. Settlement Conferences.** Upon the request of either party, 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 Evidence Code § 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 Family Code § 3025.5.

**G. Required Local Forms.** The moving party requesting an initial custody/visitation order or a modification to a custody/visitation order shall attach to any Request for Order, the "Family Court Services Child Custody Recommending Counseling Program" form, (Local Form FL005) which is available in the Clerk's Office, Legal Self Help Services, or online at [www.marincourt.org](http://www.marincourt.org). The moving party's proof of service shall indicate that this notice has been served. Petitioners and Respondents with minor children who are referred to Family Court Services for custody and visitation matters shall submit a fully completed FCS Intake Sheet to the Court. The Family Court Services Intake Sheet (FL016) is a Local Form available in the Clerk's Office, at Legal Self Help Services, or online at [www.marincourt.org](http://www.marincourt.org).

**H. 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. Within the guidelines and provisions of Family Code § 3042 and CRC 5.250, 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. Children 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.

**I. 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 case and shall resume CCR counseling upon being notified by CFS of the conclusion of the investigation.

**J. CCR Counselor Recommendations and Testimony.** Marin County is a recommending County. (See Family Code § 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 ten (10) days prior to the appearance date with fees deposited as required by Government Code § 68097.2.

**K. 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 in writing with the manager of Family Court Services, who will make a record of the complaint.
2. The manager will conduct an investigation of the matter including consultation with the CCR counselor. Within fifteen (15) days, the manager will determine whether 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 manager and the complainant will be informed promptly in writing.

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3. The complainant may appeal the manager's action by noticed motion to the Judge of the Unified Family Court to whom the case is assigned for all purposes. The Judge will rule on the complaint within fifteen (15) days of the date of the hearing.

*[Rule 6.17 adopted effective 5/1/98; amended 1/1/20]*

### **6.18 COUNSEL FOR CHILD**

**A. Appointment of Attorney for Child.** Appointment of counsel for a child will be in compliance with Family Code § 3150 and CRC 5.242; any such attorney is required to complete Judicial Council Form FL-322 and submit it to the Court within ten (10) days after being appointed and before the commencement of work on the case.

**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 Judge to whom this case is assigned for all purposes. The Judge shall respond to the complaint, either by setting the matter for hearing or by issuing a written response.

*[Rule 6.18 adopted effective 5/1/98; amended 1/1/20]*

### **6.19 CHILD CUSTODY EVALUATIONS**

**A. Child Custody Evaluators.** This rule is adopted to implement CRC 5.220(d)(1).

**B. Appointment.** Appointment of a private child custody evaluator shall be in compliance with CRC 5.225 on Judicial Council Form FL-327; any such evaluator is required to submit Form FL-327 to the Court Executive Officer within ten (10) days of his/her appointment, as required by CRC 5.225(1)(a)(B).

**C. 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.

**D. 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.

**E. 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.

**F. 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

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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. The evaluator's report shall not be furnished to any third parties without a written stipulation signed by both parties and minor's counsel, or court order.

**G. 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).)

**H. 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, 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.

**I. 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 to whom the case is assigned for all purposes within twenty (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 ten (10) days after the complaint was provided to the evaluator, the other party, and the Court.
4. Within ten (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 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.

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**J. Fees.** The Court will determine and allocate between the parties any fees or costs of the evaluation.

**K. Evaluator Domestic Violence Training.** All evaluators appointed by the court must comply with CRC 5.230(f) by attaching to their reports certificates of completion of the initial twelve (12) hours of advanced instruction and of the most recent annual four (4) hour update training in domestic violence.

**L. 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.

*[Rule 6.19 adopted effective 5/1/98; amended 1/1/20]*

### **6.20 SUPERVISED VISITATION**

The court maintains a list of professional visitation supervisors who have certified their qualifications per Family Code § 3200.5. That list may be obtained from Court Administration.

*[Rule 6.20 adopted effective 7/1/09; amended 1/1/14]*

### **6.21 PARENTING COORDINATOR**

In cases in which a Court-ordered parenting plan is in place, the parties may stipulate to the appointment of a Parenting Coordinator. A Parenting Coordinator may only be appointed by agreement of both parties and the proposed Parenting Coordinator. The parties are encouraged to use the Stipulation and Order Re: Appointment of Parenting Coordinator (Local Form FL041, available in the Clerk's Office, at Legal Self Help Services, or online at [www.marincourt.org](http://www.marincourt.org)) in connection with the appointment of a Parenting Coordinator. Any modifications to the provisions of this Local Form must be agreed upon in writing by the parties and the Parenting Coordinator, and approved by the Court.

*[Rule 6.21 adopted effective 1/1/15; amended 7/1/15]*

## **TRIAL SETTING/READINESS AND BENCH/BAR SETTLEMENT CONFERENCES**

### **6.22 TRIAL READINESS CONFERENCE**

**A. At-Issue Memorandum.** Neither party shall file an At-Issue Memorandum until both parties have served a preliminary declaration of disclosure, or pursued available remedies, as set forth in Family Code §§ 2103 and 2104, and the respondent has filed a response to the petition. The At-Issue Memorandum is a Local Form (FL018) available in the Clerk's Office, at Legal Self Help Services, or online at [www.marincourt.org](http://www.marincourt.org).

**B. Mandatory Trial Readiness Conference.** Upon the filing of an At Issue Memorandum, 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 adequate time to prepare before a Bench/Bar Settlement Conference is set. Except by stipulation of the parties, no case shall be set for a Bench/Bar Settlement Conference without first having had a Mandatory Trial Readiness Conference.

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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 serve and file with the Court a Trial Readiness Conference Statement no later than five (5) court days prior to the Conference. The Trial Readiness Conference Statement is a Local Form (FL064) available in the Clerk's Office, at Legal Self Help Services, or online at [www.marincourt.org](http://www.marincourt.org).

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.

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 6.22 adopted effective 5/1/98; amended 1/1/20]*

### **6.23 SETTLEMENT CONFERENCE AND TRIAL SETTING**

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 ("BBSC") shall be set.

**A. Panel.** The BBSC shall be conducted by a panel to be appointed by the Court.

**B. Attendance.** Each party and the trial counsel for each party shall personally attend the BBSC. Counsel and parties are expected to be available for the entire day or until excused by the BBSC Panel. Written approval from the Court must be obtained in advance by any party or counsel requesting to appear telephonically, and such permission will not be given except in extraordinary circumstances.

**C. Trial Setting Conference.** If the parties do not reach a settlement and place it on the record at the BBSC, they will be ordered to appear in court the next day for trial setting. The parties are reminded that under Family Code § 2105 they are required to file proof of service of their final declarations of disclosure forty-five (45) days before the date first set for trial.

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

*[Rule 6.23 adopted effective 5/1/98; amended 7/1/15]*

### **6.24 BENCH/BAR SETTLEMENT CONFERENCE STATEMENT GENERALLY**

**A. Issues and Contentions.** Each party shall serve and file a BBSC Statement, which shall set forth the issues and all contentions and positions to be raised at trial by that party. The BBSC Statement shall be filed, not lodged.

**B. Filing.** At least fifteen (15) court days before the BBSC, the court's ADR coordinator will notify the attorneys or self-represented parties, as the case may be, of the name and mailing address of the assigned Judge Pro Tem and the two BBSC panelists who will serve at that day's BBSC.

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The parties/counsel shall personally deliver or mail their BBSC statements to the Judge Pro Tem and to the two panelists no later than ten (10) court days before the BBSC. Parties may transmit the BBSC statement electronically only after obtaining consent by the Judge Pro Tem and individual panelists to do so.

If neither party submits timely BBSC Statements, the BBSC will be taken off calendar; in that case, the parties are ordered to appear in the assigned department's morning calendar the day after the BBSC was scheduled. At that time, the court will consider a monetary sanction against either or both parties for their failure to comply with BBSC procedures.

If one party submits his/her BBSC statement late, the case will not be removed from the BBSC calendar, but the court may sanction the party who fails timely to submit a BBSC statement in the sum of \$99 per day payable to the court.

**C. Updated Preliminary Declarations of Disclosure.** At the time of filing the BBSC 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 6.24 adopted effective 5/1/98; amended 1/1/20]*

**6.25 FORM AND CONTENTS OF BENCH/BAR SETTLEMENT CONFERENCE STATEMENT**

**A. Form.** The Statement shall be entitled "Bench/Bar Settlement Conference Statement." Self-represented parties may obtain a sample BBSC Statement at Legal Self Help Services.

**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:

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, a general statement concerning the marital standard of living, and any pendente lite or temporary orders. 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

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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 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 BBSC 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 may be attached if they were filed within three (3) months of the filing of the BBSC Statement and 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 BBSC 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. *Public Assistance Status.* If applicable, set forth that the family is receiving public assistance, the amount, and how long public assistance has been paid for the

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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 BBSC, 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 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 6.25 adopted effective 5/1/98; amended 1/1/20]*

### **JUDGMENTS**

#### **6.26 DEFAULT OR UNCONTESTED JUDGMENT BY AFFIDAVIT OR DECLARATION**

To obtain a Judgment by Declaration (non-appearance) pursuant to Family Code § 2336, the judgment packet submitted to the Clerk's Office must include:

1. Family Law Judgment Checklist (Local Form FL015).
2. Declaration for Default or Uncontested Dissolution or Legal Separation (Judicial Council Form FL-170).
3. Request to Enter Default (Judicial Council Form FL-165) with a copy and a stamped envelope for Respondent, or Appearance, Stipulations and Waivers (Judicial Council Form FL-130) as appropriate.
4. Judgment (Judicial Council Form FL-180) with any attachments: original and three (3) copies.
5. Notice of Entry of Judgment (Judicial Council Form FL-190): original and two (2) copies with two (2) envelopes addressed to the parties (or the attorneys of record) of sufficient size and with proper postage for the return of a copy of the Judgment and any attachments. The return address should be that of the Court Clerk.

*[Rule 6.26 adopted effective 5/1/98; amended 1/1/13]*

#### **6.27 DEFAULT OR UNCONTESTED JUDGMENTS GENERALLY**

**A. Support and/or Fee 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

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order, including a fully completed and executed Income and Expense Declaration (with information on both parties where available).

**B. 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 health insurance pursuant to Family Code §§ 3750-3753.

**C. 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. A marriage of 10 years or longer is presumptively a long-term marriage. In such cases, absent a written agreement to the contrary, the Court will reserve jurisdiction to award spousal support to both parties.

**D. Child Custody and Visitation.** All judgments must contain provision for legal and physical custody. 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.

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.

**E. 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.

*[Rule 6.27 adopted effective 5/1/98; amended 1/1/20]*

**6.28 DEFAULT JUDGMENT WITH WRITTEN AGREEMENT OF THE PARTIES**

Marin County permits the entry of a default judgment with a written settlement agreement attached. Respondent's signature on the agreement must be notarized. In all other respects, the judgment will be reviewed as if Respondent had made a formal appearance. Specifically, both parties must comply with the financial disclosure provisions of Family Code § 2100 et seq.

*[Rule 6.28 adopted effective 1/1/13]*

**FAMILY LAW FACILITATOR**

**6.29 GENERAL**

The Office of the Family Law Facilitator is located at the Court's Legal Self Help Center. The Facilitators' office hours and location are available on the court's website.

A Family Law Facilitator is an attorney, who 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 parties simultaneously to mediate financial issues along with custody issues.

Pursuant to Family Code § 10005, the Facilitator's duties may also include:

1. Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, subject to Section 10012. Actions in which one or both of the parties are unrepresented by counsel shall have priority.
2. Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in Section 10003.
3. If the parties are unable to resolve issues with the assistance of the Family Law Facilitator prior to or at the hearing, and at the request of the court, the Family Law Facilitator shall review the paperwork, examine documents, prepare support schedules, and advise the Judge whether or not the matter is ready to proceed.
4. Assisting the clerk in maintaining records.
5. Preparing formal orders consistent with the court's announced order in cases where both parties are unrepresented.
6. Providing the services specified in Section 10004 concerning the issues of child custody and visitation as they relate to calculating child support, if finding is provided for that purpose.

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If staff and other resources are available and the duties listed in subsections 1-6 above have been accomplished, the duties of the Family Law Facilitator may also include the following:

7. Assisting the court with research and any other responsibilities that will enable the court to be responsive to the litigants' needs.

8. Developing programs for bar and community outreach through day and evening programs, video recordings, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to family court.

*[Rule 6.29 adopted effective 7/1/99; amended 1/1/20]*

### **6.30 PROTOCOL FOR DISQUALIFICATIONS**

If a facilitator deems himself or herself disqualified or biased, or if the customer declares a concern about bias on the part of a facilitator, then the facilitator or Managing Attorney shall make arrangements for the customer to receive assistance from another qualified individual. Initially, a referral to the staff attorney of the Legal Self Help Services will be made. If a staff attorney is unable, for any reason, to render assistance, the Managing Attorney will refer the customer to a facilitator from another nearby court. All referrals shall be in writing and forwarded to the Court Executive Officer immediately. In addition, a log of such referrals shall be kept by the Managing Attorney and shall be made available for inspection upon request. [CRC 5.430(f)]

*[Rule 6.30 adopted effective 1/1/20]*

### **6.31 GRIEVANCE PROCEDURE**

The procedure for processing a complaint concerning the Family Law Facilitator's Office or Legal Self-Help Services shall be as follows:

1. The complainant must submit the complaint in writing to the Managing Attorney, who will make a record of the complaint.

2. The Managing Attorney will conduct an investigation. Within fifteen (15) court days, the Managing Attorney will inform the complainant in writing of his/her findings and whether any action was taken.

*[Rule 6.31 adopted effective 1/1/17]*

## **MISCELLANEOUS FAMILY LAW RULES**

### **6.32 DOCUMENTS NOT FILED OR ADMITTED AT HEARING OR TRIAL**

Documents not filed or admitted at a hearing or trial and left at the courthouse will be discarded immediately following the hearing or trial without notice to the parties. This includes binders and boxes containing the documents.

*[Rule 6.32 adopted effective 7/1/15]*

**6.33 COURT REPORTERS**

Court reporting services may also be provided at the request of the Court or the parties for certain types of family law proceedings. 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. Use of electronic recording in lieu of using a court reporter is not permitted by law in any family law proceeding. For information on how to request the services of a court reporter, please see Local Rule 8.18.

*[Rule 6.33 adopted effective 7/1/15; amended 7/1/18]*

**6.34 SERVICE OF SUMMONS BY PUBLICATION OR POSTING**

If the respondent cannot be found to be served a summons, the petitioner may request an order for service of the summons by publication or posting. Posting may be ordered only if the court finds that the petitioner is eligible for a waiver of court fees and costs. To request service of summons by publication or posting, the petitioner must complete and submit to the court an original and one copy of an *Application for Order for Publication or Posting* (Judicial Council Form FL-980) and *Order for Publication or Posting* (Judicial Council Form FL-982) with a self-addressed stamped envelope. If Petitioner seeks an order for Posting, the petitioner must also submit a blank *Proof of Service by Posting* (Judicial Council Form FL-985) which will be completed by the Court Clerk who posts the documents.

*[Rule 6.34 adopted effective 1/1/16]*

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## 7. APPELLATE RULES

### 7.1 APPLICATION

The Appellate Division Rules apply to all appeals filed in the appellate division of the court, unless otherwise provided in these rules, by rule in the California Rules of Court, or by order in a particular case.

*[Rule 7.1 adopted effective 1/1/18]*

### 7.2 DISMISSAL UPON FAILURE TO FILE OPENING BRIEF

When the time for filing briefs in any matter in which the appellate division has jurisdiction has expired either pursuant to the California Rules of Court or as extended by court order and no opening brief has been filed, the court will send a Notice of Impending Dismissal. If the court receives no response to the notice within the time frame provided, it shall enter a dismissal without a hearing.

*[Rule 7.2 adopted effective 1/1/18]*

### 7.3 MOTIONS

All motions, including ex parte applications for orders, shall be presented to the presiding judge of the appellate division. The presiding judge may rule on the motion, convene the panel to rule on the motion, or may schedule a motion for hearing before the panel at his or her discretion.

*[Rule 7.3 adopted effective 1/1/18]*

### 7.4 COPIES

At the time of filing any original brief with the Clerk of the Appellate Division, the filing party shall lodge with the Clerk four (4) legible copies of the brief.

*[Rule 7.4 adopted effective 5/1/98; amended 7/1/15]*

### 7.5 RECORD ON APPEAL - CIVIL MATTERS

**A. 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, pursuant to CRC 8.830(a)(1)(B) and 8.833.

**B. Settled Statement on Appeal.** The Appellate Division elects to authorize the use of an official electronic recording, where available, as the record of the oral proceeding instead of obtaining a corrected statement on appeal from the judicial officer who presided over the proceeding before the Appellate Division, 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).

*[Rule 7.5 adopted effective 1/1/13; amended 1/1/18]*

### 7.6 RECORD ON APPEAL - FELONIES AND MISDEMEANORS

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 8.860(a)(1)(B) and 8.863.

*[Rule 7.6 adopted effective 1/1/16; amended 7/1/18]*

**7.7 RECORD ON APPEAL - INFRACTIONS**

The Appellate Division elects to use 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.

The Appellate Division elects to use the official electronic recording, where available, as the record of the oral proceeding instead of obtaining a reporter's transcript or corrected statement on appeal from the judicial officer who presided over the proceeding before the Appellate Division, 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).)

*[Rule 7.7 adopted effective 1/1/18]*

## **8. MISCELLANEOUS RULES**

### **8.1 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 8.2 or MCR Misc 8.2).

*[Rule 8.1 adopted effective 5/1/98; amended 1/1/10]*

### **8.2 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 8.2 adopted effective 5/1/98]*

### **8.3 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 8.3 adopted effective 5/1/98]*

### **8.4 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 8.4 adopted effective 5/1/98]*

### **8.5 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 (3) 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 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 8.5 adopted effective 5/1/98; amended 7/1/09]*

### **8.6 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

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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 8.6 adopted effective 7/1/09]*

### **8.7 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 8.7 adopted effective 7/1/09]*

### **8.8 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.

**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 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 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 8.8 adopted effective 1/1/10]*

## **8.9 COURT RECORDS RESEARCH**

**A. Research Requests.** The fee for research requests shall be \$15 for each search of records or court files that take longer than 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 fee will be charged for the first two records and a \$5 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,” if the amount of the research is unknown, or the amount previously provided by the Court.

**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 for each record included in the Declaration.

*[Rule 8.9 adopted effective 1/1/14]*

## **8.10 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 (5) 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 ten (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 8.10 adopted effective 1/1/10]*

### **8.11 ATTORNEYS FEES FOR COURT-APPOINTED COUNSEL**

Attorneys appointed by the Court to represent parties shall submit billings for their services at least once per year and may not bill for services that span multiple years. This rule is applicable whether or not the Court, the County of Marin or the individual parties are responsible for paying for these legal services.

*[Rule 8.11 adopted effective 7/1/15]*

### **8.12 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. Checks Tendered with Insufficient Funds.** Pursuant to Penal Code section 4.76(a) persons making payment to the Court by personal or business check for criminal or traffic fines, fees or forfeitures must ensure that sufficient funds are available to honor these check transactions. If it is determined that there are insufficient funds in the payor's bank account, the Court may refer the dishonored check(s) to the Enhanced Court Collections Program for collection and/or to the District Attorney for enforcement. If attorneys licensed by the California State Bar pay filing fees by tendering checks on accounts with insufficient funds, the Court may notify the State Bar of such dishonored checks. See Business and Professions code section 6091.1.

**E. Overpayments.** When an amount paid to the Court exceeds the total amount due for any fine, fee or forfeiture, and the overpayment does not exceed ten dollars (\$10.00), the Court shall accept the overpayment and deposit those funds in local Court revenue. In recognition of the administrative costs related to refunding overpayments of \$10.00 or less, such overpayments will not be refunded to the payer.

*[Rule 8.12 adopted effective 5/1/98; amended 7/1/14]*

**8.13 PAYMENT IN COINS**

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 8.13 adopted effective 5/1/98; amended 7/1/15]*

**8.14 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 8.14 adopted effective 5/1/98]*

**8.15 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 8.15 adopted effective 7/1/99]*

**8.16 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 8.16 adopted effective 7/1/99]*

**8.17 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 (Code of Civil Procedure § 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 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

## MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

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 thirty (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 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](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.

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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 Code of Civil Procedure § 203.

2. *Exemptions.* In accordance with Code of Civil Procedure § 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. Any request for a permanent excuse or exemption due to medical or other reasons, requires approval and authorization by the Jury Commissioner or designee.

3. *Excuses.* Please see California Rule of Court 2.1008(d) for reasons that allow a juror to be excused from jury service. Excuses may only be requested after a person has been summoned for jury duty.

4. *Postponement.* A potential juror may request postponement of jury service for up to ninety (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](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 8.17 adopted effective 5/1/98; amended 7/1/19]*

### **8.18 COURT REPORTERS**

**A. General Provisions.** Official and pro tempore court reporter services and compensation are described in § 68086 et seq. of the Government 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.

## MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

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; 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 ten (10) 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 Government 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.

**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 Government Code § 69955. The notes may be lodged by email at [reporter@marincourt.org](mailto:reporter@marincourt.org) or by submitting a CD to the Clerk of the Court within thirty (30) days of reporting. The notes shall be labeled with the date recorded, the Court department, and the name of the reporter.

*[Rule 8.18 adopted effective 7/1/10; amended 1/1/20]*

### **8.19 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

## MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

(Administration) between the hours of 8:00 a.m. and 4:00 p.m., emailed to [administration@marincourt.org](mailto:administration@marincourt.org), or mailed to Marin County Superior Court, Administration (Room 116), P.O. Box 4988, San Rafael, CA 94913-4988.

*[Rule 8.19 adopted effective 7/1/11]*

### **8.20 TELEPHONIC APPEARANCES – CIVIL, FAMILY, PROBATE, AND APPELLATE DIVISIONS**

**A. Telephonic Appearances.** Parties shall schedule their telephonic appearance through vCourt, a Court-run telephonic appearance system two (2) court days prior to a hearing. To register for a telephonic appearance, go to the Court’s website and click on vCourt system to sign up. You cannot register for a telephonic appearance over the phone. There shall be a charge for each telephonic appearance, pursuant to California Rules of Court, Rule 3.670. There may be an additional charge for appearances scheduled less than two (2) court days prior to the scheduled hearing.

A party making a telephonic appearance shall: (a) eliminate to the greatest extent possible all ambient noise from the party’s location; (b) speak directly into a telephone handset during the appearance; and (c) not utilize the “hold” button. Each time a party speaks, the party shall identify by name for the record and participate in the appearance with the same degree of courtesy and courtroom etiquette as a personal appearance would require.

**B. Child Support Hearings Involving DCSS.** For telephonic appearances in cases involving DCSS, the requesting party must submit to the Court a Request for Telephone Appearance form (FL-679) at least twelve (12) court days prior to the hearing pursuant to CRC 5.324. The Court will provide the requesting party with the telephone number and conference call passcode if the request is approved.

*[Rule 8.20 adopted effective 1/1/18; amended 1/1/19]*

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**APPENDIX A**

<b>LOCAL FORMS ON WEBSITE (these forms are designated "Optional")</b>	<b>FORM #</b>		<b>ADOPT/ AMEND DATE</b>
<b>ADMINISTRATIVE</b>			
REQUEST FOR JUDICIAL ADMINISTRATIVE RECORDS	ADM022		8/15
<b>CIVIL</b>			
ADMINISTRATIVE APPEAL - CDA - PROOF OF SERVICE	CV034		6/15
ADMINISTRATIVE APPEAL - GENERAL - PROOF OF SERVICE	CV033		6/15
ALTERNATIVE DISPUTE RESOLUTION INFORMATIONAL NOTICE	CV006		7/15
AMENDMENT TO COMPLAINT	CV025		7/07
APPLICATION TO SERVE AS JUDICIAL ARBITRATOR	CV058		11/15
APPLICATION TO SERVE AS VOLUNTEER CIVIL DISCOVERY FACILITATOR	CV056		11/15
APPLICATION TO SERVE AS VOLUNTEER SETTLEMENT CONFERENCE PANELIST FOR CIVIL & FAMILY LAW (Attorneys & MHP's) & QUALIFICATIONS	CV055/FL055		11/15
ATTORNEY'S FEE SCHEDULE - CIVIL CASES	CV044		6/15
BODY ATTACHMENT & WARRANT OF ARREST	CV016		5/15
BODY ATTACHMENT & WARRANT OF ARREST LETTER	CV026		5/15
CHANGE OF NAME & GENDER FILING INFORMATION	CV079W		1/17
CHANGE OF NAME FILING INFORMATION	CV078W		11/17
DECLARATION REGARDING NOTICE OF EX PARTE APPLICATION FOR ORDERS AND/OR ORDER SHORTENING TIME - CIVIL	CV065		6/15
LEGALLY ADJUDICATED NEWSPAPERS FOR PROBATE & NAME CHANGE PUBS	CV080/PR028		10/19
NOTICE OF ADMINISTRATIVE APPEAL - CDA	CV028		8/15
NOTICE OF ADMINISTRATIVE APPEAL - GENERAL	CV027		8/15
NOTICE OF APPEAL - PARKING	CV029		8/15
NOTICE OF DECISION - FOLLOWING DE NOVO HEARING ON PARKING APPEAL	CV030		8/15
PARKING APPEAL - PROOF OF SERVICE	CV031		6/15
STIPULATION & ORDER TO DISMISS ACTION & SUBMIT CAUSES OF ACTION TO SMALL CLAIMS JURISDICTION	CV032		5/15
STIPULATION TO USE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS	CV002	(a)	7/15
<b>COURT REPORTING</b>			
REQUEST FOR COURT REPORTING SERVICES IN CIVIL, FAMILY LAW & PROBATE PROCEEDINGS	REP004		8/19
<b>CRIMINAL</b>			
CRIMINAL CALENDAR ADD-ON REQUEST - MANUAL SUBMISSION	CR099A		9/19
CRIMINAL CALENDAR ADD-ON REQUEST - OUTLOOK SUBMISSION	CR099B		9/19
PETITION FOR DISMISSAL (Penal Code Sections) - Instructions	CR112		9/17
PROOF OF SERVICE	CR047/TR047		10/17
<b>FAMILY LAW</b>			
APPLICATION TO SERVE AS VOLUNTEER SETTLEMENT CONFERENCE PANELIST FOR CIVIL & FAMILY LAW (Attorneys & MHP's) & QUALIFICATIONS	FL055/CV055		11/15
CASE PROGRESS CONFERENCE QUESTIONNAIRE	FL003/SP		9/13
CITATION TO APPEAR	FL023		3/16
DECLARATION OF PROPOSED GUARDIAN'S VIEWING OF FILM	FL033/PR033		1/15
<b>LOCAL FORMS ON WEBSITE (these forms are designated "Optional")</b>	<b>FORM #</b>		<b>ADOPT/ AMEND DATE</b>

## MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

## APPENDIX A

LOCAL FORMS ON WEBSITE <i>(these forms are designated "Optional")</i>	FORM #	◆	ADOPT/ AMEND DATE
<b><i>FAMILY LAW cont'd</i></b>			
DECLARATION REGARDING ADDRESS VERIFICATION POST JUDGMENT	FL070		10/13
DECLARATION REGARDING NOTICE OF EX PARTE APPLICATION FOR ORDERS AND/OR ORDERS SHORTENING TIME - FAMILY LAW	FL048		10/13
DISSOLUTION OF MARRIAGE, LEGAL SEPARATION & NULLITY OF MARRIAGE FILING INFORMATION	FL069W	(b)	11/17
DOMESTIC VIOLENCE PACKET (WITH CHILDREN)	FL012	(d)	12/18
DOMESTIC VIOLENCE PACKET (WITHOUT CHILDREN)	FL012	(d)	12/18
DOMESTIC VIOLENCE (WITH / WITHOUT CHILDREN) RENEWAL PACKET	FL065	(d)	12/18
FAMILY COURT SERVICES CHILD CUSTODY RECOMMENDING COUNSELING PROGRAM	FL005/SP		9/13
FAMILY COURT SERVICES INTAKE SHEET	FL016/SP		10/13
FAMILY LAW AT ISSUE MEMORANDUM	FL018		9/18
FAMILY LAW JUDGMENT CHECKLIST	FL015		10/13
FAMILY LAW RESOURCES	FL063/SP	(b)	8/17
FAMILY LAW TENTATIVE RULINGS	FL 078/SP		11/17
HOW TO COMPLETE YOUR FAMILY LAW CASE - PETITIONER'S GUIDE	FL061/SP	(b)	9/13
HOW TO COMPLETE YOUR PARENTAGE CASE - PETITIONER'S GUIDE	FL059/SP	(c)	9/13
NOTICE TO PARTIES IN FAMILY LAW CASES	FL008/SP		3/18
PETITION TO DECLARE CHILD FREE FROM PARENTAL CUSTODY & CONTROL	FL022		7/15
STATEMENT OF AGREEMENT/DISAGREEMENT WITH FAMILY COURT SERVICES RECOMMENDATIONS	FL027		10/13
STIPULATION & ORDER REGARDING APPOINTING PARENTING COORDINATOR	FL041		8/19
STIPULATION & ORDER TO CONTINUE CASE PROGRESS CONFERENCE	FL007/SP		8/19
SUMMARY DISSOLUTION OF MARRIAGE FILING INFORMATION	FL068W	(b)	11/17
TRIAL READINESS CONFERENCE STATEMENT	FL064		10/13
YOU'VE BEEN SERVED - RESPONDENT'S GUIDE - PARENTAGE	FL060/SP	(c)	9/13
YOU'VE BEEN SERVED - RESPONDENT'S GUIDE - FAMILY LAW CASE	FL062/SP	(b)	9/13
<b><i>JURY SERVICES</i></b>			
FULL-TIME CHILDCARE / CARE PROVIDER REQUEST FOR EXCUSAL FROM JURY DUTY	JUR004		8/17
REQUEST FOR MEDICAL EXCUSE FROM JURY DUTY	JUR001		11/19
<b><i>JUVENILE</i></b>			
CONSENT TO ELECTRONIC SERVICE AND NOTICE OF ELECTRONIC SERVICE ADDRESS	JUV022		1/20
<b><i>MISCELLANEOUS</i></b>			
REQUEST FOR TELEPHONIC APPEARANCE	MISC001		2/18
<b><i>PROBATE</i></b>			
AFFIDAVIT UNDER CALIFORNIA PROBATE CODE § 13101	PR009		6/15
APPLICATION FOR ORDER TRANSFERRING VENUE	PR030		7/13
ATTORNEY FEE DECLARATION	PR035		1/14
CONFIDENTIAL CONTACT INFORMATION	PR015		6/15
CONSERVATORSHIP FILING INFORMATION	PR026W		5/15

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**APPENDIX A**

<b>LOCAL FORMS ON WEBSITE</b> <i>(these forms are designated "Optional")</i>	<b>FORM #</b>		<b>ADOPT/ AMEND DATE</b>
<b><i>PROBATE cont'd</i></b>			
CONSERVATORSHIP GENERAL PLAN	PR017		1/14
COURT INVESTIGATOR SCHEDULE OF FEES	PR019		7/12
DECLARATION OF PROPOSED CONSERVATOR'S VIEWING OF FILM	PR034		1/15
DECLARATION OF PROPOSED GUARDIAN'S VIEWING OF FILM	FL033/PR033		1/15
FIDUCIARY FEE DECLARATION	PR036		1/14
GUARDIANSHIP FILING INFORMATION	PR027W		7/16
INSTRUCTIONS FOR APPLYING FOR TRANSFER OF VENUE	PR029		5/18
LEGALLY ADJUDICATED NEWSPAPERS FOR PROBATE & NAME CHANGE PUBS	PR028/CV080		10/19
NOTICE OF TRANSFER OF ESTATE PLANNING DOCUMENTS	PR014		8/15
ORDER APPOINTING REFEREE	PR010		6/15
ORDER FOR TRANSFER OF VENUE	PR031		7/13
PROPOSED GUARDIAN INFORMATION FORM	PR007		6/15
STEPARENT ADOPTION QUESTIONNAIRE	PR021		6/18
<b><i>SMALL CLAIMS</i></b>			
DECLARATION OF JUDGMENT DEBTOR REGARDING SATISFACTION OF JUDGMENT	SC012		8/15
IMPORTANT INFORMATION FOR SMALL CLAIMS PARTIES	SC008		4/19
LOCAL POLICY INFORMATION FOR THE SMALL CLAIMS PLAINTIFF	SC001		6/15
NAMING PLAINTIFFS AND DEFENDANTS	SC004		9/10
REQUEST FOR DISMISSAL	SC005		12/16
SMALL CLAIMS FILING INFORMATION	SC013W		7/18
SMALL CLAIMS SUBPOENA & DECLARATION INFORMATION SHEET	SC003		4/19
<b><i>TRAFFIC</i></b>			
PLEA FORM - INFRACTIONS	TR048		10/17

<b> LEGEND - LOCAL FORMS CAN BE FOUND UNDER THE FOLLOWING HEADINGS:</b>	
(a)	Forms Related to Alternative Dispute Resolution
(b)	Forms Related to Dissolution (Divorce)
(c)	Forms Related to Parentage
(d)	Forms Packets
<b>NOTES REGARDING FORM NAMES &amp; NUMBERS:</b>	
INST	Instructions Only - Form is Separate
incl. INST	Instructions Included
SP	Form is either bilingual or available on a separate form in Spanish
W	Form duplicated specifically for Website - contains hyperlinks to Judicial Council Forms & Local Forms

**APPENDIX A**

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**Marin County  
Competency  
Protocol for  
Juvenile Court  
2020**

**APPENDIX B**

**MARIN COUNTY COMPETENCY PROTOCOL FOR JUVENILE COURT  
JANUARY 1, 2020**

**I. INTRODUCTION**

A. This protocol shall apply when it appears that there is a doubt as to the competency of a minor to stand trial or to participate in Juvenile proceedings in a delinquency case.

B. This protocol is intended to supplement the provisions of Welfare & Institutions Code §709, California Rule of Court 5.645, as well as relevant case law. In the event that a conflict arises between this protocol and the statute or rule, the statutory and rule provisions control.

C. This protocol is created to further the goals and obligations of Welfare & Institutions Code §202 and to enable a collaborative approach toward issues of competency. The Court should always consider the rehabilitative needs and best interests of the minor as well as the interests of public safety and protection of the community.

**II. INFORMAL RESOLUTION**

A. Formal competency proceedings in some cases may be contrary either to the goals of protecting public safety or rehabilitating the minor. Where substantial evidence exists that a minor may be incompetent to stand trial, the Court may consider resolving the matter without initiating formal competency proceedings.

B. In determining whether informal resolution is appropriate the Court may:

1. Consider dismissal of the action pursuant to Welfare and Institutions Code §782.
2. Work with the parties to establish a voluntary service plan
3. Consider WIC 654 or 654.2 alternatives
4. Refer the minor for evaluation under WIC§705, or (Parents/Guardians may seek under Lanterman-Petris – Act.)
5. Refer minor to a local social service provider to develop and implement a service plan
6. Enlist assistance of Probation and Defense Counsel or others to:
  - a. Assist family to enroll in Medi-Cal and/or SSI,
  - b. Obtain services of local regional center
  - c. Obtain services through individuals with Disabilities Education Act
  - d. Obtain services through the Mental Health Services Act or Title IV-E
  - f. If the minor’s parents are not available to authorize treatment, order that needed medical and mental care be provided pursuant to WIC §739
  - g. Use the joinder provisions of WIC §727 subdivision (b)(1) to join as a party an agency that has failed to meet a legal obligation to the minor,

## MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

provided that the Juvenile Court may not impose duties on the agency beyond those mandated by law.

C. The court may, with the consent of the parties, conduct progress review hearings and continue the case until the court is satisfied that the situation that brought the minor to the attention of the juvenile court has been addressed, or that the matter cannot be addressed by the juvenile court intervention. At that time, the court shall dismiss the petition under WIC §782 on the grounds that “the interests of justice and the welfare of the minor require such dismissal.” Or the “minor is not in need of treatment and rehabilitation.”

### **III. LEGAL STANDARD FOR JUVENILE COMPETENCE**

A minor is incompetent if the minor lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as a factual understanding of the nature of the charges or proceedings against the minor. Incompetency may result from the presence of any condition or conditions, including, but not limited to, mental illness, mental disorder, developmental disability or developmental immaturity. WIC §709(a).

### **IV. INVITATION OF FORMAL COMPETENCY PROCEEDINGS**

A. During the pendency of any juvenile proceeding, the court may receive information from any source regarding the minor’s ability to understand the proceedings. The minor’s counsel or the court may express a doubt as to the minor’s competency. WIC §709(a). The Court may allow defense counsel to present his/her opinion regarding the minor’s competence *in camera* if the court finds there is reason to believe that the attorney-client privileged information would be inappropriately revealed in open court. (California Rules of Court, Rule 4.130(b)(2))

B. If the Court finds substantial evidence that raises a doubt as to the minor’s competency, the proceedings shall be suspended. The Court and parties are referred to Appendix 3, for summary of various findings on the issue of substantial evidence.

C. Unless the parties stipulate to a finding that the minor lacks competency, or the parties are willing to submit on the issue of the minor’s lack of competency, the court shall appoint an expert to evaluate the minor and determine whether the minor suffers from a mental illness, mental disorder, developmental disability, developmental immaturity, or other condition affecting competency and, if so, whether the minor is incompetent as defined. (WIC§709)(b)(1)).

### **V. QUALIFICATIONS, APPOINTMENT OF EXPERT PSYCHOLOGIST**

A. Qualifications of Expert Psychologist. The expert shall have expertise in child and adolescent development and forensic evaluation of juveniles for purposes of adjudicating competency, shall be familiar with the competency standards and accepted criteria used

## MARIN COUNTY SUPERIOR COURT - UNIFORM LOCAL RULES

in evaluating juvenile competency, shall have received training in conducting juvenile competency evaluations, and shall be familiar with competency remediation for the condition or conditions affecting competence in the particular case. WIC§ 709(b)(2)

B. Court Psychologist Panel. The Court shall maintain a panel of Psychologists doing competency evaluations for the juvenile Court who meet the above criteria. Panel members shall have met the requirements of CRC 5.645(d)(1)(B).

C. Assignment of Psychologist from Court Panel. The Court or Probation shall appoint a Psychologist from the Court panel to evaluate the minor. Court approval must be obtained to retain a Psychologist outside the approved panel.

D. Payment of Psychologist. The Court will contribute \$750 towards payment of the psychologist evaluation.

E. Retention of Expert by Parties. The Prosecuting Attorney or the minor may retain an expert witness to testify at a competency hearing. Said experts must meet the requirements of CRC 5.645. Any costs incurred as a result of contracting with expert witnesses in this manner shall be borne by the requesting party or agency. The Court does not pay for separately retained defense or prosecution experts. Experts must be disclosed at least five court days prior to the hearing.

F. Evaluation/Report by Court Appointed Psychologist.

1. The Psychologist shall conduct an examination in conformance with the requirements of WIC §709(b)(3) which include:
  - a. personal interview of minor,
  - b. review of available records,
  - c. consult with minor's counsel and any other person who has provided information to the court regarding the minor's lack of competency,
  - c. gather a developmental history of the minor,
  - e. administer age appropriate testing specific to the issue of competency,
  - f. be proficient in the language preferred by the minor or employ the services of a certified interpreter and use assessment tools that are linguistically and culturally appropriate for the minor
2. The Psychologist shall prepare a written report which will
  - a. opine whether the minor has sufficient present ability to consult with his or her counsel with a reasonable degree of rational understanding.
  - b. opine whether the minor has a rational and factual understanding of the proceedings against the minor.
  - c. state the basis for these conclusions.
  - d. give the expert's opinion on whether the minor is likely to attain competency in the foreseeable future (assuming finding of incompetency),
  - e. make recommendations regarding the type of remediation services that would be effective in assisting the minor in attaining competency.

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G. Setting Date for Receipt of Competency Report. A psychologist should be afforded at least 15 court days to complete the evaluation. The 15 day time frame balances the need for speedy resolution of the competency issues, and adequate time to complete an evaluation. In the Court's discretion the psychologist may be given additional time to complete the evaluation.

The scheduled for Receipt of the Competency Evaluation shall be set 17 court days after the Court initially suspends criminal proceedings and appoints an expert to evaluate the minor's competency. (Receipts for Competency Evaluations for out of custody minors shall be set within 30 days) The Competency Evaluation Report shall be delivered to the Judge, Probation Officer, District Attorney and Defense Counsel two court days before the Competency Hearing. This will allow all parties to review the report prior to the hearing.

### H. Proceedings at Receipt of Competency Report

On the date of Receipt of the Competency Evaluation Report, three things can happen:

1. The parties can stipulate to the findings of the Competency Evaluation Report. If Petitioner and Defense Counsel stipulate that the minor is competent and the Court accepts this stipulation, then criminal proceedings are reinstated. If Petitioner and Defense Counsel stipulate that the minor is incompetent and the Court accepts this stipulation, then criminal proceedings remain suspended (or are dismissed, see Section VII B below). The Court need not accept the stipulation. If the Court does not accept the stipulation of the parties, the Court should set a Competency Trial. At the trial, the parties could still stipulate to the Competency Evaluation Report and the Court would make whatever findings the Court deems appropriate at the hearing;
2. The parties can submit the matter for a court determination based on the Competency Evaluation Report. The parties would not take a position and leave it up to the Court to decide. If the Court finds that the minor is competent, then criminal proceedings are reinstated. If the Court finds that the minor is incompetent, then criminal proceedings remain suspended (or dismissed see Section VII B below); or
3. The parties can contest the opinion and set the matter for a Competency Hearing.

If the Court appointed expert opines that the minor is developmentally disabled, the Court shall order the Probation Department to refer the minor to the Director of the Golden Gate Regional Center to further evaluate the minor for eligibility for services.

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## **VI. COMPETENCY HEARING**

A. Timing of Competency Hearing. If the minor is in custody, a Competency Hearing should be set within 15 court days from the Receipt of Competency Evaluation Report, unless there is good cause to extend the time for a short period to accommodate the availability of expert witnesses or to allow for completion of additional evaluations. If the minor is out of custody, a Competency Hearing shall be set within 45 days from the Receipt of Competency Evaluation Report date. De facto good cause would exist for a reasonable continuance if an attorney needs further time to prepare for trial, or to secure his/her own expert to render a second opinion.

B. Trial Judge. There is no requirement that the Competency Hearing be held before the same judge who declared a doubt about the minor's competence to stand trial. (*People v. Hill* (1967) 62 Cal. 2d 105, 113, fn. 2; *People v. Lawley* (2002) 27 Cal.4th 102, 133-134 [Adult cases].)

C. Presumption of Competence; Burden of Proof. The minor is presumed competent. The party asserting the Minor's incompetency bears the burden of proof. (Welfare and Institutions Code §709; *In Re R.V.* (2015) 61 Cal. 4<sup>th</sup> 181; *Bryan E. v. Superior Court* (2014) 231 Cal.App.4th 385.). However, for minor's under the age of 14 at the time of the commission of the alleged offense, the court shall first make a determination as to the minor's capacity pursuant to Penal Code§26. WIC§709(c). The burden of proof is by a preponderance of evidence. WIC §709(h)(1)

D. Competency Hearing Procedure:

1. Either counsel may offer an opening statement.
2. Defense Counsel presents evidence of the minor's incompetence.
3. Petitioner presents evidence of the minor's competence.
4. Each party may offer rebuttal testimony.
5. Defense Counsel makes final argument, followed by Petitioner.

E. Minor's Statements in Subsequent Proceedings. Neither statements made by a minor to any evaluator, nor any evidence derived from these statements may be used by the Petitioner to prove its case-in-chief as to the minor's guilt. (California Rules of Court 4.130(d)(3); *People v. Jablonski* (2006) 37 Cal.App.4th 774, 802-804; *People v. Arcega* (1982) 32 Cal.3d 504,520. Statements made during competency examinations may not be used to impeach the minor if he or she testifies at a regular trial. *People v. Pokovich* (2006) 39 Cal. 4th 1240, 1246-1253.)

F. Express Finding After Competency Trial. The Court must expressly state on the record, either orally or in writing, its determination whether the minor is competent or incompetent to stand trial, as well as the evidence considered and the reasons in support of its finding. (California Rules of Court 4.130(e)(4)(B)).

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### **VII. PROCEDURE FOLLOWING FINDING OF COMPETENCY/INCOMPETENCY AT COMPETENCY HEARING**

A. If the court finds the minor to be competent, the court shall reinstate the proceedings.

B. If the court finds the minor to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed. WIC §709(f)

C. If the court finds the minor to be incompetent and the petition contains felony offenses:

1. All offenses shall remain suspended for a period of time that is no longer than reasonably necessary to determine whether there is a substantial probability that the minor will attain competency in the foreseeable future, or the court no longer retains jurisdiction and the case must be dismissed.
2. The court may make orders that it deems appropriate for services and rule on motions that do not require the participation of the minor. WIC§709(e).
3. The court shall refer the minor to services to help the minor attain competency in accordance with WIC §709(g)(1). Services shall be provided in the least restrictive environment consistent with public safety. The goal should be to assist the improvement of the overall functioning of the minor in addition to answering the narrow issue of competency.

D. New Offenses. Where the minor is alleged to have committed a new offense or violation of probation, the deputy probation officer should not avoid filing a new notice or petition merely because there is a pending competency process. The Probation Department should proceed as if there were no competency process under way, and should not wait until the next scheduled court hearing. For wards of the court whom have violated conditions of their probation, the deputy probation officer may make the decision to immediately bring the minor into custody, which would trigger a detention. The Probation Department can also choose to leave the minor out of custody and set an immediate hearing if they believe there is no threat to either the child or public safety.

The minor is presumed to be competent. The minor's attorney would have to petition the court for a review of the minor's current competency. Starting anew by applying this Protocol to the new petition/notice, the court must make findings. A new Competency Evaluation may be ordered after consideration of the timing and nature of the alleged violations. If there is substantial evidence the minor may be incompetent, the new case will be suspended and the court will order the minor's treatment for the new alleged offense to be added to the pending attempt to restore competency. If the court determines there is not substantial evidence the minor is incompetent, the new case will not be suspended and the court will proceed with the new underlying juvenile proceedings. The issue of the minor's competence on the previously suspended petition/notice will remain as is, until the court makes a finding regarding competence on that matter.

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Of course a determination by the court on the new case can significantly affect the competency issue on the formerly suspended case because the standard for competency is “current” status of the minor. If the minor is competent on the new case, it is a factor to be considered on the pending competency issue.

### **VIII. COMPETENCY ATTAINMENT PROGRAM**

Where incompetency has been found and services ordered, the Probation Officer will collect and provide Department of Health and Human Services with the following information:

1. Competency Evaluation;
2. All psychiatric and psychological evaluations;
3. All behavioral health records;
4. Relevant educational records, including Individualized Education Plans, if applicable;
5. Available health and medical information (including medication);
6. All Delinquency and Dependency petitions or notices;
7. A list of all previous referrals to Probation, Human Services Agency and/or Child Protective Services, and reports generated;
8. Name, phone number and email of the Probation Officer, Minor’s attorney and Assistant District Attorney;
9. Location, phone number and address of the minor; and
10. Names, phone numbers, addresses and emails for the parents or guardians for the minor.

#### A. Initiating Competency Attainment Service:

The court may make orders that it deems appropriate for services to “assist the minor I attaining competency” based on the expert report or other relevant testimony. The court shall order a deputy probation officer to initiate services for the attainment of competence by referring the matter to Golden Gate Regional Center (If the competency assessment indicates it is related to a developmental delay see below) or to Health and Human Services (if competency assessment indicates it is related to another issue). The court may order the responsible person or entity to do specific things, including but not limited to seeking evaluation for eligibility for particular programs or services, or arranging for those services to be provided.

B. Placement of the Minor. Many minors can successfully participate in restoration services while they are living in their homes, attending their regular schools, and participating in their normal activities. Community-based wraparound services may assist in the minor’s progress in attaining competency. The minor may be placed at home or in a §709 placement with Home Detention Orders.

C. Developmentally Disabled Minors. If the minor is developmentally disabled he or she shall be referred to the Golden Gate Regional Center for services. In order for a minor to

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qualify for these services, the Golden Gate Regional Center must examine and accept the client.

1. If the minor is already a Golden Gate Regional Center client, the assigned Probation Officer will submit a plan to work collaboratively with Golden Gate Regional Center staff in order to obtain appropriate community supports and services.
2. If the minor is not already a Golden Gate Regional Center client, the assigned Probation Officer will work with the minor's family to facilitate the completion of a Golden Gate Regional Center evaluation within the 120 days allowed through the application process. If the minor's parent or guardian is unable or unwilling to participate in this process, the Court will order the evaluation but designate the minor's attorney or the assigned Probation Officer to facilitate the arrangements.
3. The assigned Probation Officer will request that the Golden Gate Regional Center provide progress reports at each court hearing for the minor.

### **IX. PERIODIC REVIEWS OF REMEDIAL STATUS**

A. The court shall review remediation services at least every 30 calendar days for minors in custody and every 45 days for minors out of custody during the remediation period. WIC §709 (g)(1).

B. For minors in custody, the County Mental Health Department shall provide the court with suitable alternatives for the continued delivery of remediation services as part of the Court's review of remediation services. The court shall consider appropriate alternatives to juvenile hall confinement and make orders necessary to assist with the delivery of remediation services in an alternate setting. WIC §709(g)(1) (A-G) and WIC §709(g)(2).

C. Within six months of the initial finding of incompetency, the court shall hold an evidentiary hearing on whether the minor is remediated or is able to be remediated (absent stipulation to the recommendation of the remediation program). See WIC§709(h)(1) for burdens of proof and presumptions.

D. The court shall consider the factors outlined in WIC §709(h)(5)(A) (B) (C) whenever confinement over six months is being considered.

E. If the court finds the minor has been remediated, the court shall reinstate the proceedings. WIC§709(h)(2)

F. If the court finds the minor has not yet been remediated, but is likely to be remediated within six months, the court shall order the minor returned to the remediation program. The total remediation period shall not exceed one year. WIC§709(h)(3).

G. If the court finds the minor will not achieve competency within six months, the court shall dismiss the petition. The court shall invite persons and agencies to the dismissal

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hearing (or other agreed upon forum) the following issues and to discuss any services that may be available to the minor.

1. Possible danger the minor presents to himself/herself or the community;
2. A short time to bridge the minor's return to the community/home and make sure appropriate mental health services are in place;
3. Conservatorship, with an assessment that needs to be completed before dismissal;
4. Civil Commitment, with an assessment that needs to be completed before dismissal;
5. Educational needs before dismissal;
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